

## **Report**

### **Compensating Victims of Crime**

(LRC 130 - 2026)

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NOTES

1. Our website uses ReachDeck which helps to improve the accessibility, readability and reach of our publications. If you have any difficulty in reading this Report, please contact us and we will do our best to assist. This Report has been drafted in plain English in so far as was possible.

2. Please note that all hyperlinks in this Report were checked for accuracy at the time of the final draft.

3. The Commission relied on the official English translation of international legislative sources where available. If an official version was not available, the translation software DeepL was generally used. The translation may not accurately reflect the original version on all points.

## About the Law Reform Commission

### Law Reform

Our purpose is to review Irish law and make proposals for reform. We also work on modernising the law to make it easier to access and understand. Our proposals are developed in a process which starts with a Consultation Paper. Consultation Papers examine the law and set out questions on possible changes to the law. Once a Consultation Paper is published, we invite submissions on possible changes to the law. We consult widely, consider the submissions we have received and then publish a Report setting out the Commission's analysis and recommendations.

Many of the Commission's proposals have led to changes in Irish law.

### Our mandate is provided for by law

The Law Reform Commission was established by the Law Reform Commission Act 1975 to keep the law under independent, objective and expert review.

You can read all our publications at [www.lawreform.ie](http://www.lawreform.ie).

### Access to Legislation

We make legislation more accessible to the public. We do this by offering three resources:

- **The Legislation Directory** is an online directory of amendments to primary and secondary legislation and important related information.
- **The Revised Acts** bring together all amendments and changes to an Act in a single text that you can search online. They include selected Acts that were enacted before 2004, and all textually amended Acts enacted from 2004 on except for Finance Acts.
- **The Classified List** is an online database of all Acts of the Oireachtas that remain in force organised into 36 subject-based headings or titles. The Classified List makes it easier to find related legislation on a particular subject. It is the only publicly available resource that does this.

In addition, we are engaged in a continuation of the Statute Law Revision Programme which aims to identify obsolete legislation for repeal.

## Commission Members

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The Commission remains fully responsible for the content of this Report.

## Glossary

| Term                                | Definition                                                                                                                                                                                                                                                             |
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| Actuarial                           | This relates to the use of statistical methods to determine the effects of future contingent events, especially in calculating future financial loss on the basis of empirical data.                                                                                   |
| Advocate General                    | Members of the Court of Justice of the European Union who can present an independent, non-binding legal opinion to the judge in a particular case.                                                                                                                     |
| Adjudication                        | The application of law to facts as found after the consideration of evidence in order to resolve legal disputes relating to rights and obligations.                                                                                                                    |
| Adjudicative body                   | A body, independent of the Government or any other entity but at the same time not a court, which takes decisions affecting individual rights, according to some fairly precise (and usually legal) guidelines and by following a regular and fairly formal procedure. |
| Advance decision on costs           | In the context of the Report, this means making a decision on whether to make a contribution to legal costs at the start of the application process.                                                                                                                   |
| Appeal on a point of law            | Appeals that challenge a decision on the grounds that the law was misinterpreted or incorrectly applied.                                                                                                                                                               |
| Appellant                           | A person who appeals.                                                                                                                                                                                                                                                  |
| Application for leave               | A motion requesting an appellate court to hear a party's appeal from a judgment when the party has no appeal by right or when the party's time limit for an appeal by right has expired.                                                                               |
| Assessment and adjudication officer | Decision-maker of the proposed statutory body.                                                                                                                                                                                                                         |
| At-risk adult                       | A person who is not a child, and by reason of their physical or mental condition or other particular personal characteristics or family or life circumstance (whether permanent or otherwise) needs support to protect themselves from harm at a particular time.      |
| Award of costs                      | When a court orders a party to pay the legal costs of another party in civil proceedings. The courts                                                                                                                                                                   |

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|                              | have discretion to award costs. The successful party is generally the one awarded costs.                                                                                                                                                                                                                     |
| Balance of probabilities     | This is the standard of proof that will be applicable in determining any claims made to the statutory scheme. It is defined as 'more probable than not'.                                                                                                                                                     |
| Band scheme                  | This kind of scheme uses different bands of compensation to determine an appropriate level of general compensation. Such a scheme provides a range of figures for compensation based on different categories and each band or range of figures can reflect the severity of a particular offence.             |
| Bereavement payment          | This refers to the payment given to family members of a victim who has died under the proposed statutory scheme. The Commission recommends the inclusion of this term in the proposed scheme to refer to payments for family members in fatal cases to recognise the harm suffered as a result of the death. |
| Blanket ban                  | An overall prohibition.                                                                                                                                                                                                                                                                                      |
| Capacity                     | Decision-making capacity as defined in the Assisted Decision-Making (Capacity) Act 2015. A person's ability to make decisions for themselves. This is based on the person's ability to make a specific decision about something, at a specific time.                                                         |
| Central Funds                | The money held and used by the Government. See also the Exchequer.                                                                                                                                                                                                                                           |
| [The] Charter                | The Charter of Fundamental Rights of the European Union. It sets out the civil, political, economic and social rights and freedoms of EU citizens and all persons resident in the EU. It has the same status as the Treaties of the EU.                                                                      |
| Civil law                    | The body of law dealing with the resolution of disputes between individuals; it provides a remedy, usually a financial one, to the aggrieved party against the wrongdoer by way of compensation rather than as punishment.                                                                                   |
| Civil Legal Aid Review Group | An independent review group established by the Minister for Justice in 2022 to review the Civil Legal Aid Scheme. It published both majority and minority reports in 2025.                                                                                                                                   |
| Civil Legal Aid Scheme       | The State scheme, administered by the Legal Aid Board in line with the Civil Legal Aid Act, 1995 as                                                                                                                                                                                                          |

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|                              | amended, through which people on low incomes are supported to access legal advice and legal representation on civil law issues.                                                                                                                                                                                                                                                                                                       |
| Coercive control             | A pattern of controlling and threatening behaviour. This is a criminal offence under section 39 of the Domestic Violence Act 2018 which criminalises a person knowingly and persistently engaging in behaviour that is controlling or coercive, has a serious effect on a person, and which a reasonable person would expect to have a serious effect on a person.                                                                    |
| Common law                   | Judge-made law as opposed to statute law.                                                                                                                                                                                                                                                                                                                                                                                             |
| Comparative jurisdictions    | In the context of this Report, this refers to other countries or areas that have been examined by the Commission when considering proposals for reform.                                                                                                                                                                                                                                                                               |
| Compensation                 | A payment to make amends for loss or injury. In the context of this Report, this may also refer to payments awarded to victims under state-funded compensation schemes to compensate them for the harm they have suffered.                                                                                                                                                                                                            |
| [The] Compensative Directive | Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims [2004] OJ L 261/15. The Directive requires all EU countries to have a compensation scheme for victims of violent intentional crime committed on their territories. The organisation and operation of such schemes is left to the discretion of each EU country. It also sets up an EU-wide cooperation system based on those national schemes |
| Compensation order           | An order made by the court for an offender to pay the victim compensation for any personal injury or loss resulting from an offence. Court-ordered offender compensation orders are provided for under section 6 of the Criminal Justice Act 1993. They are also referred to in the Report as section 6 compensation orders and court-ordered offender compensation.                                                                  |
| Complainant                  | A person who makes a complaint.                                                                                                                                                                                                                                                                                                                                                                                                       |
| Consultation Paper           | The Law Reform Commission's Consultation Paper on Compensating Victims of Crime (LRC CP 67 – 2022) which was published in February 2022.                                                                                                                                                                                                                                                                                              |

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| Consultative case stated procedure                                       | This is a procedure whereby adjudicative bodies refer a legal question to a higher court, typically the High Court, for determination.                                                                                                                                                                                                                                                                                                                          |
| Contributory negligence                                                  | This is a tort law concept. It means that where the plaintiff is at fault, damages will be reduced in proportion to their fault.                                                                                                                                                                                                                                                                                                                                |
| [The] 1983 Convention                                                    | The 1983 Council of Europe Convention on the Compensation of Victims of Violent Crimes.                                                                                                                                                                                                                                                                                                                                                                         |
| Council of Europe                                                        | The Council of Europe is an international body established in 1949 which promotes European co-operation in a number of fields, except defence, with particular emphasis on the safeguarding of human rights, improving the quality of life and strengthening democratic institutions                                                                                                                                                                            |
| Court of Justice of the European Union (CJEU)                            | The judicial authority of the European Union. In cooperation with the courts and tribunals of the Member States, the CJEU ensures the uniform application and interpretation of EU law.                                                                                                                                                                                                                                                                         |
| Court Poor Box                                                           | The Court Poor Box is a non-statutory mechanism whereby a court may direct a defendant in criminal proceedings to make a payment to a charity, with the understanding that no conviction will be recorded against them. The payment is usually accompanied by the dismissal of a charge under section 1 of the Probation of Offenders Act 1907. Their donation is generally lodged by the defendant with the court and paid by the Courts Service to a charity. |
| Crime of violence                                                        | An offence or series of offences involving violence of the threat of violence against a person.                                                                                                                                                                                                                                                                                                                                                                 |
| Criminal Injuries Compensation Scheme ('the current scheme')             | This the current scheme that the Report proposes to be replaced by the statutory scheme. Victims of a violent crime can claim compensation from the state under this scheme. The scheme currently operates as a non-statutory administrative scheme.                                                                                                                                                                                                            |
| Criminal Injuries Compensation Tribunal ('the Tribunal')                 | The Tribunal that is currently responsible for administering the Criminal Injuries Compensation Scheme.                                                                                                                                                                                                                                                                                                                                                         |
| Criminal Justice (Victims of Crime) Act 2017 (the 'Victims' Rights Act') | This Act transposes the Victims' Rights Directive into Irish law. It provides for the protection of victims during investigations and criminal proceedings.                                                                                                                                                                                                                                                                                                     |

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| Cuan (An Ghníomhaireacht um Fhoréigean Baile, Gnéasach agus Inscnebhunaithe) | Cuan is a statutory agency under the remit of the Department of Justice dedicated to tackling and reducing domestic, sexual and gender-based violence (DSGBV).                                                                                                   |
| Custodial sentence                                                           | A sentence of imprisonment where a person is taken into state custody, normally a prison.                                                                                                                                                                        |
| Damages                                                                      | Damages are a money payment which one party is directed to pay to another as compensation for a wrongful act.                                                                                                                                                    |
| Data Protection Commission                                                   | The Irish independent authority responsible for upholding the right of individuals in the EU to have their personal data protected. It is the supervisory authority in Ireland for the GDPR and has functions and powers related to other regulatory frameworks. |
| <i>De minimus</i>                                                            | Minimum threshold.                                                                                                                                                                                                                                               |
| De novo hearing                                                              | The reconsideration of an application as if it were being heard for the first time.                                                                                                                                                                              |
| Dependant                                                                    | A person who relies on another, especially a family member, for financial support.                                                                                                                                                                               |
| Double compensation                                                          | A payment made to an individual to cover expenses, losses or harm that have already been reimbursed.                                                                                                                                                             |
| [The principle of] effectiveness                                             | This is an EU law principle which means that procedures for implementing EU law must not make it practically impossible or overly difficult for people to exercise their EU rights.                                                                              |
| Eligibility requirements                                                     | The factors or circumstances required for an applicant to be able to access compensation under a scheme.                                                                                                                                                         |
| [The principle of] equivalence                                               | This is an EU law principle which means that procedures for implementing EU law must be similar, or equivalent, to the procedures for implementing national law.                                                                                                 |
| [The] European Union Charter of Fundamental Rights                           | See [The] Charter.                                                                                                                                                                                                                                               |
| European Convention on Human Rights (ECHR)                                   | The ECHR is an international human rights instrument established by the Council of Europe. If a state has signed up to the ECHR, individuals may then take a complaint to the European Court of Human Rights (ECrHr) if their rights have been                   |



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|                                          | breached. This is usually after all domestic remedies have been exhausted.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| [The] Exchequer                          | Also referred to as the Central Fund. This is the main bank account held by the Irish Government in the Central Bank. See also Central funds.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Exclusions/Exclusionary criteria         | For the purposes of this report, exclusions mean the circumstances in which the proposed statutory body should reduce or refuse payments of compensation. Exclusionary criteria are a common feature of compensation schemes.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <i>Ex gratia</i>                         | Without legal obligation, not legally required.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Fair and appropriate compensation        | This is an obligation under the Compensation Directive. Compensation is fair and appropriate only if it compensates, to an appropriate extent, the suffering to which the victims have been exposed, as held in cases <i>Presidenza del Consiglio dei Ministri</i> , C-129/19, EU:C:2020:566, paragraph 64, and <i>Burdene</i> , C-126/23, EU:C:2024:937, paragraph 60. For compensation awarded under national schemes to be fair and appropriate with the meaning of Article 12(2) of the Compensation Directive, it must be fixed taking into account the seriousness of the consequences, for the victims, of the crime committed and therefore represent an appropriate contribution to the reparation of such material and non-material harm suffered, as held in the above cases. |
| Fair procedures                          | The rules and procedures which must be followed by all persons and bodies making decisions affecting the individual. Decisions must be fair and seen to be fair. The courts protect the right to fair procedures and can intervene where a procedure is unfair and oppressive.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Fiosrú (Oifig an Ombudsman Póilíneachta) | The Office of the Police Ombudsman is the statutory body which deals with complaints from members of the public about the Gardaí. Fiosrú is a body with enhanced powers that continues the work of the body formally referred to as the Garda Síochána Ombudsman Commission (GSOC).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| General compensation                     | The Commission is recommending the use of this term in the proposed statutory scheme to refer to payments for general damages, pain and suffering, non-financial loss or non-material loss.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |



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| General damages                           | Compensation for non-financial losses including losses that cannot be assessed precisely and are difficult to quantify in exact monetary terms such as pain and suffering.                                                                                                                                                   |
| General Data Protection Regulation (GDPR) | The EU Regulation on data protection.                                                                                                                                                                                                                                                                                        |
| Good Samaritan                            | A Good Samaritan is defined in the Civil Liability Act 1961 as anyone who, without expectation of payment or other reward, provides assistance, advice or care to another person in an emergency.                                                                                                                            |
| Harm                                      | For the purposes of this Report, harm is defined as including physical, mental or emotional harm or distress which was directly caused by a criminal offence.                                                                                                                                                                |
| Indemnify                                 | To reimburse for loss suffered.                                                                                                                                                                                                                                                                                              |
| <i>In loco parentis</i>                   | A person who is not the parent of a particular child but takes on himself parental offices and duties in relation to the child.                                                                                                                                                                                              |
| Interim payment                           | A payment made before the final decision on an application is made.                                                                                                                                                                                                                                                          |
| Judicial review                           | A legal remedy whereby decisions can be challenged by the High Court. The High Court aims to assess whether the decision-making process was reasonable, unbiased, and fair. If the decision is deemed to have breached a legal requirement, the court may quash the unlawful decision and require a new decision to be made. |
| Lump sum payment                          | A one-off payment.                                                                                                                                                                                                                                                                                                           |
| Loss of earnings                          | Compensation on the basis of any actual loss of net income, or in the case of long-term harm, likely to be sustained by the victim, taking into account likely career progression.                                                                                                                                           |
| Member States                             | Countries in the EU.                                                                                                                                                                                                                                                                                                         |
| Memorandum of Understanding               | This is an agreement between two parties that is not legally binding, but which outlines the responsibilities of each of the parties to the agreement.                                                                                                                                                                       |
| Merits test                               | A test that focuses on whether an applicant has a reasonable case to bring or defend in court.                                                                                                                                                                                                                               |
| Milquet Report                            | Report of Special Adviser Milquet to the President of the European Commission entitled "Strengthening Victims' Rights: from Compensation                                                                                                                                                                                     |

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|                                    | to Reparation for a New EU Victims' Rights Strategy 2020-2025" (European Commission 2019).                                                                                                                                                                                                                                                                                                                                                                                              |
| Mitigation of damages              | Reasonable steps that an injured party takes to minimise damage or reduce the damage caused to them.                                                                                                                                                                                                                                                                                                                                                                                    |
| Offender compensation              | A sum of money paid to the victim by an offender to compensate them for the harm they have suffered as a result of the offence. Offender compensation can be voluntary (See Voluntary payment by the offender) or court-ordered (see Compensation Order).                                                                                                                                                                                                                               |
| Oireachtas                         | The national parliament of Ireland, responsible for making laws, electing the government and overseeing public expenditure. It consists of the President of Ireland, Dáil Éireann, and Seanad Éireann.                                                                                                                                                                                                                                                                                  |
| Ombudsman                          | An official appointed to investigate individuals' complaints against public bodies.                                                                                                                                                                                                                                                                                                                                                                                                     |
| Onward appeal from the High Court  | An appeal to the Court of Appeal or the Supreme Court.                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Payor of last resort               | The entity that should only make payments of compensation when no other source of compensation is available.                                                                                                                                                                                                                                                                                                                                                                            |
| [Damages for] pain and suffering   | General damages and damages for pain and suffering are generally referred to interchangeably, and the Commission understands the concept of general damages as encompassing damages for pain and suffering. See also general compensation.                                                                                                                                                                                                                                              |
| Periodic payment                   | A payment that is made after a clear decision on liability (or in the context of the statutory scheme, eligibility), but in circumstances where a person may have ongoing, and potentially changing needs. This type of payment is an alternative to a lump sum payment and is made annually on an agreed date. The payment is calculated to meet the cost of permanent and long-term care and treatment. An indexation rate is applied to ensure the amount keeps pace with inflation. |
| Perpetrator                        | A person who carries out a harmful, illegal or immoral act.                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Personal Injuries Resolution Board | Also referred to as the Injuries Resolution Board. It is an independent statutory body that deals with personal injury claims.                                                                                                                                                                                                                                                                                                                                                          |

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| PI Guidelines                              | The Personal Injuries Guidelines outline general principles which should be considered by the court when determining an award of general damages in a tort case.                                                                                                              |
| Preliminary reference                      | A procedure that allows national courts to ask the CJEU to interpret or assess the validity of EU law.                                                                                                                                                                        |
| Programme for Law Reform                   | The principal basis on which the Commission carries out its statutory mandate to keep the law under review with a view to its reform.                                                                                                                                         |
| Proportionality                            | The principle which requires that actions, punishments or judicial decisions are appropriate, necessary and balanced, rather than excessive, in achieving their goal.                                                                                                         |
| Public policy                              | The principle of law that a person will not be permitted to do that which has a tendency to be injurious to the public, or against the public good.                                                                                                                           |
| Quantum                                    | The appropriate amount of compensation to be awarded.                                                                                                                                                                                                                         |
| Quash                                      | Reject as invalid by legal procedure.                                                                                                                                                                                                                                         |
| Rape myths                                 | Prejudicial, damaging and false beliefs about sexual assault, rapists and rape victims.                                                                                                                                                                                       |
| Recovery of Benefits and Assistance Scheme | A statutory scheme administered by the Department of Social Protection which allows the Department to recover certain illness-related social welfare payments, where the same costs are later covered by a compensator, such as insurance or a compensation award.            |
| Registrar                                  | For the purposes of this Report, this means an official appointed to manage the administration and staff of a tribunal.                                                                                                                                                       |
| Reparation                                 | The action of making amends for a wrong or harm done by providing payment or other assistance to the wronged party.                                                                                                                                                           |
| Reporting obligation                       | A requirement that the victim report the crime of violence that gave rise to the harm for which they are seeking compensation to the Gardaí or to Fiosrú. They are a common feature of state-funded compensation schemes across the EU and in other common law jurisdictions. |
| <i>Restitution in integrum</i>             | This is a principle in law that, when awarding damages, a person should be put in the same position as they had been in before they suffered the loss.                                                                                                                        |

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| Retraumatism            | An event a person experiences that reminds a victim of and activates an emotional response to a traumatic event. Retraumatism can cause the same reaction as the initial traumatic event.                                                                                                                                                                                                                                                                      |
| Revictimisation         | To harm someone again in an unfair way after they have been harmed in the past.                                                                                                                                                                                                                                                                                                                                                                                |
| Rights-based approach   | Ensuring that the rights of victims are respected. Victims' rights are contained in the Irish Constitution, the Charter of Fundamental Rights, the ECHR, fundamental rights principles, the Compensation Directive, and the Victims' Rights Directive. The Commission considers that to implement a rights-based approach, the proposed statutory scheme and the operation of the statutory body should comply with the rights contained in those instruments. |
| Remedy                  | The means provided by the law whereby the violation of a right is prevented, redressed or compensated.                                                                                                                                                                                                                                                                                                                                                         |
| Restitution order       | See Compensation order.                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Secondary victimisation | Secondary victimisation is defined in the Criminal Justice (Victims of Crime) Act 2017. It means victimisation that occurs indirectly through the response of institutions and individuals to the victim.                                                                                                                                                                                                                                                      |
| Sequencing              | The process of combining things in a particular order. For the purposes of this Report, it refers to the order of events for a claim for compensation from the proposed statutory body and criminal proceedings.                                                                                                                                                                                                                                               |
| Solatium                | Compensation awarded by a judge under section 49 of the Civil Liability Act 1961 to statutory dependents of a deceased person for mental distress.                                                                                                                                                                                                                                                                                                             |
| Special damages         | These are damages which are capable of substantially exact calculation, as distinct from those not capable of such calculation which are known as general damages.                                                                                                                                                                                                                                                                                             |
| Standard of proof       | In civil cases, the standard of proof normally required is on the balance of probability. In criminal cases, the guilt of the accused must be proved beyond a reasonable doubt.                                                                                                                                                                                                                                                                                |

|                        |                                                                                                                                                                                                                                                                                                                    |
|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Statute of Limitations | The law that sets a legal deadline for initiating legal proceedings after a cause of action accrues.                                                                                                                                                                                                               |
| Statutory basis        | The explicit foundation or authority derived directly from enacted written law.                                                                                                                                                                                                                                    |
| Statutory body         | A body provided for by legislation. In this Report, the statutory body means the adjudicative body proposed by the Commission to administer the statutory victim compensation scheme. It is comprised of three tiers: an information and assistive tier, an assessment and adjudicative tier, and an appeals tier. |
| Statutory long-stop    | A period, set out in statute law, after which no claim can be brought.                                                                                                                                                                                                                                             |
| Statutory scheme       | A scheme provided for by legislation.                                                                                                                                                                                                                                                                              |
| Submission             | In the context of this Report, this refers to the responses received to the questions asked in our Consultation Paper.                                                                                                                                                                                             |
| Subrogation            | Subrogation is an equitable doctrine that enables a third party to take over the right to a repayment owed.                                                                                                                                                                                                        |
| Tariff scheme          | A scheme that uses fixed amounts of compensation for injuries listed in the tariff, and a specific amount of compensation is awarded for particular injuries to cover general damages. Northern Ireland and England, Scotland and Wales use a tariff scheme.                                                       |
| Tortfeasor             | A person who commits a tort. A tort is a civil wrong, for example negligence or defamation.                                                                                                                                                                                                                        |
| Tortious liability     | This arises when a civil wrong infringes on a party's legal rights, causing harm, and is generally remedied by compensation.                                                                                                                                                                                       |
| Transposition          | This is the term used when describing how EU law is implemented into Irish law. EU law is said to be 'transposed' into Irish law, usually via primary or secondary legislation.                                                                                                                                    |
| Trauma-informed        | An approach which recognises the impact of trauma on an individual's neurological, biological, psychological and social development.                                                                                                                                                                               |
| Trauma awareness       | Being aware of the impact of trauma. See trauma-informed.                                                                                                                                                                                                                                                          |
| Unspent convictions    | Unlike spent convictions, unspent convictions must be disclosed to employers, insurers, and for certain licenses. They remain on record for a set period based on the sentence and they have not been                                                                                                              |



|                                  |                                                                                                                                                                                                                                                                                                                                                                                   |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                  | completed, reached the end of their active phase or expired.                                                                                                                                                                                                                                                                                                                      |
| Verifiable expenses              | This is the term used in this Report for expenses that can be verified by receipt, invoice or other proof of loss.                                                                                                                                                                                                                                                                |
| Victim of crime of violence      | A victim is a natural person who has suffered harm as a result of a crime of violence. Harm includes physical, mental or emotional harm or economic loss, which was directly caused by an offence.                                                                                                                                                                                |
| Victim-centred approach          | Ensuring the victim is at the heart of all interaction with and decisions affecting the victim.                                                                                                                                                                                                                                                                                   |
| Victim Impact Statement          | An account by the victim in court, in their own words, of the effect that a crime has had on them.                                                                                                                                                                                                                                                                                |
| Victims' Rights Act              | Criminal Justice (Victims of Crime) Act 2017. This Act transposed the Victims' Rights Directive into Irish law.                                                                                                                                                                                                                                                                   |
| Victims' Rights Directive        | Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L 315/57.                                                                                                                         |
| Voluntary payment by an offender | When an offender voluntarily pays a sum of money to the victim during criminal proceedings to compensate them for the harm they have suffered as a result of the offence. This is a type of offender compensation.                                                                                                                                                                |
| Wardship                         | The legal practice of a person being made a Ward of Court. The purpose of wardship was to protect the person and their property and finances when they lacked the capacity to do so themselves. The arrangements under the Assisted Decision Making (Capacity) Act 2015 are now replacing wardship, and all existing Wards of Court are being gradually discharged from wardship. |
| Well-meaning intervenors         | This is a term used in this Report to refer to individuals who intervene to assist An Garda Síochána in particular circumstances or who are injured while trying to save a life.                                                                                                                                                                                                  |

The following abbreviations are used throughout this Report:

| Abbreviation | Definition                                                                 |
|--------------|----------------------------------------------------------------------------|
| ACC          | Accident Compensation Corporation (New Zealand)                            |
| BV           | <i>Presidenza del Consiglio de Ministri v BV</i>                           |
| CalVCB       | California Victim Compensation Board                                       |
| CEO          | Chief Executive Officer                                                    |
| CIAV         | The French Cross-Government Victim Support Unit                            |
| CICT         | Criminal Injuries Compensation Tribunal                                    |
| CICA         | The Criminal Injuries Compensation Authority (England, Scotland and Wales) |
| CICB         | Criminal Injuries Compensation Board (England and Wales)                   |
| CICAPNI      | The Criminal Injuries Compensation Appeals Panel for Northern Ireland      |
| CIVI         | Crime Victims' Compensation Board (France)                                 |
| CJA 1993     | Criminal Justice Act 1993                                                  |
| CJEU/ECJ     | Court of Justice of the European Union                                     |
| CJIB         | Central Judicial Collection Agency (Netherlands)                           |
| CLA 1961     | Civil Liability Act 1961                                                   |
| DPP          | Director of Public Prosecutions                                            |
| DSGBV        | Domestic, sexual and gender-based violence                                 |
| DVA          | Domestic Violence Act 2018                                                 |
| ECHR         | European Convention on Human Rights                                        |
| ECtHR        | European Court of Human Rights                                             |
| FAS          | Financial Assistance Scheme (Victoria)                                     |
| FLA 1976     | Family Law (Maintenance of Spouses and Children) Act 1976                  |
| FRA          | Fundamental Rights Agency (EU)                                             |
| FLOs         | Family Liaison Officers                                                    |
| FGTI         | Fonds de Garantie des Victimes/Victims Guarantee Fund (France)             |

|      |                                                                          |
|------|--------------------------------------------------------------------------|
| GDPR | General Data Protection Regulation (EU) 2016/679                         |
| GP   | General Practitioner (doctor)                                            |
| GSOC | Garda Síochána Ombudsman Commission                                      |
| GVLO | Garda Victim Liaison Office                                              |
| HICP | Harmonised Index of Consumer Prices                                      |
| HIQA | Health and Information Quality Authority                                 |
| HRA  | Human Rights Act                                                         |
| HSE  | Health Service Executive                                                 |
| IPAT | International Protection Appeals Tribunal                                |
| ICT  | Information Communication Technology                                     |
| LD   | <i>LD v Criminal Injuries Compensation Tribunal</i>                      |
| LED  | Law Enforcement Directive (EU) 2016/680                                  |
| LRC  | Law Reform Commission (Ireland)                                          |
| MCSG | Magistrates' Courts Sentencing Guidelines (England, Scotland and Wales). |
| MHC  | Mental Health Commission                                                 |
| MHT  | Mental Health Tribunal                                                   |
| MIBI | Motor Insurers' Bureau of Ireland                                        |
| NGO  | Non-governmental organisation                                            |
| OVS  | The Office of Victim Services, New York                                  |
| PAS  | Public Appointments Service                                              |
| PCO  | Protected Costs Order                                                    |
| PHI  | Permanent Health Insurance                                               |
| PI   | Personal Injury                                                          |
| PIAB | Personal Injuries Assessment Board                                       |
| PPSN | Personal Public Service Number                                           |
| PTSD | Post traumatic stress disorder                                           |
| RBA  | Recovery of Benefits and Assistance                                      |
| RTB  | Residential Tenancies Board                                              |
| TEU  | The Treaty on European Union                                             |
| TFEU | Treaty on the Functioning of the European Union                          |
| UK   | The United Kingdom                                                       |



|       |                                                 |
|-------|-------------------------------------------------|
| VCAT  | Victoria Civil and Administrative Tribunal      |
| VLRC  | Victorian Law Reform Commission                 |
| VOCA  | Victims of Crime Act 1984 (Victoria)            |
| VOCAA | Victims of Crime Assistance Act 1996 (Victoria) |



# Table of Contents

|                                                                                    |               |
|------------------------------------------------------------------------------------|---------------|
| <b>Overview and Executive Summary .....</b>                                        | <b>1</b>      |
| <b>Executive Summary.....</b>                                                      | <b>1</b>      |
| <i>Overview .....</i>                                                              | <i>1</i>      |
| <i>Chapter 1: Background and a Rights-Based Approach.....</i>                      | <i>3</i>      |
| <i>Chapter 2: Establishing a Statutory Scheme .....</i>                            | <i>3</i>      |
| <i>Chapter 3: Funding the Statutory Scheme .....</i>                               | <i>3</i>      |
| <i>Chapter 4: Structure of the Statutory Body and the Application Process.....</i> | <i>4</i>      |
| <i>Chapter 5: Administration of the Statutory Body and Statutory Scheme.....</i>   | <i>5</i>      |
| <i>Chapter 6: Defining Eligible Applicants and Crimes of Violence .....</i>        | <i>5</i>      |
| <i>Chapter 7: Other Eligibility Requirements.....</i>                              | <i>6</i>      |
| <i>Chapter 8: Well-meaning Intervenors .....</i>                                   | <i>7</i>      |
| <i>Chapter 9: Exclusionary Criteria .....</i>                                      | <i>7</i>      |
| <i>Chapter 10: Types of Compensation.....</i>                                      | <i>7</i>      |
| <i>Chapter 11: Determining Fair and Appropriate Compensation.....</i>              | <i>8</i>      |
| <i>Chapter 12: Legal Assistance .....</i>                                          | <i>9</i>      |
| <i>Chapter 13: Interaction with Court Proceedings .....</i>                        | <i>9</i>      |
| <i>Chapter 14: Offender Compensation.....</i>                                      | <i>10</i>     |
| <i>Chapter 15: Preventing Double Compensation.....</i>                             | <i>11</i>     |
| <br><b>Chapter 1      Background and a Rights-Based Approach .....</b>             | <br><b>12</b> |
| 1. <i>Introduction: The need for reform.....</i>                                   | <i>13</i>     |
| (b) The consultation process .....                                                 | 13            |
| (c) A statutory scheme.....                                                        | 14            |
| (d) Recent developments .....                                                      | 15            |
| 2. <i>Background.....</i>                                                          | <i>17</i>     |
| (a) Victims in the criminal justice system.....                                    | 17            |
| (b) Why the state compensates victims of violent crimes.....                       | 19            |
| 3. <i>Compensation as a right .....</i>                                            | <i>22</i>     |
| (a) Development of the right in the European Union.....                            | 22            |
| (b) Implications of the right to state compensation.....                           | 27            |
| (i) <i>A rights-based approach to compensating victims of crime.....</i>           | <i>27</i>     |
| (ii) <i>Rights at issue</i>                                                        | <i>28</i>     |
| (iii) <i>Framework for analysing the limitation of rights.....</i>                 | <i>33</i>     |
| (iv) <i>Implications for the proposed scheme.....</i>                              | <i>35</i>     |
| <br><b>Chapter 2      Establishing a Statutory Scheme.....</b>                     | <br><b>39</b> |
| 1. <i>A statutory basis for a victim compensation scheme.....</i>                  | <i>41</i>     |
| (a) Advantages of a statutory scheme.....                                          | 41            |

|                                                                              |                                                                          |           |
|------------------------------------------------------------------------------|--------------------------------------------------------------------------|-----------|
| (i)                                                                          | <i>Providing for permanence</i> .....                                    | 42        |
| (ii)                                                                         | <i>Consistency and predictability in decision-making</i> .....           | 42        |
| (iii)                                                                        | <i>Independence</i> .....                                                | 43        |
| (iv)                                                                         | <i>Articulating the scheme's objectives and guiding principles</i> ..... | 44        |
|                                                                              | (v) <i>Appeals</i> .....                                                 | 44        |
|                                                                              | (b) EU law requirements .....                                            | 45        |
|                                                                              | (c) Submissions .....                                                    | 46        |
|                                                                              | (d) Proposals for reform.....                                            | 46        |
| 2.                                                                           | <i>Objectives and guiding principles of the statutory scheme</i> .....   | 47        |
|                                                                              | (a) Introduction .....                                                   | 47        |
|                                                                              | (b) Objectives .....                                                     | 49        |
| (i)                                                                          | <i>Comparative jurisdictions</i> .....                                   | 49        |
| (ii)                                                                         | <i>Proposals for reform</i> .....                                        | 50        |
|                                                                              | (c) Guiding principles .....                                             | 53        |
| (i)                                                                          | <i>Comparative jurisdictions</i> .....                                   | 53        |
|                                                                              | (ii) <i>Submissions</i> .....                                            | 55        |
| (iii)                                                                        | <i>Proposals for reform</i> .....                                        | 57        |
| <b>Chapter 3 Funding the Statutory Scheme</b> .....                          |                                                                          | <b>60</b> |
| 1.                                                                           | <i>Introduction</i> .....                                                | 61        |
| 2.                                                                           | <i>Current scheme</i> .....                                              | 61        |
| 3.                                                                           | <i>Submissions</i> .....                                                 | 62        |
| 4.                                                                           | <i>Alternative sources of funding</i> .....                              | 63        |
|                                                                              | (a) Offender levies .....                                                | 63        |
|                                                                              | (b) The Court Poor Box.....                                              | 66        |
| 5.                                                                           | <i>Proposals for reform</i> .....                                        | 67        |
| <b>Chapter 4 Structure of the Statutory Body and the Application Process</b> |                                                                          | <b>69</b> |
| 1.                                                                           | <i>Introduction</i> .....                                                | 71        |
| 2.                                                                           | <i>The form of the proposed new body</i> .....                           | 71        |
|                                                                              | (a) Current scheme.....                                                  | 71        |
|                                                                              | (b) EU law and policy .....                                              | 72        |
|                                                                              | (c) Comparative jurisdictions .....                                      | 74        |
| (i)                                                                          | <i>EU Member States</i> .....                                            | 74        |
| (ii)                                                                         | <i>United Kingdom</i> .....                                              | 76        |
|                                                                              | (iii) <i>New Zealand</i> .....                                           | 77        |
|                                                                              | (iv) <i>Victoria</i> .....                                               | 78        |
|                                                                              | (d) Submissions .....                                                    | 78        |
|                                                                              | (e) Proposals for reform.....                                            | 79        |

|       |                                                                    |     |
|-------|--------------------------------------------------------------------|-----|
| 3.    | <i>The information and assistive tier</i> .....                    | 81  |
|       | (a) Overview .....                                                 | 81  |
|       | (b) Current scheme.....                                            | 81  |
|       | (c) Comparative jurisdictions .....                                | 83  |
|       | (d) Submissions .....                                              | 85  |
|       | (e) Proposals for reform.....                                      | 86  |
| (i)   | <i>Information and assistance in the application process</i> ..... | 87  |
| (ii)  | <i>Support for cross-border applications</i> .....                 | 88  |
| (iii) | <i>Information and assistance in accessing support</i> .....       | 89  |
| (iv)  | <i>Identification of complex issues</i> .....                      | 89  |
| 4.    | <i>The assessment and adjudicative tier</i> .....                  | 92  |
|       | (a) Overview .....                                                 | 92  |
|       | (b) Current scheme.....                                            | 92  |
|       | (c) Proposals for reform.....                                      | 93  |
| 5.    | <i>The appeals tier</i> .....                                      | 95  |
|       | (a) Current scheme.....                                            | 95  |
|       | (b) Comparative jurisdictions .....                                | 96  |
|       | (c) Submissions .....                                              | 98  |
|       | (d) Proposals for reform.....                                      | 99  |
| (i)   | <i>Internal appeals</i> .....                                      | 99  |
| (ii)  | <i>External appeals</i> .....                                      | 100 |
| (iii) | <i>Onward appeals from the High Court</i> .....                    | 102 |
| 6.    | <i>The application process</i> .....                               | 103 |
|       | (a) Introduction .....                                             | 103 |
|       | (b) Current scheme.....                                            | 104 |
|       | (c) Submissions .....                                              | 105 |
|       | (d) Proposals for reform.....                                      | 107 |
|       | (i) <i>Applications</i> .....                                      | 107 |
| (ii)  | <i>Requests from the applicant</i> .....                           | 110 |
| (iii) | <i>Certificate of authority and data protection</i> .....          | 111 |

## **Chapter 5      Administration of the Statutory Body and Statutory Scheme**

### **118**

|      |                                                                     |     |
|------|---------------------------------------------------------------------|-----|
| 1.   | <i>Introduction</i> .....                                           | 121 |
| 2.   | <i>EU standards: Reducing procedural barriers for victims</i> ..... | 121 |
| 3.   | <i>Composition of the statutory body</i> .....                      | 123 |
|      | (a) Current scheme.....                                             | 123 |
|      | (a) Comparative bodies .....                                        | 124 |
| (i)  | <i>Mental Health Commission</i> .....                               | 124 |
| (ii) | <i>International Protection Appeals Tribunal</i> .....              | 126 |

|       |                                                                     |     |
|-------|---------------------------------------------------------------------|-----|
| (iii) | <i>Workplace Relations Commission</i> .....                         | 127 |
| (b)   | Proposals for reform.....                                           | 128 |
| (i)   | <i>Staff members and assessment and adjudication officers</i> ..... | 128 |
| (ii)  | <i>Chairperson</i> .....                                            | 129 |
| (iii) | <i>Chief Executive Officer</i> .....                                | 132 |
| 4.    | <i>Appointment, tenure and removal</i> .....                        | 132 |
| (a)   | Current scheme.....                                                 | 132 |
| (b)   | Comparative bodies.....                                             | 133 |
| (ii)  | <i>Mental Health Commission</i> .....                               | 133 |
| (ii)  | <i>International Protection Appeals Tribunal</i> .....              | 134 |
| (iii) | <i>Workplace Relations Commission</i> .....                         | 135 |
| (c)   | Proposals for reform.....                                           | 137 |
| 5.    | <i>Qualifications</i> .....                                         | 138 |
| (a)   | Current scheme.....                                                 | 138 |
| (b)   | Comparative bodies.....                                             | 139 |
| (c)   | Proposals for reform.....                                           | 140 |
| (i)   | <i>Ordinary decision-makers</i> .....                               | 140 |
| (ii)  | <i>Chairperson</i> .....                                            | 141 |
| (iii) | <i>Appeal panels</i> .....                                          | 142 |
| 6.    | <i>Specialist training</i> .....                                    | 142 |
| (a)   | Current scheme.....                                                 | 142 |
| (b)   | Relevant law.....                                                   | 143 |
| (c)   | Submissions.....                                                    | 143 |
| (d)   | Proposals for reform.....                                           | 144 |
| 7.    | <i>Powers of the statutory body</i> .....                           | 145 |
| (a)   | Introduction.....                                                   | 145 |
| (b)   | Power to determine procedural rules.....                            | 146 |
| (i)   | <i>Current scheme</i> .....                                         | 146 |
| (ii)  | <i>Comparative bodies</i> .....                                     | 146 |
| (iii) | <i>Proposals for reform</i> .....                                   | 147 |
| (c)   | Power to hold a hearing.....                                        | 147 |
| (i)   | <i>Current scheme</i> .....                                         | 147 |
| (ii)  | <i>Comparative bodies</i> .....                                     | 148 |
| (iii) | <i>Comparative jurisdictions</i> .....                              | 149 |
| (iv)  | <i>Submissions and other views</i> .....                            | 150 |
| (v)   | <i>Proposals for reform</i> .....                                   | 151 |
| (d)   | Power to join applications.....                                     | 152 |
| (e)   | Evidence.....                                                       | 153 |
| (i)   | <i>Current scheme and law</i> .....                                 | 153 |
| (ii)  | <i>Comparative bodies</i> .....                                     | 154 |

|       |                                                            |     |
|-------|------------------------------------------------------------|-----|
| (iii) | <i>Proposals for reform</i> .....                          | 155 |
| (f)   | Publication and redaction of decisions.....                | 157 |
| (i)   | <i>Current scheme and law</i> .....                        | 157 |
| (ii)  | <i>Comparative bodies</i> .....                            | 158 |
| (iii) | <i>Proposals for reform</i> .....                          | 159 |
| (g)   | Power to make a direct payment .....                       | 161 |
| 8.    | <i>Referring a question of law to the High Court</i> ..... | 162 |
| (a)   | Overview .....                                             | 162 |
| (b)   | Proposals for reform.....                                  | 163 |

## **Chapter 6     Defining Eligible Applicants and Crimes of Violence..... 164**

|       |                                                               |     |
|-------|---------------------------------------------------------------|-----|
| 1.    | <i>Introduction</i> .....                                     | 167 |
| 2.    | <i>Defining a victim</i> .....                                | 168 |
| (a)   | Introduction.....                                             | 168 |
| (b)   | Victims of a crime of violence.....                           | 169 |
| (i)   | <i>Current scheme and law</i> .....                           | 169 |
| (ii)  | <i>Comparative jurisdictions</i> .....                        | 171 |
| (iii) | <i>Submissions</i> .....                                      | 174 |
| (iv)  | <i>Proposals for reform</i> .....                             | 174 |
| 3.    | <i>Other eligible applicants</i> .....                        | 177 |
| (a)   | Persons responsible for the maintenance of the victim .....   | 177 |
| (b)   | Family members: Bereavement payments.....                     | 177 |
| (i)   | <i>Introduction</i> .....                                     | 177 |
| (ii)  | <i>Current scheme and law</i> .....                           | 178 |
| (iii) | <i>Comparative jurisdictions</i> .....                        | 183 |
| (iv)  | <i>Proposals for reform</i> .....                             | 186 |
| (c)   | Family members: Bystanders to a crime of violence.....        | 192 |
| (i)   | <i>Introduction</i> .....                                     | 192 |
| (ii)  | <i>Comparative jurisdictions</i> .....                        | 192 |
| (iii) | <i>Proposals for reform</i> .....                             | 194 |
| (d)   | Persons dependent on the victim .....                         | 195 |
| (i)   | <i>Dependency under the current scheme</i> .....              | 195 |
| (ii)  | <i>Dependency in Irish civil law</i> .....                    | 196 |
| (iii) | <i>Comparative jurisdictions</i> .....                        | 197 |
| (iv)  | <i>Proposals for reform</i> .....                             | 199 |
| (e)   | Other persons who have incurred expenses in fatal cases ..... | 203 |
| 4.    | <i>Defining a crime of violence</i> .....                     | 204 |
| (a)   | Introduction.....                                             | 204 |
| (b)   | Relevance of criminal proceedings.....                        | 204 |
| (c)   | Standard of proof.....                                        | 206 |

**Chapter 7 Other Eligibility Requirements .....228**

|       |                                          |     |
|-------|------------------------------------------|-----|
| 1.    | <i>Introduction</i> .....                | 231 |
| 2.    | <i>Jurisdiction</i> .....                | 231 |
|       | (a) Introduction.....                    | 231 |
|       | (b) Current scheme and law.....          | 232 |
|       | (c) Proposals for reform.....            | 233 |
| 3.    | <i>Time limits</i> .....                 | 234 |
|       | (a) Introduction.....                    | 234 |
|       | (b) Current scheme.....                  | 234 |
|       | (c) Continuing acts.....                 | 236 |
|       | (d) Legal disability.....                | 237 |
|       | (e) Comparative jurisdictions.....       | 238 |
|       | (f) Submissions.....                     | 240 |
|       | (g) Proposals for reform.....            | 240 |
| (i)   | <i>Ordinary time limit</i> .....         | 240 |
| (ii)  | <i>Exceptional circumstances</i> .....   | 241 |
| (iii) | <i>Continuing acts of violence</i> ..... | 241 |
| (iv)  | <i>Time limits for children</i> .....    | 242 |
| (v)   | <i>Mental incapacity</i> .....           | 242 |
| (vi)  | <i>Internal appeals</i> .....            | 243 |
| 4.    | <i>Reporting obligations</i> .....       | 244 |
|       | (a) Introduction.....                    | 244 |
|       | (b) Current scheme.....                  | 245 |
|       | (c) Comparative jurisdictions.....       | 246 |
| (i)   | <i>EU Member States</i> .....            | 246 |
|       | (ii) <i>Australia</i> .....              | 247 |
|       | (d) Submissions.....                     | 250 |
|       | (e) Proposals for reform.....            | 251 |



|      |                                                                                          |     |
|------|------------------------------------------------------------------------------------------|-----|
| 5.   | <i>Obligation to give reasonable assistance</i> .....                                    | 255 |
|      | (a) Introduction.....                                                                    | 255 |
|      | (b) Current scheme.....                                                                  | 256 |
|      | (c) Comparative jurisdictions.....                                                       | 258 |
| (i)  | <i>EU Member States</i> .....                                                            | 258 |
| (ii) | <i>United Kingdom</i> .....                                                              | 259 |
|      | (iii) <i>Australia</i> .....                                                             | 260 |
|      | (d) Submissions.....                                                                     | 262 |
|      | (e) Proposals for reform.....                                                            | 263 |
| (i)  | <i>Providing reasonable assistance to the statutory body</i> .....                       | 263 |
| (ii) | <i>Providing reasonable assistance to An Garda Síochána, Fiosrú, or to the DPP</i> ..... | 266 |

## **Chapter 8 Well-Meaning Intervenor..... 269**

|    |                                                                  |     |
|----|------------------------------------------------------------------|-----|
| 1. | <i>Introduction</i> .....                                        | 271 |
| 2. | <i>Current scheme and law</i> .....                              | 271 |
|    | (a) Intervening in a crime and/or assisting law enforcement..... | 273 |
|    | (b) Saving or attempting to save a life.....                     | 275 |
| 3. | <i>Comparative jurisdictions</i> .....                           | 276 |
| 4. | <i>Proposals for reform</i> .....                                | 277 |

## **Chapter 9 Exclusionary Criteria..... 281**

|      |                                                                            |     |
|------|----------------------------------------------------------------------------|-----|
| 1.   | <i>Introduction</i> .....                                                  | 283 |
| 2.   | <i>The rationale for, and background to, exclusions</i> .....              | 283 |
|      | (a) The need for reform.....                                               | 283 |
|      | (b) International instruments: Relevant developments.....                  | 284 |
|      | (c) Civil law principles.....                                              | 286 |
|      | (d) The concept of the 'deserving' victim and a rights-based approach..... | 286 |
| 3.   | <i>Current scheme: Conduct, character, or "way of life"</i> .....          | 289 |
|      | (a) Introduction.....                                                      | 289 |
|      | (b) Current scheme and law.....                                            | 289 |
|      | (c) Comparative jurisdictions.....                                         | 293 |
| (i)  | <i>United Kingdom</i> .....                                                | 293 |
| (ii) | <i>EU Member States</i> .....                                              | 296 |
|      | (iii) <i>Australia</i> .....                                               | 297 |
|      | (d) Submissions.....                                                       | 300 |
|      | (e) Proposals for reform.....                                              | 302 |
| (i)  | <i>No broad discretion</i> .....                                           | 302 |
| (ii) | <i>Unconnected criminal convictions</i> .....                              | 304 |
| 4.   | <i>Contributory misconduct</i> .....                                       | 305 |

|       |                                                                                      |     |
|-------|--------------------------------------------------------------------------------------|-----|
| (a)   | Introduction .....                                                                   | 305 |
| (b)   | Current scheme and law.....                                                          | 306 |
| (c)   | Comparative jurisdictions .....                                                      | 307 |
| (i)   | <i>EU Member States</i> .....                                                        | 307 |
| (ii)  | <i>United Kingdom</i> .....                                                          | 308 |
| (iii) | <i>Australia</i> .....                                                               | 310 |
| (d)   | Submissions .....                                                                    | 312 |
| (e)   | Proposals for reform.....                                                            | 313 |
| (i)   | <i>The context of sexual offences and domestic violence</i> .....                    | 315 |
| (ii)  | <i>Intoxication</i> .....                                                            | 316 |
| (iii) | <i>Contributory misconduct (including unspent criminal convictions)</i><br>.....     | 317 |
| (iv)  | <i>Participating in, assisting or encouraging the crime of violence</i> .....        | 317 |
| (v)   | <i>Failure to mitigate the consequences</i> .....                                    | 319 |
| (vi)  | <i>Failure to avoid a violent situation</i> .....                                    | 320 |
| (vii) | <i>Conclusion</i> .....                                                              | 320 |
| 5.    | <i>Exceptional public interest discretion to reduce or refuse compensation</i> ..... | 322 |
| (a)   | Introduction .....                                                                   | 322 |
| (b)   | Current scheme and law.....                                                          | 322 |
| (c)   | Comparative jurisdictions .....                                                      | 324 |
| (i)   | <i>EU Member States</i> .....                                                        | 324 |
| (ii)  | <i>United Kingdom</i> .....                                                          | 325 |
| (iii) | <i>Australia</i> .....                                                               | 325 |
| (d)   | Submissions .....                                                                    | 327 |
| (e)   | Proposals for reform.....                                                            | 327 |
| 6.    | <i>Fraud, collusion and perpetrator benefit</i> .....                                | 329 |
| (a)   | Fraudulent applications.....                                                         | 329 |
| (b)   | Collusion .....                                                                      | 331 |
| (c)   | Benefit to the perpetrator.....                                                      | 332 |

## **Chapter 10 Types of Compensation.....336**

|       |                                                                                    |     |
|-------|------------------------------------------------------------------------------------|-----|
| 1.    | <i>Introduction</i> .....                                                          | 339 |
| 2.    | <i>Terminology and types of compensation</i> .....                                 | 339 |
| (a)   | Background .....                                                                   | 339 |
| (b)   | Financial loss.....                                                                | 341 |
| (i)   | <i>The current scheme</i> .....                                                    | 342 |
| (ii)  | <i>Relevant EU terms</i> .....                                                     | 343 |
| (iii) | <i>Other jurisdictions</i> .....                                                   | 343 |
| (iv)  | <i>Commission's preferred term: Verifiable expenses and loss of earnings</i> ..... | 344 |

|       |                                                                                                     |     |
|-------|-----------------------------------------------------------------------------------------------------|-----|
| (c)   | Non-financial loss .....                                                                            | 345 |
| (i)   | <i>The current scheme</i> .....                                                                     | 345 |
| (ii)  | <i>Non-material loss</i> .....                                                                      | 346 |
| (iii) | <i>Other jurisdictions</i> .....                                                                    | 347 |
| (iv)  | <i>The Commission's preferred terms: General compensation payment and bereavement payment</i> ..... | 347 |
| 3.    | <i>Fair and appropriate compensation</i> .....                                                      | 348 |
| (a)   | Introduction .....                                                                                  | 348 |
| (b)   | Current scheme .....                                                                                | 348 |
| (c)   | Relevant law .....                                                                                  | 349 |
| (i)   | <i>The Compensation Directive</i> .....                                                             | 349 |
| (ii)  | <i>Blanco and LD</i> .....                                                                          | 350 |
| (d)   | Submissions .....                                                                                   | 352 |
| (e)   | Proposals for reform .....                                                                          | 353 |
| 4.    | <i>Compensating property loss</i> .....                                                             | 355 |
| (a)   | Current scheme .....                                                                                | 355 |
| (b)   | Comparative jurisdictions .....                                                                     | 357 |
| (c)   | Proposals for reform .....                                                                          | 358 |
| 5.    | <i>Interim payments</i> .....                                                                       | 359 |
| (a)   | Introduction .....                                                                                  | 359 |
| (b)   | Current scheme .....                                                                                | 359 |
| (c)   | Relevant law .....                                                                                  | 360 |
| (d)   | Comparative jurisdictions .....                                                                     | 360 |
| (e)   | Submissions .....                                                                                   | 361 |
| (f)   | Proposals for reform .....                                                                          | 362 |
| 6.    | <i>Periodic payments</i> .....                                                                      | 365 |
| (g)   | Introduction .....                                                                                  | 365 |
| (b)   | Current scheme .....                                                                                | 366 |
| (c)   | Relevant law .....                                                                                  | 366 |
| (d)   | Submissions .....                                                                                   | 367 |
| (e)   | Proposals for reform .....                                                                          | 368 |
| 7.    | <i>Types of compensation payments not included</i> .....                                            | 368 |
| (a)   | Current scheme .....                                                                                | 368 |
| (b)   | Proposals for reform .....                                                                          | 369 |

## **Chapter 11   Determining Fair and Appropriate Compensation..... 371**

|     |                                                       |     |
|-----|-------------------------------------------------------|-----|
| 1.  | <i>Introduction</i> .....                             | 373 |
| 2.  | <i>Verifiable expenses and loss of earnings</i> ..... | 373 |
| (a) | Introduction .....                                    | 373 |
| (b) | Current scheme .....                                  | 374 |

|                   |                                                                               |            |
|-------------------|-------------------------------------------------------------------------------|------------|
| (i)               | <i>Maximum amount of compensation</i> .....                                   | 374        |
| (ii)              | <i>Minimum amount of compensation</i> .....                                   | 375        |
| (c)               | Relevant law.....                                                             | 376        |
| (d)               | Comparative jurisdictions.....                                                | 377        |
| (i)               | <i>European Union</i> .....                                                   | 377        |
| (ii)              | <i>Northern Ireland</i> .....                                                 | 378        |
| (iii)             | <i>England, Scotland and Wales</i> .....                                      | 378        |
|                   | (iv) <i>Australia</i> .....                                                   | 379        |
|                   | (v) <i>California</i> .....                                                   | 380        |
| (e)               | Submissions.....                                                              | 380        |
| (i)               | <i>Maximum amount of compensation</i> .....                                   | 380        |
| (ii)              | <i>Minimum amount of compensation</i> .....                                   | 381        |
| (f)               | Proposals for reform.....                                                     | 382        |
| (i)               | <i>Maximum amount of compensation</i> .....                                   | 382        |
| (ii)              | <i>Minimum amount of compensation</i> .....                                   | 383        |
| 3.                | <i>A framework for general compensation payments</i> .....                    | 384        |
| (a)               | Current scheme.....                                                           | 385        |
| (b)               | Relevant law.....                                                             | 386        |
| (c)               | Approaches to making general compensation.....                                | 387        |
| (ii)              | <i>Personal Injuries Guidelines</i> .....                                     | 387        |
|                   | (iii) <i>Tariff scheme</i> .....                                              | 389        |
|                   | (iv) <i>Band scheme</i> .....                                                 | 393        |
| (d)               | Submissions.....                                                              | 396        |
| (e)               | Proposals for reform.....                                                     | 397        |
| (i)               | <i>Personal Injuries Guidelines</i> .....                                     | 397        |
|                   | (ii) <i>Tariff scheme</i> .....                                               | 399        |
| (iii)             | <i>Commission proposal: Band scheme</i> .....                                 | 400        |
| (iv)              | <i>Minimum and maximum thresholds for general compensation payments</i> ..... | 401        |
| (v)               | <i>Factors for allocating categories of harm</i> .....                        | 402        |
| 4.                | <i>Bereavement payments for family members</i> .....                          | 405        |
| (a)               | Current scheme.....                                                           | 405        |
| (b)               | Irish law.....                                                                | 406        |
| (c)               | EU law.....                                                                   | 406        |
| (d)               | Proposals for reform.....                                                     | 407        |
| <b>Chapter 12</b> | <b>Legal Assistance</b> .....                                                 | <b>410</b> |
| 1.                | <i>Introduction</i> .....                                                     | 413        |
| (a)               | Assistance under the current scheme.....                                      | 413        |
| (b)               | Assistance under the proposed statutory scheme.....                           | 414        |

|       |                                                                                        |     |
|-------|----------------------------------------------------------------------------------------|-----|
| (c)   | Why is reform necessary? .....                                                         | 416 |
| 2.    | <i>Whether legal assistance or other support may be necessary for applicants</i> ..... | 416 |
| (b)   | Current scheme.....                                                                    | 417 |
| (c)   | Current law.....                                                                       | 418 |
| (i)   | Irish law .....                                                                        | 419 |
| (ii)  | European Convention on Human Rights .....                                              | 420 |
| (iii) | European Union law.....                                                                | 422 |
| (d)   | Comparative jurisdictions .....                                                        | 424 |
| (i)   | France .....                                                                           | 424 |
| (ii)  | The Netherlands .....                                                                  | 424 |
| (iii) | England, Scotland and Wales.....                                                       | 424 |
| (iv)  | Northern Ireland.....                                                                  | 425 |
| (v)   | Victoria .....                                                                         | 425 |
| (e)   | Submissions .....                                                                      | 426 |
| (f)   | Proposals for reform.....                                                              | 427 |
| (i)   | Legal assistance .....                                                                 | 427 |
| (ii)  | Accompaniment at hearings.....                                                         | 428 |
| 3.    | <i>Funding necessary legal assistance</i> .....                                        | 428 |
| (a)   | Current scheme.....                                                                    | 429 |
| (b)   | Current law.....                                                                       | 429 |
| (i)   | Irish law .....                                                                        | 429 |
| (ii)  | European Convention on Human Rights .....                                              | 430 |
| (iii) | European Union law.....                                                                | 431 |
| (iv)  | <i>Kelly and Doyle v Criminal Injuries Tribunal</i> .....                              | 433 |
| (c)   | Comparative jurisdictions .....                                                        | 435 |
| (i)   | France .....                                                                           | 435 |
| (ii)  | The Netherlands .....                                                                  | 435 |
| (iii) | England, Scotland and Wales.....                                                       | 436 |
| (iv)  | Northern Ireland.....                                                                  | 436 |
| (v)   | Victoria .....                                                                         | 436 |
| (d)   | Submissions .....                                                                      | 437 |
| (e)   | The Commission's view .....                                                            | 438 |
| (i)   | Legal aid .....                                                                        | 438 |
| (ii)  | Contribution to legal costs.....                                                       | 444 |
| (f)   | Proposals for reform.....                                                              | 445 |
| (i)   | Circumstances for contributing to legal costs.....                                     | 445 |
| (ii)  | Scale of fees .....                                                                    | 446 |
| (iii) | Advance decision on legal costs.....                                                   | 447 |
| (iv)  | Appealing a decision on legal costs.....                                               | 449 |

|      |                                           |     |
|------|-------------------------------------------|-----|
| (v)  | <i>Applications to courts</i> .....       | 450 |
| 4.   | <i>Reimbursement of other costs</i> ..... | 451 |
|      | (a) Current scheme.....                   | 451 |
|      | (b) Comparative jurisdictions .....       | 452 |
| (i)  | <i>England, Scotland and Wales</i> .....  | 452 |
| (ii) | <i>Northern Ireland</i> .....             | 452 |
|      | (c) Proposals for reform.....             | 453 |

## **Chapter 13 Interaction with Court Proceedings.....454**

|       |                                                                                                                   |     |
|-------|-------------------------------------------------------------------------------------------------------------------|-----|
| 1.    | <i>Introduction</i> .....                                                                                         | 455 |
| 2.    | <i>Sequencing of proceedings</i> .....                                                                            | 455 |
|       | (a) Current scheme.....                                                                                           | 456 |
|       | (b) Why is reform necessary? .....                                                                                | 458 |
|       | (c) Comparative jurisdictions .....                                                                               | 459 |
|       | (i) <i>France</i> .....                                                                                           | 460 |
| (ii)  | <i>The Netherlands</i> .....                                                                                      | 461 |
| (iii) | <i>England, Scotland and Wales</i> .....                                                                          | 462 |
|       | (iv) <i>Victoria</i> .....                                                                                        | 463 |
|       | (d) Submissions .....                                                                                             | 464 |
|       | (e) Proposals for reform.....                                                                                     | 465 |
| 3.    | <i>Sharing of information with courts</i> .....                                                                   | 468 |
|       | (a) Introduction .....                                                                                            | 468 |
|       | (b) Disclosure in criminal proceedings .....                                                                      | 469 |
|       | (i) <i>Relevant law</i> .....                                                                                     | 469 |
|       | (ii) <i>DPP v AM</i> .....                                                                                        | 472 |
| (iii) | <i>Comparative jurisdictions</i> .....                                                                            | 474 |
|       | (c) Discovery in civil proceedings .....                                                                          | 476 |
|       | (d) Proposals for reform.....                                                                                     | 476 |
| (i)   | <i>Reasons for disclosure or discovery</i> .....                                                                  | 477 |
| (ii)  | <i>Obligation on the Director of Public Prosecutions to disclose the fact of a compensation application</i> ..... | 477 |
| (iii) | <i>Voluntary, informed and written consent</i> .....                                                              | 478 |
| 4.    | <i>Testing evidence of an application for compensation in court proceedings</i> .....                             | 482 |
|       | (a) Introduction .....                                                                                            | 482 |
|       | (b) Comparative jurisdictions .....                                                                               | 483 |
|       | (c) Proposals for reform.....                                                                                     | 485 |

## **Chapter 14 Offender Compensation.....488**

|    |                                             |     |
|----|---------------------------------------------|-----|
| 1. | <i>Introduction</i> .....                   | 489 |
| 2. | <i>What is offender compensation?</i> ..... | 490 |

|                   |                                                                                     |            |
|-------------------|-------------------------------------------------------------------------------------|------------|
| (a)               | Voluntary payment by the offender .....                                             | 492        |
| (b)               | Court-ordered compensation.....                                                     | 493        |
| 3.                | <i>Challenges with section 6 compensation orders and proposals for reform</i> ..... | 495        |
| (a)               | Lack of awareness of section 6 compensation orders.....                             | 495        |
| (i)               | Current law .....                                                                   | 495        |
| (ii)              | Comparative jurisdictions .....                                                     | 497        |
| (iii)             | Submissions .....                                                                   | 500        |
| (iv)              | Proposals for reform.....                                                           | 500        |
| (b)               | Hybrid nature of section 6 compensation orders.....                                 | 502        |
| (i)               | Current law .....                                                                   | 502        |
| (ii)              | Comparative jurisdictions .....                                                     | 507        |
| (iii)             | Submissions .....                                                                   | 509        |
| (iv)              | Proposals for reform.....                                                           | 510        |
| (c)               | A duty on the courts to consider a section 6 compensation order....                 | 512        |
| (i)               | Current law .....                                                                   | 512        |
| (ii)              | Comparative jurisdictions .....                                                     | 516        |
| (iii)             | Submissions .....                                                                   | 519        |
| (iv)              | Proposals for reform.....                                                           | 519        |
| (d)               | Appropriate amount of compensation.....                                             | 521        |
| (i)               | Current law .....                                                                   | 521        |
| (ii)              | Comparative jurisdictions .....                                                     | 524        |
| (iii)             | Submissions .....                                                                   | 527        |
| (iv)              | Proposals for reform.....                                                           | 527        |
| (e)               | Enforcement.....                                                                    | 528        |
| (i)               | Current law .....                                                                   | 528        |
| <b>Chapter 15</b> | <b>Preventing Double Compensation.....</b>                                          | <b>532</b> |
| 1.                | <i>Introduction</i> .....                                                           | 535        |
| (a)               | What is double compensation? .....                                                  | 535        |
| (b)               | Double compensation under the current scheme.....                                   | 537        |
| (c)               | Why is reform necessary? .....                                                      | 539        |
| (d)               | Other sources of compensation.....                                                  | 539        |
| (i)               | Employment leave and social welfare payments.....                                   | 540        |
| (ii)              | Insurance payments .....                                                            | 541        |
| (iii)             | Charitable payments and donations.....                                              | 542        |
| (iv)              | Voluntary payments by the offender following a criminal<br>prosecution .....        | 544        |
| (v)               | Court-ordered offender compensation .....                                           | 546        |
| (vi)              | Civil proceedings .....                                                             | 547        |
| (e)               | Proposal for reform .....                                                           | 548        |

|       |                                                                                                                   |     |
|-------|-------------------------------------------------------------------------------------------------------------------|-----|
| 2.    | <i>Duty to inform the statutory body of other payments</i> .....                                                  | 549 |
| (a)   | Current scheme.....                                                                                               | 549 |
| (b)   | Comparative jurisdictions .....                                                                                   | 552 |
| (i)   | England, Scotland and Wales.....                                                                                  | 552 |
| (ii)  | Northern Ireland.....                                                                                             | 553 |
| (iii) | California                                                                                                        | 553 |
| (iv)  | Victoria                                                                                                          | 554 |
| (v)   | New South Wales.....                                                                                              | 554 |
| (c)   | Proposal for reform .....                                                                                         | 554 |
| 3.    | <i>Information regarding double payments</i> .....                                                                | 557 |
| (b)   | Current scheme.....                                                                                               | 557 |
| (c)   | Comparative jurisdictions .....                                                                                   | 558 |
| (i)   | England, Scotland and Wales.....                                                                                  | 558 |
| (ii)  | Northern Ireland.....                                                                                             | 559 |
| (iii) | Victoria                                                                                                          | 559 |
| (iv)  | New South Wales.....                                                                                              | 560 |
| (d)   | Proposal for reform .....                                                                                         | 560 |
| 4.    | <i>Reductions of compensation payments</i> .....                                                                  | 562 |
| (a)   | Current scheme.....                                                                                               | 562 |
| (b)   | Comparative jurisdictions .....                                                                                   | 565 |
| (i)   | The Netherlands.....                                                                                              | 565 |
| (ii)  | England, Scotland and Wales.....                                                                                  | 565 |
| (iii) | Northern Ireland.....                                                                                             | 566 |
| (iv)  | Victoria                                                                                                          | 566 |
| (c)   | Proposal for reform .....                                                                                         | 567 |
| 5.    | <i>Repayment of compensation by the victim</i> .....                                                              | 568 |
| (a)   | Current scheme.....                                                                                               | 569 |
| (b)   | Models for repayment in Ireland.....                                                                              | 569 |
| (i)   | Recovery of Benefits and Assistance Scheme.....                                                                   | 569 |
| (ii)  | Repayment of compensation under the Malicious Injuries Act 1981                                                   | 570 |
| (iii) | Interaction between section 6 compensation orders and civil compensation under the Criminal Justice Act 1993..... | 571 |
| (c)   | Comparative jurisdictions .....                                                                                   | 571 |
| (i)   | England, Scotland and Wales.....                                                                                  | 571 |
| (ii)  | Northern Ireland.....                                                                                             | 572 |
| (iii) | France                                                                                                            | 573 |
| (iv)  | California                                                                                                        | 574 |
| (v)   | The Netherlands.....                                                                                              | 574 |
| (vi)  | Victoria                                                                                                          | 575 |



|       |                                           |     |
|-------|-------------------------------------------|-----|
| (vii) | <i>New South Wales</i> .....              | 576 |
| (d)   | Submissions.....                          | 577 |
| (e)   | Proposals for reform.....                 | 577 |
| 6.    | <i>Direct recovery by the State</i> ..... | 580 |
| (a)   | Current scheme.....                       | 581 |
| (b)   | Relevant law.....                         | 581 |
| (c)   | Comparative jurisdictions.....            | 581 |
|       | (i) <i>California</i> .....               | 581 |
|       | (ii) <i>Victoria</i> .....                | 582 |
| (iii) | <i>New South Wales</i> .....              | 582 |
| (d)   | Proposal for reform.....                  | 583 |

## **Appendix A Summary of Recommendations..... 585**

|                                                                                     |     |
|-------------------------------------------------------------------------------------|-----|
| <i>Chapter 2: Establishing a Statutory Scheme</i> .....                             | 587 |
| (a) A statutory basis for a victim compensation scheme.....                         | 587 |
| (b) Objectives .....                                                                | 587 |
| (c) Guiding principles .....                                                        | 587 |
| <i>Chapter 3: Funding the Statutory Scheme</i> .....                                | 588 |
| <i>Chapter 4: Structure of the Statutory Body and the Application Process</i> ..... | 588 |
| (a) The form of the proposed new body .....                                         | 588 |
| (b) The information and assistive tier .....                                        | 589 |
| (c) The assessment and adjudicative tier .....                                      | 590 |
| (d) The appeals tier .....                                                          | 591 |
| (i) <i>Internal appeals</i> .....                                                   | 591 |
| (ii) <i>External appeals</i> .....                                                  | 591 |
| (iii) <i>Onward appeals</i> .....                                                   | 592 |
| (e) The application process.....                                                    | 592 |
| (i) <i>Applications</i> .....                                                       | 592 |
| (ii) <i>Requests from the applicant</i> .....                                       | 592 |
| (iii) <i>Certificate of authority and data protection</i> .....                     | 593 |
| <i>Chapter 5: Administration of the Statutory Body and Statutory Scheme</i> .....   | 595 |
| (a) Composition of the statutory body .....                                         | 595 |
| (i) <i>Staff members and assessment and adjudication officers</i> .....             | 595 |
| (ii) <i>Chairperson</i> .....                                                       | 595 |
| (iii) <i>Chief Executive Officer</i> .....                                          | 596 |
| (b) Appointment, tenure and removal.....                                            | 597 |
| (c) Qualifications.....                                                             | 597 |
| (i) <i>Ordinary decision makers</i> .....                                           | 597 |
| (ii) <i>Chairperson</i> .....                                                       | 598 |
| (iii) <i>Appeal panels</i> .....                                                    | 598 |

|       |                                                                                                        |     |
|-------|--------------------------------------------------------------------------------------------------------|-----|
| (d)   | Specialist training .....                                                                              | 598 |
| (e)   | Powers of the statutory body .....                                                                     | 599 |
| (i)   | <i>Power to determine procedural rules</i> .....                                                       | 599 |
| (ii)  | <i>Power to hold a hearing</i> .....                                                                   | 599 |
| (iii) | <i>Power to join applications</i> .....                                                                | 599 |
| (iv)  | <i>Evidence</i> .....                                                                                  | 599 |
| (v)   | <i>Publication and redaction of decisions</i> .....                                                    | 600 |
| (vi)  | <i>Power to make a direct payment</i> .....                                                            | 601 |
| (f)   | Referring a question of law to the High Court .....                                                    | 601 |
|       | <i>Chapter 6: Defining Eligible Applicants and Crimes of Violence</i> .....                            | 601 |
| (a)   | Defining a victim.....                                                                                 | 601 |
| (i)   | <i>Victims of a crime of violence</i> .....                                                            | 601 |
| (b)   | Other eligible applicants .....                                                                        | 602 |
| (i)   | <i>Persons responsible for the maintenance of the victim</i> .....                                     | 602 |
| (ii)  | <i>Family members: Bereavement payments</i> .....                                                      | 602 |
| (iii) | <i>Family members: Bystanders to a crime of violence</i> .....                                         | 603 |
| (iv)  | <i>Persons dependent on the victim</i> .....                                                           | 603 |
| (v)   | <i>Other persons who have incurred expenses in fatal cases</i> .....                                   | 605 |
| (c)   | Defining a crime of violence .....                                                                     | 605 |
|       | <i>Chapter 7: Other Eligibility Requirements</i> .....                                                 | 608 |
| (a)   | Jurisdiction .....                                                                                     | 608 |
| (b)   | Time limits .....                                                                                      | 608 |
| (c)   | Reporting obligations .....                                                                            | 610 |
| (d)   | Obligation to give reasonable assistance.....                                                          | 611 |
| (i)   | <i>Providing reasonable assistance to the statutory body</i> .....                                     | 611 |
| (ii)  | <i>Providing reasonable assistance to An Garda Síochána, the Police Ombudsman, or to the DPP</i> ..... | 612 |
|       | <i>Chapter 8: Well-meaning intervenors</i> .....                                                       | 612 |
|       | <i>Chapter 9: Exclusionary Criteria</i> .....                                                          | 614 |
| (a)   | Current scheme: Conduct, character, or "way of life" .....                                             | 614 |
| (i)   | <i>No broad discretion</i> .....                                                                       | 614 |
| (ii)  | <i>Unconnected criminal convictions</i> .....                                                          | 614 |
| (b)   | Contributory misconduct .....                                                                          | 614 |
| (c)   | Exceptional public interest discretion to reduce or refuse compensation.....                           | 616 |
| (d)   | Fraud, collusion and perpetrator benefit .....                                                         | 616 |
| (i)   | <i>Fraudulent applications</i> .....                                                                   | 616 |
| (ii)  | <i>Collusion</i> .....                                                                                 | 617 |
| (iii) | <i>Benefit to the perpetrator</i> .....                                                                | 617 |
|       | <i>Chapter 10: Types of Compensation</i> .....                                                         | 618 |

|       |                                                                                                              |     |
|-------|--------------------------------------------------------------------------------------------------------------|-----|
| (a)   | Terminology and types of compensation .....                                                                  | 618 |
| (i)   | Financial loss .....                                                                                         | 618 |
| (ii)  | Non-financial loss .....                                                                                     | 618 |
| (b)   | Fair and appropriate compensation .....                                                                      | 619 |
| (c)   | Compensating property loss .....                                                                             | 619 |
| (d)   | Interim payments .....                                                                                       | 620 |
| (e)   | Periodic payments .....                                                                                      | 621 |
| (f)   | Types of compensation payments not included .....                                                            | 621 |
|       | <i>Chapter 11: Determining Fair and Appropriate Compensation</i> .....                                       | 621 |
| (a)   | Verifiable expenses and loss of earnings .....                                                               | 621 |
| (i)   | Maximum amount of compensation .....                                                                         | 622 |
| (ii)  | Minimum amount of compensation .....                                                                         | 622 |
| (b)   | A framework for general compensation payments .....                                                          | 622 |
| (c)   | Bereavement payment for family members .....                                                                 | 624 |
|       | <i>Chapter 12: Legal Assistance</i> .....                                                                    | 624 |
| (a)   | Could legal assistance or other support be necessary for applicants .....                                    | 624 |
| (i)   | Legal assistance .....                                                                                       | 624 |
| (ii)  | Accompaniment at hearings .....                                                                              | 624 |
| (b)   | Funding necessary legal assistance .....                                                                     | 624 |
| (i)   | Circumstances for contributing to legal costs .....                                                          | 624 |
| (ii)  | Scale of fees .....                                                                                          | 625 |
| (iii) | Advance decision on legal costs .....                                                                        | 625 |
| (iv)  | Appealing a decision on legal costs .....                                                                    | 627 |
| (v)   | Application to courts .....                                                                                  | 627 |
| (c)   | Reimbursement of other costs .....                                                                           | 627 |
|       | <i>Chapter 13: Interaction with Court Proceedings</i> .....                                                  | 627 |
| (a)   | Sequencing of proceedings .....                                                                              | 627 |
| (b)   | Sharing of information with courts .....                                                                     | 629 |
| (i)   | Obligation on the DPP to disclose the fact of a compensation application .....                               | 629 |
| (ii)  | Voluntary, informed and written consent .....                                                                | 629 |
| (c)   | Testing evidence of an application for compensation in court proceedings .....                               | 630 |
|       | <i>Chapter 14: Offender Compensation</i> .....                                                               | 631 |
| (a)   | Challenges with section 6 compensation orders and proposals for reform .....                                 | 631 |
| (i)   | Lack of awareness of section 6 compensation orders .....                                                     | 631 |
| (b)   | Hybrid nature of section 6 compensation orders: the role of offender compensation orders in sentencing ..... | 631 |
| (c)   | A duty on the courts to consider a section 6 compensation order .....                                        | 632 |



# OVERVIEW AND EXECUTIVE SUMMARY

## EXECUTIVE SUMMARY

### Overview

1. This Report forms part of the Law Reform Commission's Fifth Programme of Law Reform.<sup>1</sup> The purpose of this Report is to propose a statutory basis for a new compensation scheme for victims of crimes of violence that is victim-centred, adopts a rights-based approach, and aligns with EU and Irish legal requirements. Putting the new compensation scheme on a statutory footing will provide a clear legal basis for its functions, powers, and procedures.
2. The recommendations in this Report follow the publication of the Commission's *Consultation Paper on Compensating Victims of Crime*.<sup>2</sup> The Commission received many submissions from individuals and bodies with an interest in this area. It very much appreciates those contributions. The submissions received greatly assisted the Commission in its deliberations and helped shape the recommendations contained in this Report. The Consultation Paper asked for submissions relating to the following:
  - how the current compensation process operates,
  - the nature of awards of compensation,
  - who should be eligible to receive compensation,
  - who should make decisions on compensation awards, and
  - what a new statutory scheme should look like.
3. The current Criminal Injuries Compensation Scheme was established by administrative decision in 1974, and continues to operate on a non-statutory basis. It was significantly amended in 1986 when its scope was confined to compensation for special damages (financial loss such as medical expenses and loss of earnings) and excluded compensation for general damages (damages for pain and suffering). The current scheme was amended again in 2021 by allowing victims' dependants to claim compensation for general damages in fatal cases, and by increasing the minimum level of an award payable under the scheme.
4. This Report examines how the current scheme operates and how it could be improved. The Commission had particular regard to Ireland's obligation to provide fair and appropriate compensation to victims of violent crime under the

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<sup>1</sup> Law Reform Commission, *Report on Fifth Programme of Law Reform* (LRC 120-2019), Project 7.

<sup>2</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022).

EU Compensation Directive 2004.<sup>3</sup> The extent and scope of Member States' obligations under the Compensation Directive have been clarified by the Court of Justice of the European Union in a series of recent cases. In 2020, the CJEU ruled in *Presidenza del Consiglio dei Ministri v BV* that the right to fair and appropriate compensation applies to all victims of intentional violent crimes within the EU, and not just in cross-border cases.<sup>4</sup> The Court also clarified in *BV* that compensation must respond to the seriousness of the consequences for individual victims and must not be "purely symbolic or manifestly insufficient".<sup>5</sup> The Court further clarified the scope of the Directive in *LD v Criminal Injuries Compensation Tribunal* in October 2025, finding that national compensation schemes cannot exclude compensation for pain and suffering.<sup>6</sup> These developments have significant implications for the provision of state-funded compensation in Ireland.

5. Another important consideration for the Commission in developing its recommendations was the EU Victims' Rights Directive 2012,<sup>7</sup> and the Irish legislation implementing this Directive - the Criminal Justice (Victims of Crime) Act 2017 (Victims' Rights Act). These laws contain minimum standards for the treatment of victims of crime in the criminal justice system, and outline victims' rights to information, support, and protection. They also emphasise the importance of a victim-centred approach for any state interaction with victims. The CJEU has confirmed that the rights outlined in the Victims' Rights Directive must be taken into consideration when implementing the Compensation Directive.<sup>8</sup>
6. The Commission also examines the way in which state compensation schemes for victims of crime operate in a range of comparative jurisdictions, taking particular note of jurisdictions that have recently reformed their schemes in line with a victim-centred approach, such as the Financial Assistance Scheme for victims of crime in Victoria, Australia.<sup>9</sup>
7. In this Report, the Commission recommends a number of significant changes to the provision of state-funded victim compensation in Ireland, including:

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<sup>3</sup> Directive 2004/80/EC.

<sup>4</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566.

<sup>5</sup> Case C-126/23 *Burdene* EU:C:2024:937.

<sup>6</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741.

<sup>7</sup> Directive 2012/29/EU.

<sup>8</sup> Case C-126/23 *Burdene* EU:C:2024:937.

<sup>9</sup> See also the Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) for its analysis of Victoria's approach to compensating victims of crime.

- establishing a new statutory scheme,
- establishing a new statutory body,
- providing compensation for pain and suffering for victims in both fatal and non-fatal cases,
- providing a contribution to legal assistance costs, and
- increasing the time limits for applying for compensation.

## **Chapter 1: Background and a Rights-Based Approach**

8. In Chapter 1, the Commission examines the frameworks and fundamental principles that generally underpin victim compensation schemes. This Chapter outlines why reform to the law in Ireland is necessary, notes some limitations of the current scheme, and examines key suggestions for change from consultees.
9. The Chapter begins by examining the evolution of victims' rights, the rationale behind state-funded victim compensation, and the development of the right to fair and appropriate compensation for victims of violent crime. The Commission examines what a human-rights based approach to the provision of compensation entails and summarises what it considers are the most relevant rights under the Irish Constitution, the Charter of Fundamental Rights of the EU, and the European Convention of Human Rights, alongside fundamental rule of law principles. In particular, the Chapter addresses the implications of a rights-based approach for the scheme's provisions concerning eligibility and exclusionary criteria, payments of compensation, legal assistance, accessibility, and the sequencing of applications and relevant court proceedings.

## **Chapter 2: Establishing a Statutory Scheme**

10. Chapter 2 outlines why the state-funded victim compensation scheme in Ireland should be put on a statutory basis. Primarily, it would enshrine the right to fair and appropriate compensation in Irish law and provide a clear legal foundation for the scheme. It would also ensure that the scheme's terms are legally enforceable, consistently applied, and easily accessible.
11. The Chapter then addresses objectives and guiding principles for the proposed legislation. The Commission recommends a clear statement of objectives to express the purpose of the statutory scheme, outline its underlying philosophy, and identify its specific aims. Guiding principles for staff and decision-makers are also recommended to ensure that the scheme operates in a victim-centred, trauma-informed manner.

## **Chapter 3: Funding the Statutory Scheme**

12. In Chapter 3, the Commission identifies challenges with the current funding model for the Criminal Injuries Compensation Scheme. At times, financial

constraints faced by the current scheme have hindered its ability to process compensation claims efficiently and make timely awards. Consultees shared with the Commission how consequent delays have exacerbated the stress and financial hardship experienced by victims. The Chapter examines how state-funded victim compensation schemes in other jurisdictions are funded and explores some options that could be considered by the Government. The Commission's key recommendation is that the statutory body should be adequately funded on a multi-annual basis from central Government funds.

## **Chapter 4: Structure of the Statutory Body and the Application Process**

13. In Chapter 4, the Commission recommends that a specialist independent body be established on a statutory basis to administer the victim compensation scheme. The Commission does not recommend a specific form for this body but refers instead to 'the statutory body' throughout the Report. The Commission proposes that the statutory body would be composed of three tiers, each with distinct functions, namely:
  - (1) An information and assistive tier;
  - (2) An assessment and adjudication tier; and
  - (3) An appeals tier.
14. The information and assistive tier would proactively provide direct assistance to victims as they apply for compensation. This would include the provision of information, direct and timely communication, help with accessing other victim support services, and assistance in identifying complex issues in applications.
15. All applications for compensation would be decided by a single decision-maker at the assessment and adjudicative tier. Decision-makers would determine the eligibility of applicants and the appropriate amount of compensation, as well as any other issues that arise, such as requests for contributions to costs.
16. An applicant would be able to appeal a decision to an internal appeals tier. The appeal would be heard by a panel of three members of the appeals tier, who would be able to hear appeals on issues of law and fact. The Commission proposes that there should be an onward appeal on a point of law to the High Court.
17. Chapter 4 also outlines proposals for a victim-centred application process, including incorporating an online application system and ensuring application forms are accessible. The Chapter then outlines a range of detailed information and support that the Commission considers the applicant should be given throughout the application process.



## **Chapter 5: Administration of the Statutory Body and Statutory Scheme**

18. Chapter 5 makes recommendations for the administration of the proposed statutory body and statutory scheme. The Commission recognises that the way the statutory body is administered can significantly influence how applicants experience the compensation process and it recommends that the administration and procedures of the scheme are designed to minimise secondary victimisation and protect victims from retraumatisation.
19. The Chapter outlines the existing procedures under the current scheme, and examines how some other adjudicative bodies are administered in Ireland. The Commission makes recommendations on the composition of the statutory body and what powers it should have. It makes recommendations in relation to the appointment, tenure, and removal of staff and decision-makers, the qualifications that decision-makers should have, and the provision of specialist training for all staff and decision-makers at the statutory body.

## **Chapter 6: Defining Eligible Applicants and Crimes of Violence**

20. Chapter 6 outlines the Commission's proposals regarding who may be eligible for a compensation payment under the statutory scheme.
21. The Chapter begins by proposing a definition for 'a victim' under the scheme. It considers what threshold of harm should be required to entitle an applicant to apply for compensation. The Commission acknowledges that the harm caused by violent crimes does not always reach the threshold of physical or psychological injury. Recognising that part of the pain and suffering inflicted by violent crime on victims is the violation of their dignity and personal integrity, the Commission recommends that harm should be defined more broadly than injury. It recommends that harm should include physical, mental, or emotional harm or distress which was directly caused by a criminal offence.
22. In line with the current scheme, the Commission recommends that other categories of persons who have suffered harm or loss should be entitled to apply for compensation under the statutory scheme. This includes the family members of a victim who has died as a result of the crime of violence, who will be entitled to receive a bereavement payment which will be shared between them. The Commission recommends a broader definition of 'family member' than the current scheme. The proposal would align the scheme with the definition of 'family member' in the Victims' Rights Act, and, in the Commission's view, reflect the reality of social connections in modern Ireland.
23. The other categories of eligible applicants that the Commission proposes are individuals responsible for the maintenance of the victim who may have incurred

expenses as a result of the death, and dependants for 'loss of dependency'. A new category, not in the current scheme, that the Commission proposes is family members who witness a crime of violence. This reflects the understanding that witnessing a crime of violence against a loved one can be deeply traumatising, especially for children.

24. Chapter 6 then proposes a definition for a 'crime of violence'. The Chapter examines recent developments in law and policy in Ireland and at EU level, in particular in relation to efforts to combat domestic, sexual, and gender-based violence. The Commission recommends that certain offences that may not ordinarily be understood to be crimes of violence because they may lack the element of physical harm should be expressly included in the scheme. This includes crimes of a sexual nature like intimate image abuse and various forms of domestic violence, including coercive control. To provide clarity, the Commission proposes a non-exhaustive list of specific offences that can constitute a 'crime of violence', as well as a definition of 'crime of violence' to assist decision-makers in assessing eligibility.

## **Chapter 7: Other Eligibility Requirements**

25. Chapter 7 outlines other eligibility requirements that applicants must meet in order to access compensation under the proposed statutory scheme. For example, the Commission recommends that the relevant harm must have occurred in Ireland, or aboard an Irish registered ship or aircraft.
26. On time limits, the Commission recommends that an applicant should have two years from the crime of violence to make an application. The Commission considers that this time limit reflects the fact that many victims may be too traumatised in the aftermath of a crime of violence to engage with the compensation scheme and may need recovery time first. The Commission proposes that the statutory body may accept out-of-time applications up to ten years after the crime of violence, but only where there is good reason justifying the delay and the application can be dealt with fairly. The Chapter also outlines how time limits should be dealt with in the context of continuing acts of violence, children, and mental incapacity.
27. Like the current scheme, the Commission recommends that a victim should be required to report the crime and provide reasonable assistance to the statutory body, the Gardaí and the Director of Public Prosecutions. The Commission considers that these obligations would help ensure that the statutory body has sufficient evidence to make a payment of compensation, and would support the State in the administration of justice. However, the Commission recognises that fulfilling these requirements may be very difficult for some victims, due to their personal situation or the circumstances of the crime. The Commission therefore

recommends that the statutory body may waive these requirements in certain specified circumstances.

## **Chapter 8: Well-meaning Intervenorors**

28. In Chapter 8, the Commission proposes that ‘well-meaning intervenors’ may apply for compensation where they come to the aid of a member of an Garda Síochána to assist in the prevention of a crime or in the apprehension of a perpetrator, or of others in saving a life, and suffer harm as a result. A similar provision can be found in the current scheme. The Commission sees a value to society in promoting and rewarding this positive behaviour.

## **Chapter 9: Exclusionary Criteria**

29. Chapter 9 considers the circumstances in which a payment of compensation may be reduced or refused by the statutory body. Exclusionary criteria are a common feature of compensation schemes. They aim to maintain the integrity of compensation schemes and to ensure financial resources are not spent on applicants who have engaged in some form of relevant misconduct, such as fraud.
30. The Commission examines the exclusions contained in the current scheme and concludes that they are too broad in the context of the right to fair and appropriate compensation. It makes recommendations for more precise exclusionary criteria for the proposed statutory scheme. The Commission proposes exclusions that are underpinned by the requirement that the victim’s conduct or behaviour must have directly or indirectly contributed to the harm suffered by them and it would be appropriate to reduce or refuse compensation on that basis. It provides some specific exceptions to the criteria it proposes for sexual offences and domestic violence.
31. The Commission also proposes that the statutory body should have an exceptional public interest discretion to reduce or refuse compensation for conduct not related to the crime of violence where necessary in the interests of justice. The Chapter then discusses specific instances where the statutory body will be required to refuse compensation, such as in the case of collusion or fraud. The Chapter concludes with the Commission’s recommendation that the statutory body should be permitted to make a payment directly to a person charging the victim for verifiable expenses, if it is concerned that the perpetrator will benefit from a compensation payment made to the victim.

## **Chapter 10: Types of Compensation**

32. Chapter 10 examines what types of compensation payments are required to ensure that compensation under the proposed statutory scheme is capable of being “fair and appropriate”, as required by the EU Compensation Directive. The

Commission recommends that applicants may claim for verifiable expenses (such as medical expenses, care needs, transport costs, or funeral expenses) and for loss of earnings suffered as a result of the crime of violence.

33. The Chapter then addresses compensation for non-financial loss, which may include pain and suffering, loss of life expectancy, loss of amenities, and mental distress. Payments for such loss are referred to by the Commission as general compensation payments (where a victim is applying) or bereavement payments (where a family member is applying in a fatal case).
34. The current scheme does not compensate applicants for pain and suffering, with the exception of a victim's dependants in fatal cases. However, following the CJEU decision in *LD*, it is clear that compensation schemes for victims of violent crimes must be capable of including compensation for pain and suffering in order to be considered fair and appropriate. The Commission therefore recommends that the statutory scheme should provide for general compensation payments in non-fatal cases.
35. In relation to family members in fatal cases, the Commission recommends that there should be one lump sum payment divided among family members and this should be known as a bereavement payment. This reflects the approach in the current scheme and in civil proceedings.
36. The Commission recommends that in clearly defined and exceptional circumstances the statutory body may consider an interim payment. In relation to periodic payments, it acknowledges that the law is developing in this area and recommends that the statutory body could align with any future proposals for periodic payments in court proceedings.

## **Chapter 11: Determining Fair and Appropriate Compensation**

37. Chapter 11 addresses how the statutory body should determine the amount of compensation to be paid to applicants under the statutory scheme. It addresses compensation for reasonable, verifiable expenses and loss of earnings, and proposes a framework for assessing general compensation payments for victims. It also addresses how the bereavement payment for family members may be assessed and divided between eligible family members.
38. The Commission's main recommendation in this Chapter is that the statutory body should use a band scheme to assist in determining the amount of general compensation to pay to a victim. The Commission considers that a band scheme offers the flexibility to respond to the actual impact of a crime of violence on an individual victim, and permits a case-specific approach to determining fair and appropriate levels of compensation.

39. The Commission also recommends that payments for reasonable, verifiable expenses and loss of earnings should be uncapped and should not be subject to a minimum threshold in the statutory scheme.

## **Chapter 12: Legal Assistance**

40. Chapter 12 addresses the issue of whether applicants may require legal assistance when applying for compensation under the statutory scheme. It first considers whether access to legal assistance may be necessary in some cases to fulfil the right to effective access to justice and a victim's right to fair and appropriate compensation under the Compensation Directive. The Commission considers that the statutory body should operate in a manner that permits most applicants to apply for compensation without legal assistance. However, the Commission concludes that there may be cases where applicants require legal assistance because of the complexity of the legal issues in their case, or because of their personal circumstances.
41. The Chapter then examines two potential models for funding necessary legal assistance: legal aid, or a direct contribution to an applicant's legal costs. The Commission ultimately recommends that the statutory body should be able to make a contribution towards the costs of legal assistance where a legal practitioner is necessary because of either the complexity of the case or the circumstances of the applicant.
42. Chapter 12 also outlines the Commission's recommendations concerning advance decisions on legal costs, appealing a decision on legal costs, and the reimbursement of reasonable costs incurred during the application process.

## **Chapter 13: Interaction with Court Proceedings**

43. Chapter 13 examines the potential interaction between the operation of the statutory body and court proceedings. The current practice of the Criminal Injuries Compensation Tribunal is to wait until the conclusion of related court proceedings before it makes a decision on an application for compensation. This results in significant delays for some victims, which the Commission understands has impacted some victims' ability to access necessary supports and may have contributed to secondary victimisation. The Commission examines an EU level imperative for making upfront compensation payments before court proceedings are concluded and expresses its view that a victim-centred approach requires this approach. In making its recommendation that the statutory body should not await the conclusion of court proceedings before making decisions on compensation payments, the Commission considered the balancing exercise required between the rights of a victim and the rights of a defendant, the risk of double compensation and other implications for court proceedings.

44. Chapter 13 considers the practical implications the proposed change in sequencing may have, such as a potential increase in requests to the statutory body for discovery in civil proceedings or disclosure in criminal proceedings. The Commission recommends that the statutory body should not share documents without the voluntary, informed consent of victims in writing, or a court order. The Commission sets out its view on how the introduction of compensation evidence in court through examination or cross-examination may be dealt with in a victim-centred manner, and makes certain recommendations on these issues.

## **Chapter 14: Offender Compensation**

45. Chapter 14 addresses the issue of offender compensation. The Commission expresses its view that offender compensation for a victim is preferable to state-funded compensation because the offender is the wrongdoer. The Chapter begins by outlining how offender compensation operates within the criminal justice process, and the benefits to the victim, and to society, that follow from the offender bearing some or all of the costs of compensating the victim. Payments to victims of crime by offenders may be either voluntary or court-ordered. Both types of payment are considered in the Chapter as are their advantages and disadvantages.
46. Court-ordered offender compensation is provided for under section 6 of the Criminal Justice Act 1993. Under section 6, the court may on conviction order an offender to pay the victim compensation for any personal injury or loss resulting from the offence. The Commission decided to consider section 6 compensation orders in the context of this Report for two reasons. First, there appears to be a developing EU imperative for victims to receive a decision on compensation from the offender in the course of criminal proceedings, in order to reduce the burden on a victim and avoid the situation where a victim has to apply for compensation through multiple different processes. Second, the Commission is firmly of the view that the State compensation body should be a payor of last resort. This means that if compensation is available from any other source, including the offender, that other source should be the primary source of compensation for a victim.
47. There are currently a number of issues with section 6 compensation orders which contribute to such orders not being used regularly in practice. The Commission proposes reforms in Chapter 14 that are aimed at addressing these issues. The Commission's primary recommendation is that courts should be required to consider making a section 6 compensation order in all criminal cases where the victim has suffered any personal injury or loss as a result of the offence. Judges should give reasons where they decline to make a section 6 compensation order and the Commission outlines a non-exhaustive list of reasons that may make a section 6 order inappropriate.

## Chapter 15: Preventing Double Compensation

48. Double compensation arises where applicants to the scheme also seek payments from other sources covering the same expenses, losses, or harm. This may include compensation from a known offender, benefits from different state bodies, sick leave benefit from employers, or insurance payments. Chapter 15 examines when double compensation might occur and how it may be avoided. As the Commission considers that the statutory body should be a payor of last resort, it recommends that the statutory body should reduce compensation by the amount of any payment already issued to the applicant in respect of that expense, loss, or harm. This is similar to the approach in the current scheme.
49. The Commission also recommends that if a payment for the same expenses, losses, or harm is made by another source after the statutory body issues a compensation payment, the State should be entitled to recoup those funds. The Chapter explores different models for recouping double payments, and the Commission recommends that the Government should set up a specific body to recover double compensation from applicants to the scheme.
50. Finally, Chapter 15 considers the circumstances in which the State may take on (subrogate) the right of an applicant to take a claim against an offender or other body for the expenses, losses, or harm incurred as a result of the crime of violence when the statutory body has made a payment and the victim decides not to pursue the offender through the courts.

# CHAPTER 1

## BACKGROUND AND A RIGHTS-BASED APPROACH

### TABLE OF CONTENTS

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|                  |                                                                      |           |
|------------------|----------------------------------------------------------------------|-----------|
| <b>Chapter 1</b> | <b>Background and a Rights-Based Approach.....</b>                   | <b>12</b> |
| 1.               | <i>Introduction: The need for reform.....</i>                        | <i>13</i> |
|                  | (a) The consultation process .....                                   | 13        |
|                  | (b) A statutory scheme.....                                          | 14        |
|                  | (c) Recent developments .....                                        | 15        |
| 2.               | <i>Background.....</i>                                               | <i>17</i> |
|                  | (a) Victims in the criminal justice system.....                      | 17        |
|                  | (b) Why the state compensates victims of violent crimes .....        | 19        |
| 3.               | <i>Compensation as a right.....</i>                                  | <i>22</i> |
|                  | (a) Development of the right in the European Union.....              | 22        |
|                  | (b) Implications of the right to state compensation.....             | 27        |
| (i)              | <i>A rights-based approach to compensating victims of crime.....</i> | <i>27</i> |
| (ii)             | <i>Rights at issue .....</i>                                         | <i>28</i> |
| (iii)            | <i>Framework for analysing the limitation of rights.....</i>         | <i>33</i> |
| (iv)             | <i>Implications for the proposed scheme.....</i>                     | <i>35</i> |



## 1. Introduction: The need for reform

- [1.1] The Criminal Injuries Compensation Scheme (“the current scheme”) in Ireland was established by administrative decision in 1974 and continues to operate on a non-statutory basis.<sup>10</sup> Compensation under the current scheme is intended to reimburse verifiable expenses or losses that victims have incurred as a direct result of a crime of violence.<sup>11</sup> The current scheme also makes compensation payments to family members in fatal cases and to individuals injured while assisting a Garda or while trying to save a life.<sup>12</sup>
- [1.2] This Chapter deals with the framework, purpose, and fundamental principles that generally underpin compensation schemes for victims of crimes of violence, and explains why this area of law requires reform in Ireland. It first examines the evolution of victims’ rights and the rationale behind state-funded victim compensation. It then discusses the development of the right to compensation at a national and European level. Finally, it outlines the implications of a rights-based approach to victim compensation for the provisions of the proposed statutory scheme, including eligibility criteria, exclusions, and potential access to legal representation.

### (a) The consultation process

- [1.3] The Commission published a Consultation Paper on the operation of the current scheme in 2022.<sup>13</sup> It explored the following topics:
- the nature of awards of compensation;
  - who is eligible to receive compensation;
  - how the compensation process operates;
  - who should make decisions on compensation awards; and

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<sup>10</sup> The most recent version of the Criminal Injuries Compensation Scheme is effective from 31 January 2025. The terms and conditions of the scheme, last updated July 2025, are available here: <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/terms-and-conditions-of-the-criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

<sup>11</sup> Criminal Injuries Compensation Scheme, “Your questions answered: What you can claim for” (8 September 2025) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/criminal-injuries-compensation-scheme-your-questions-answered/#what-you-can-claim-for>> accessed 23 March 2026. The current scheme does not define a crime of violence. The Commission recommends a definition for the proposed statutory scheme in the Chapter on Defining Eligible Applicants and Crimes of Violence.

<sup>12</sup> Paragraphs 3 to 6 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>13</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022). It is available at: <<https://publications.lawreform.ie/Portal/External/en-GB/RecordView/Index/62377>> accessed 23 March 2026.

- what a statutory scheme should look like.

[1.4] In its Consultation Paper, the Commission identified several areas for potential reform. It invited submissions from stakeholders, including victim support organisations and others with expert knowledge in the area, to respond to specific questions. The Commission identified a number of issues with the current scheme, including the following:

- lack of sufficient funding for the scheme;
- long delays in awarding compensation;
- difficult application procedures for applicants, including a very short time limit within which to make applications;
- lack of clarity regarding the application of the terms of the scheme, including eligibility of victims for the scheme.<sup>14</sup>

[1.5] Throughout this Report, the Commission outlines the general views of consultees, or a number of them, without naming them or citing specific submissions received in response to the Consultation Paper. It should be stressed that every consultee view expressed to the Commission was considered in the development of this Report. All of the consultees who responded to the Consultation Paper and engaged with the Commission over the course of its consultation process greatly assisted the Commission in developing its recommendations. The Commission is very grateful to all those who took the time to engage with it over the course of this law reform project.

[1.6] The Commission does not propose to repeat the in-depth analysis and history of the operation of the current scheme contained in its Consultation Paper. Rather, in this Report it focuses on its proposals for a new scheme and a new statutory decision-making body. Drawing on its consultations with stakeholders, further research, and developments in national and European law, the Commission has concluded that comprehensive reform of the Criminal Injuries Compensation Scheme is necessary and recommends a new scheme for compensating victims of crimes of violence in this Report.

### **(b) A statutory scheme**

[1.7] A key recommendation in this Report is to place the proposed scheme and the body which would replace the Criminal Injuries Compensation Tribunal ("the Tribunal") on a statutory basis. If the terms of the proposed compensation scheme have a statutory basis, they would be legally enforceable, consistently

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<sup>14</sup> See for example Chapter 6 of the Consultation Paper which addresses practical and procedural issues in the terms of the scheme and the procedures of the Criminal Injuries Compensation Tribunal that administers it.

applied, and more easily accessible. The new statutory body would have a clear legal basis for its functions, powers, and procedures. Accordingly, this Report refers to the Commission's proposed scheme as "the statutory scheme" and the proposed new body as "the statutory body". The Commission notes that the Programme for Government published in January 2025 includes a commitment to placing the Criminal Injuries Compensation Tribunal on a statutory basis.<sup>15</sup>

- [1.8] The Commission's research on the current operation of the Tribunal suggests that simply formalising current structures and practices in legislation would not create a satisfactory system for victims of crime, and may not be sufficient to comply with European Union ("EU") obligations. The Commission has carried out an evaluation of the current scheme and it recommends a new approach to compensating victims of crime.
- [1.9] The Commission notes that the proposed scheme for compensating victims of crime, based on the recommendations outlined in this Report, could serve as a template for future bespoke compensation schemes for victims of crime in a particular context.<sup>16</sup>

### **(c) Recent developments**

- [1.10] The Commission's recommendations in this Report are influenced by significant recent developments in the law on victims' rights. In 2004, the EU Directive relating to compensation to crime victims ("Compensation Directive")<sup>17</sup> introduced an obligation on Member States to establish a state-funded victim compensation scheme, and established the right of victims of violent intentional crimes to "fair and appropriate compensation" in the Member State where their injury occurred.<sup>18</sup> Since then, a series of cases decided by the Court of Justice of

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<sup>15</sup> Government of Ireland, *Programme for Government 2025: Securing Ireland's Future* (Department of the Taoiseach 2025) at page 120. The Commitment reads: "Ensure comprehensive support services for victims and place the Criminal Injuries Compensation Tribunal on a statutory basis."

<sup>16</sup> There are many situations where misconduct by public authorities or others lead to the need for a reparation scheme. The conduct leading to requests for reparation will often be criminal in nature, or at least be understood with the passage of time as requiring some reparation. The model proposed in this Report for the receipt of applications and their consideration, evaluation, and payment in a victim-focused context could be a template to be adapted later for other situations, even if a future reparation scheme did not fit neatly within the parameters of the proposed scheme and the draft Bill. The model suggested would add to the options available for adaptation in future situations involving reparation.

<sup>17</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims [2004] OJ L 261/15 ("Compensation Directive"). Fair and appropriate compensation is discussed in further detail in the Chapter on Types of Compensation and the Chapter on Determining Fair and Appropriate Compensation.

<sup>18</sup> Article 12(2) of the Compensation Directive (2004/80/EC). See also *Blanco v Criminal Injuries Compensation Tribunal* [2024] IEHC 171.

the European Union (“CJEU”) have clarified the extent and scope of Member States’ obligations under the Compensation Directive.

- [1.11] Initially, the Compensation Directive was considered only to apply in cross-border cases; in other words, where a national of an EU Member State suffered a criminal injury in another Member State.<sup>19</sup> However, in *Presidenza del Consiglio dei Ministri v BV*, the CJEU held that the right to fair and appropriate compensation provided by the Compensation Directive applies to all victims of violent intentional crimes within the EU, regardless of whether there is a cross-border element.<sup>20</sup> Significantly, the CJEU recently ruled in *LD v Criminal Injuries Compensation Tribunal* that national compensation schemes cannot exclude compensation for pain and suffering.<sup>21</sup> These legal developments have changed the way in which Member States need to approach victim compensation and have significant implications for the provision of state-funded compensation in Ireland.
- [1.12] Another important development at EU level is the 2012 Directive establishing minimum standards on the rights, support and protection of victims of crime (“Victims’ Rights Directive”).<sup>22</sup> The Victims’ Rights Directive outlines key rights of victims in criminal proceedings, including the rights to information, protection, and support. It firmly establishes the importance of a victim-centred approach for any state interaction with victims of crime. This includes the need to minimise any potential secondary victimisation.<sup>23</sup> Secondary victimisation refers to the revictimisation of victims in their interactions with institutions when their particular needs are not recognised, respected, or met.<sup>24</sup> The CJEU confirmed in the case of *Burdene* that the Victims’ Rights Directive establishes a horizontal framework for victims’ rights at EU level that must be applied when interpreting the Compensation Directive.<sup>25</sup> This means that the Compensation Directive must

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<sup>19</sup> The High Court interpreted the state of the EU jurisprudence as providing that the Compensation Directive did not confer rights outside a cross-border situation in *Byrne v Criminal Injuries Compensation Tribunal* [2017] IEHC 28 at paras 22 – 28 (White J).

<sup>20</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 55.

<sup>21</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741. In this decision, the CJEU considered a number of questions referred by the Irish High Court in *Blanco v Criminal Injuries Compensation Tribunal* [2024] IEHC 171.

<sup>22</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L 315/57 (“Victims’ Rights Directive”).

<sup>23</sup> See Recital 9 of the Victims’ Rights Directive (2012/29/EU).

<sup>24</sup> Section 2 of the Criminal Justice (Victims of Crime) Act 2017 defines secondary victimisation as “victimisation that occurs indirectly through the response of institutions and individuals to the victim.”

<sup>25</sup> Case C-126/23 *Burdene* EU:C:2024:937 at para 48. The Court held that “Directive 2012/29 is intended to set out the ‘horizontal framework for addressing the needs of all victims of

be interpreted in light of the rights created by the Victims' Rights Directive. The Victims' Rights Directive was implemented into Irish law by the Criminal Justice (Victims of Crime) Act 2017 ("the Victims' Rights Act").<sup>26</sup>

- [1.13] In light of these developments, the Commission has sought to ensure that its recommendations for the proposed statutory scheme are underpinned by a rights-based and victim-centred approach. The Commission considers that placing the compensation scheme on a statutory basis will contribute to ensuring that victims' right to state compensation is effective.<sup>27</sup> This is explored in more detail in the Chapter on Establishing a Statutory Scheme.
- [1.14] Legislating for a victims' compensation scheme provides an opportunity to reconsider the current scheme in its entirety. The Commission does so in this Report. It makes recommendations about vindicating the right of victims of crimes of violence to fair and appropriate compensation, in line with EU law and international best practice. The Commission's recommendations aim to minimise any potential additional trauma for victims, and to ensure that victims' rights are respected throughout the process of claiming compensation. The Commission's recommendations are outlined in proposed statutory provisions, and a draft Bill called the Compensation for Victims of Crimes of Violence Bill 2026 is included in this Report.

## 2. Background

### (a) Victims in the criminal justice system

- [1.15] Many countries have systems in place for compensating victims of crime. The widespread adoption of state-funded victim compensation schemes can be attributed to an evolving understanding of victims' rights. Since the second half of the 20th century, there has been a significant shift in the treatment of victims in the criminal justice process and in the understanding of their rights. This was influenced by the victims' rights movement which highlighted the significant

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crime'. Since both Directive 2004/80 and Directive 2012/29 concern the protection of victims of crime, they thus have overlapping fields of application, as is apparent from recital 5 of Directive 2004/80."

<sup>26</sup> The Commission is aware that the Victims' Rights Directive is currently under review, and expects a revised version of the Directive to be published this year. The Commission understands, however, that the revised version is unlikely to significantly impact its recommendations in this Report. See further Council of the European Union, "The EU strengthens the protection and support of victims of crime" (10 December 2025) <<https://www.consilium.europa.eu/en/press/press-releases/2025/12/10/the-eu-strengthens-the-protection-and-support-of-victims-of-crime/>> accessed 23 March 2026.

<sup>27</sup> Independent of the Commission's work, the Government's Programme for Government contained a commitment to place the Criminal Injuries Compensation Tribunal on a statutory basis. Government of Ireland, *Programme for Government 2025: Securing Ireland's Future* (Department of the Taoiseach 2025) at page 120.

impact of violent crime on victims and the need to address the welfare and dignity of victims within the criminal justice system.

- [1.16] Criminal justice was traditionally seen as a matter primarily between the state and the offender, with victims often sidelined in the process.<sup>28</sup> A victim's primary function in the system was as a witness to an offence.<sup>29</sup> However, from the 1950s onwards, there was a growing awareness of the marginalisation of victims in discussions of criminal law and policy. Efforts to rebalance the system sparked a movement advocating for greater protection and support for victims. This movement acknowledged the harm caused by the system's offender-centric focus, and recognised the need to support and protect victims against secondary victimisation.<sup>30</sup> During this period, there was a shift to a rights-based understanding of victimisation.<sup>31</sup> Victims were no longer regarded as simply witnesses to an offence, but rather as persons who had fundamental rights within the criminal justice system.
- [1.17] As part of this movement, campaigners advocated for state-funded compensation for victims.<sup>32</sup> For example, the social reformer and magistrate Margery Fry led the campaign in England. She fought for the introduction of state-funded victim compensation, highlighting cases where offender compensation was wholly inadequate. Offender compensation is where an offender is ordered by a court to pay compensation to a victim on a case-by-case basis. In one case she highlighted, an offender had been ordered by a court to pay compensation, but due to adjustments, the victim would only have received the full amount after 442 years.<sup>33</sup>
- [1.18] In Ireland, the position of victims gained attention as a result of high-profile cases of violence stemming from the conflict in Northern Ireland. The Irish victims' compensation scheme was introduced in 1974, but its terms applied

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<sup>28</sup> Council of Europe, Recommendation R(85)11 of the Committee of Ministers to member states on the Position of the Victims in the Framework of Criminal Law and Procedure (Adopted by the Committee of Ministers on 28 June 1985 at the 387th meeting of the Ministers' Deputies).

<sup>29</sup> European Union Agency for Fundamental Rights "Victims' rights as standards of criminal justice – Justice for victims of violent crime, Part I" (2019) at page 15.

<sup>30</sup> European Union Agency for Fundamental Rights "Victims' rights as standards of criminal justice – Justice for victims of violent crime, Part I" (2019) at page 16.

<sup>31</sup> European Union Agency for Fundamental Rights "Victims' rights as standards of criminal justice – Justice for victims of violent crime, Part I" (2019) at page 17.

<sup>32</sup> See Coffey, "The Victim of Crime and the Criminal Justice Process" (2006) 16(3) *Irish Criminal Law Journal* 15; Kilcommins and Moffett, "The Inclusion and Juridification of Victims on the Island of Ireland" in Healy, Hamilton, Daly and Butler (eds), *The Routledge Handbook of Irish Criminology* (Routledge 2016); Coffey, "Accommodating Victims of Crime: A Survey of the Legislative and Juridical Landscape" (2018) 28(4) *Irish Criminal Law Journal* 104.

<sup>33</sup> Fry, "Justice for Victims" (1959) 8 *Journal of Public Law* 191 at page 192.

retrospectively to 1972 to ensure that victims of the 1972 and 1973 Dublin and Monaghan bombings would be entitled to apply.<sup>34</sup>

- [1.19] The first state-funded victim compensation schemes were introduced in this context of an increased awareness and understanding of victims' rights.

### **(b) Why the state compensates victims of violent crimes**

- [1.20] When compensation schemes for victims of violent crimes were first introduced, some commentators asked why victims of violent crime were deemed to be more deserving of state compensation than victims of other injuries, such as those caused by disease or workplace accidents.<sup>35</sup> Others queried why the state was only compensating victims of violent crimes and not victims of non-violent crimes. There are both practical and theoretical factors underpinning these distinctions.
- [1.21] On a practical level, the choice to compensate only victims of violent crime reflects a rational use of public funds. It excludes those who may be victims of crimes which are covered, wholly or partially, by insurance – such as property theft. This reduces the volume of claims, helping to ensure that compensation schemes remain practically viable and financially sustainable.<sup>36</sup>
- [1.22] Compensating victims of violent crimes may also be justified by society's particular disapproval of crimes causing deliberate or reckless harm. Violent crimes generally involve a decision on the part of the offender to inflict harm on the victim, though not every element of an injury may be intended. The element of intent or recklessness in general separates violent crimes from other actions that might cause harm – such as accidental injuries.<sup>37</sup> The intention to cause harm or recklessness in causing harm elevates violent crimes to a wrong against the whole of society, as they are perceived to be contrary to fundamental social norms and values, attracting a greater demand for compensation for victims.

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<sup>34</sup> Osborough, "The Work of the Criminal Injuries Compensation Tribunal" (1978) 13(2) Irish Jurist 320 at page 320.

<sup>35</sup> Ashworth, "Punishment and Compensation: Victims, Offenders and the State" (1986) 6 Oxford Journal of Legal Studies 86 at page 87.

<sup>36</sup> Miers, "Offender and State Compensation for Victims of Crime: Two Decades of Development and Change" (2014) 20(1) International Review of Victimology 145 at page 156.

<sup>37</sup> Buck, "State Compensation to Crime Victims and the Principle of Social Solidarity: Can Theoretical Analysis Contribute to a Future European Framework?" (2005) 13 European Journal of Crime, Criminal Law and Criminal Justice 148 at page 160. The Commission notes that not all crimes of violence in Irish law require intention on the part of the offender but may require a different standard such as recklessness. The Chapter on Defining Eligible Applicants and Crimes of Violence in this Report examine the Commission's proposed eligibility requirements for the statutory body in more detail.

- [1.23] There are several theoretical rationales which justify the view that the state should be the body responsible for victim compensation. One rationale flows from the state's duty to protect its citizens. The idea is that since the state holds a monopoly on the legitimate use of force and limits citizens' capacity for self-defence, it bears a responsibility to compensate those it fails to protect from criminal harm. Support for this theory can be traced back to the 17th century writings of John Locke<sup>38</sup> and 19th century jurist Jeremy Bentham.<sup>39</sup>
- [1.24] This rationale has also found support at an EU level. In his Opinion in *Cowan v Trésor Public*, Advocate General Lenz stated that:

"Compensation for victims of crime must be understood as an aspect of public security and public order. It is compensation for infringement of a right which it is the duty of the State to protect but which in the specific case it is not able to safeguard."<sup>40</sup>

- [1.25] More recently, the EU Fundamental Rights Agency ("FRA") commented that, since the state is tasked with securing and protecting the rights of individuals living under its jurisdiction against violent offences, it incurs a form of guarantor liability.<sup>41</sup> Therefore, where the offender is unable to pay compensation to the victim, the state must step in and pay compensation in advance, or instead, of the offender.<sup>42</sup> The European Parliament explained in its report on the Proposal for a Directive on Compensation to Crime Victims that "compensation for the victim must be guaranteed not only to alleviate the harm and suffering caused as far as this can be done, but also to deal with the social conflict produced by the crime and facilitate the application of a properly rational criminal policy".<sup>43</sup>

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<sup>38</sup> Locke stated in this Commonwealth that individuals voluntarily cede their rights in return for the state's protection: Locke, *Second Treatise of Government* (1690) (Macpherson ed, Hackett Publishing 1980) at para 87.

<sup>39</sup> Bentham states: "Has a crime been committed? Those who have suffered by it, either in their person or their fortune, are abandoned to their evil condition. The society which they have contributed to maintain, and which ought to protect them, owes them, however, an indemnity, when its protection has not been effectual". See Bowring (ed), *The Works of Jeremy Bentham* vol 1 (Edinburgh: Tait 1843) at page 379.

<sup>40</sup> Case 186/87 *Ian William Cowan v Trésor public*, Opinion of Mr Advocate General Lenz delivered on 6 December 1988 ECLI:EU:C:1988:526 at para 44.

<sup>41</sup> European Union Agency for Fundamental Rights, "Sanctions that do justice – Justice for victims of violent crime, Part III" (2019) at page 23.

<sup>42</sup> European Union Agency for Fundamental Rights, "Sanctions that do justice – Justice for victims of violent crime, Part III" (2019) at page 23. This was cited in Case C-601/14, *European Commission v Italian Republic*, Opinion of Advocate General Bot ECLI:EU:C:2016:249 at para 81.

<sup>43</sup> European Parliament, *Report on the Commission proposal for a Council directive on compensation to crime victims* (COM(2002) 562 – C5-0517/2002 – 2002/0247(CNS))



- [1.26] As noted above, Margery Fry's main justifications for state compensation were the challenges that victims face in securing compensation directly from offenders.<sup>44</sup> These challenges may include the fact that the offender cannot be identified or that they simply do not have the means to compensate the victim. Equally, victims may not have the resources to pursue offenders for compensation in the civil courts.<sup>45</sup>
- [1.27] Miers notes that successive governments in the United Kingdom have rejected the idea that the state compensation schemes in that jurisdiction are an acknowledgement of liability on the part of the state. Rather, they have justified providing state compensation to victims of crimes of violence on the grounds that it acts as a symbol of recognition, public sympathy, and acknowledgment of the harm suffered by victims.<sup>46</sup>
- [1.28] Another rationale underpinning state-funded victim compensation is one of social responsibility. Victim compensation can be seen as a collective societal response to crime, designed to support those harmed within the community, like public healthcare or social welfare systems. Fry observed that, "[i]n our modern system of collective responsibility for sickness and injury, we have evolved a machinery for assuring compensation which could well be extended to injuries criminally caused".<sup>47</sup>
- [1.29] The provision of compensation can further be justified on humanitarian grounds, on the basis that all citizens should receive assistance for their compelling needs.<sup>48</sup> According to this view, offering state-funded compensation to victims is a moral duty of a democratic society to care for those who are harmed. By providing compensation, the state is seen to act on behalf of society, expressing empathy and providing practical aid to those in need.
- [1.30] Finally, compensation for victims of crime can also be a valuable tool in supporting the objectives of criminal law because it builds trust between the

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(Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, 7 October 2003) Doc A5-0330/2003 at page 42.

<sup>44</sup> Fry, "Justice for Victims" (1959) 8 Journal of Public Law 191 at pages 191 – 192.

<sup>45</sup> O'Driscoll, "'Trundled Along, Almost Unheard Of, Almost Inaccessible': Understanding Access to State Compensation for Victims of Violent Crime in Ireland and the European Union" (PhD thesis, Dublin City University 2025) at page 28.

<sup>46</sup> Miers, "Offender and State Compensation for Victims of Crime: Two Decades of Development and Change" (2014) 20(1) International Review of Victimology 145 at page 155, citing Ministry of Justice, *Getting it Right for Victims and Witnesses* (Cm 8288, 2012) at para 149 and Attorney General's Office, *Rebuilding Lives: Supporting Victims of Crime* (Cm 6705, 2005) at page 21.

<sup>47</sup> Fry, "Justice for Victims" (1959) 8 Journal of Public Law 191 at page 192.

<sup>48</sup> US President's Task Force on Victims of Crime, *President's Task Force on Victims of Crime: Final Report* (1982) at page 39.

public and the criminal justice system. In a 1974 paper on restitution and compensation, the Law Reform Commission of Canada commented that one of the purposes of the criminal law is to protect core values. When those values are violated by violent crime, there may not only be an injury to individual rights, but also an injury to public confidence and trust in the system generally. By demonstrating society's wish to respond to criminal wrongs, victim compensation can restore public trust in the criminal justice system.<sup>49</sup>

### 3. Compensation as a right

#### (a) Development of the right in the European Union

- [1.31] More recently, an imperative for establishing or reforming state-funded compensation schemes in Europe, building on the foundational rationales outlined above, has been the creation of an EU right to compensation. Under the 2004 Compensation Directive, EU Member States are under a legal obligation to establish state-funded compensation schemes for victims of intentional violent crimes.
- [1.32] This is in keeping with the general trend of strengthening victims' rights through various European and international instruments since the 1970s.<sup>50</sup> In 1977, the Committee of Ministers of the Council of Europe adopted Resolution on the Compensation of Victims of Crime.<sup>51</sup> This Resolution contains 13 guiding principles to harmonise national provisions on victim compensation for Member States of the Council of Europe to consider. This was a precursor to the 1983 Council of Europe Convention on the Compensation of Victims of Violent Crimes ("the 1983 Convention"). This instrument was not signed or ratified by Ireland but it influenced later developments, including the EU Compensation Directive. It reflected a new emphasis among policy makers on the interests of victims of crime, in an effort to rebalance the focus which had been placed on the

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<sup>49</sup> Law Reform Commission of Canada, *Working Paper 5: Restitution and Compensation* (1974) at page 17.

<sup>50</sup> Victims' rights have been continually strengthened in Europe since the Council of Europe, European Convention on the Compensation of Victims of Violent Crimes 1983 (ETS No 116), up to the current EU Strategy on Victims' Rights (2020-2025): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU Strategy on victims' rights (2020-2025) COM (2020) 258 ("EU Strategy on Victims' Rights (2020-2025)") <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0258>> accessed 23 March 2026. See Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at pages 41 – 50.

<sup>51</sup> Council of Europe Resolution (77) 27 on the Compensation of Victims of Crime (Adopted by the Committee of Ministers on 28 September 1977, at the 275th meeting of the Ministers' Deputies).

treatment of offenders in the criminal justice system.<sup>52</sup> The 1983 Convention provided that state compensation should be provided to victims of violent crimes. It cites “equity and social solidarity” as key justifications for compensation schemes.<sup>53</sup>

- [1.33] The 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power went further and recognised victims’ entitlement to “access to the mechanisms of justice and to prompt redress ... for the harm they have suffered”.<sup>54</sup> At a meeting in Tampere in 1999, the European Council called for minimum standards on the protection of victims of crime, in particular on crime victims’ access to justice and their rights to compensation for damages.<sup>55</sup> The 2001 EU Council Framework Decision on the Standing of Victims in Criminal Proceedings identified the right of victims to receive information about compensation and to obtain a decision on compensation in the course of criminal proceedings.<sup>56</sup>
- [1.34] As noted above, the 2004 EU Compensation Directive establishes access to state compensation as a right for all victims of intentional violent crime in the European Union. Article 12(2) of the Compensation Directive grants victims of intentional violent crime the right to fair and appropriate compensation.<sup>57</sup> A number of significant decisions by the CJEU have clarified the extent and scope of this right to compensation. While the Compensation Directive was initially considered to apply only in cross-border cases, in the case of *Presidenza del Consiglio dei Ministri v BV*, the CJEU held that the right to fair and appropriate compensation applies to all victims within the European Union, regardless of whether there is a cross-border element.<sup>58</sup>
- [1.35] This decision altered the nature of the State’s obligation to provide state compensation to victims of violent crime. Prior to *BV*, the Irish scheme was conceptualised as an “ex gratia” (without legal obligation), non-statutory scheme,

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<sup>52</sup> *Kelly and Doyle v The Criminal Injuries Tribunal* [2020] IECA 342 at para 56 (Ní Raifeartaigh J).

<sup>53</sup> Council of Europe, European Convention on the Compensation of Victims of Violent Crimes 1983 (ETS No 116).

<sup>54</sup> Article 4 of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).

<sup>55</sup> This meeting is referred to in Recital 3 of the Compensation Directive (2004/80/EC).

<sup>56</sup> See Article 4 and Article 9 of the Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings [2001] OJ L 082. This document is no longer in force as it was replaced by the EU Victims’ Rights Directive 2012, but it demonstrates the historical developments in victims’ rights.

<sup>57</sup> This was affirmed in Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 55.

<sup>58</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 55.

and its existence was considered to be a matter of social policy rather than one of legal right.<sup>59</sup> In *Kelly and Doyle v Criminal Injuries Tribunal*, the Court of Appeal found that the character of the scheme must now be thought of differently; it must now be seen as the way in which the State gives effect to obligations under the Compensation Directive, in relation to both cross-border and purely domestic scenarios.<sup>60</sup>

- [1.36] The CJEU in *BV* also confirmed that the Compensation Directive provides a discretion to Member States regarding the level of compensation to be paid. It does not necessarily correspond to the same level of compensation that would be required from an offender in civil proceedings, but it must not be “purely symbolic or manifestly insufficient having regard to the seriousness of the consequences, for those victims, of the crime committed”.<sup>61</sup>
- [1.37] The level of compensation required under the Compensation Directive was further defined in the 2025 case of *LD v Criminal Injuries Compensation Tribunal*.<sup>62</sup> The CJEU held that “the compensation must be capable, where appropriate, of contributing to the reparation of any non-material harm, including pain and suffering”.<sup>63</sup> The Commission discusses the level of compensation which is to be available under the proposed statutory scheme in the Chapter on Types of Compensation and the Chapter on Determining Fair and Appropriate Compensation.
- [1.38] A number of other measures to strengthen victims’ rights in Europe are notable. The 2006 Recommendation by the Council of Europe on assistance to crime victims recommended standards and assistance for victims of crime on 15 issues, including access to support services, the right to effective access to remedies, and the need to raise awareness of the effects of crime.<sup>64</sup> This has since been replaced by the 2023 Recommendation,<sup>65</sup> which provides more detailed guidance on the

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<sup>59</sup> See the High Court judgment in *Kelly and Doyle v Criminal Injuries Tribunal* [2019] IEHC 265 at para 19 (Murphy J).

<sup>60</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 81 (Ní Raifeartaigh J).

<sup>61</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at paras 58 – 63.

<sup>62</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741. In this decision, the CJEU considered a number of questions referred by the Irish High Court in *Blanco v Criminal Injuries Compensation Tribunal* [2024] IEHC 171.

<sup>63</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 36.

<sup>64</sup> Council of Europe, Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims (Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies).

<sup>65</sup> Council of Europe, Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime (Adopted by the Committee of Ministers on 15 March 2023 at the 1460th meeting of the Ministers' Deputies).

development and implementation of victims' rights in national legislation and practice.<sup>66</sup>

- [1.39] The 2012 EU Victims' Rights Directive explicitly frames crime as a violation of individual rights. It outlines minimum rights for victims of crime as they interact with the criminal justice system, in particular regarding information, support, and protection. As outlined above, the CJEU confirmed in the case of *Burdene* that the Victims' Rights Directive establishes a horizontal framework on victims' rights at EU level that must be applied when interpreting the Compensation Directive.<sup>67</sup> Many, but not all, of these rights have been implemented into Irish law through the Victims' Rights Act 2017. They include the rights to receive information,<sup>68</sup> linguistic assistance,<sup>69</sup> and protection.<sup>70</sup> The Victims' Rights Directive and the Victims' Rights Act both provide that information must be provided to victims about how to access compensation.<sup>71</sup> The Commission considers that these broader rights must be reflected in the operation of a compensation scheme for victims of crime.
- [1.40] Recital 9 of the Victims' Rights Directive is of particular note in relation to how victims should be treated as they go through the compensation application process. It both asserts and explains a rights-based approach to state interactions with victims with the aim of avoiding secondary victimisation, as follows:

"Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind ... Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate

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<sup>66</sup> European Committee on Crime Problems, *b. Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime – Explanatory Memorandum* (15 March 2023).

<sup>67</sup> Case C-126/23 *Burdene* EU:C:2024:937 at para 48. The Court held that "Directive 2012/29 is intended to set out the 'horizontal framework for addressing the needs of all victims of crime'. Since both Directive 2004/80 and Directive 2012/29 concern the protection of victims of crime, they thus have overlapping fields of application, as is apparent from recital 5 of Directive 2004/80."

<sup>68</sup> Articles 4 and 6 of the Victims' Rights Directive (2012/29/EU) and sections 7 – 11 of the Criminal Justice (Victims of Crime) Act 2017.

<sup>69</sup> Articles 3, 5, and 7 of the Victims' Rights Directive (2012/29/EU) and sections 22 and 23 of the Criminal Justice (Victims of Crime) Act 2017.

<sup>70</sup> Articles 18 – 24 of the Victims' Rights Directive (2012/29/EU) and sections 12 – 26 of the Criminal Justice (Victims of Crime) Act 2017.

<sup>71</sup> Article 4 of the Victims' Rights Directive (2012/29/EU) and section 7(1)(i) – (j) of the Criminal Justice (Victims of Crime) Act 2017.

support to facilitate their recovery and should be provided with sufficient access to justice.”<sup>72</sup>

- [1.41] In a 2019 report to the European Commission President on Strengthening Victims’ Rights, Special Advisor Milquet conducted research across the EU and identified ongoing obstacles to accessing compensation, including a lack of information, insufficient support, and overly restrictive eligibility criteria or procedural hurdles.<sup>73</sup> She recommended strengthening access to compensation. Her report is founded on a human rights-based approach to criminal justice, drawing on the right to an effective remedy<sup>74</sup> and the right to access justice,<sup>75</sup> and identifies the state’s duty to compensate a victim where an offender is unable to, or is unavailable.<sup>76</sup> Milquet states that her report is:

“...based on the assumption that victims of crimes against the person have a right to justice and that criminal justice serves to redress – to ‘right’ – the wrong done to victims. If an offender, by committing a violent crime, calls victims’ rights into question or fails to compensate, victims can legitimately expect that their legal community will defend their rights to justice in criminal proceedings and that the State will have the duty to compensate them in place of the offender.”<sup>77</sup>

- [1.42] The EU Strategy on Victims’ Rights (2020-2025)<sup>78</sup> built on Milquet’s report and identified improving victims’ access to compensation as a priority. It refers to Milquet’s research and the need to overcome current obstacles to accessing compensation. These are identified as including the “lack of sufficient information about victims’ rights to compensation, numerous procedural hurdles including restrictive time limits, insufficient allocations from national budgets and complicated rules governing offender compensation and state compensation.”<sup>79</sup>

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<sup>72</sup> Recital 9 of the Victims’ Rights Directive (2012/29/EU).

<sup>73</sup> Milquet, *Strengthening Victims’ Rights: From Compensation to Reparation for a New EU Victims’ Rights Strategy 2020-2025* (European Commission 2019).

<sup>74</sup> Contained in Article 13 of the European Convention on Human Rights and Article 47 of the Charter of Fundamental Rights of the European Union.

<sup>75</sup> Interpreted by the European Court of Human Rights to include a right to compensation when provided for by law. See *Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania* App no 47848/08 (ECtHR 17 July 2014) at para 149.

<sup>76</sup> Milquet, *Strengthening Victims’ Rights: From Compensation to Reparation for a New EU Victims’ Rights Strategy 2020-2025* (European Commission 2019) at page 14.

<sup>77</sup> Milquet, *Strengthening Victims’ Rights: From Compensation to Reparation for a New EU Victims’ Rights Strategy 2020-2025* (European Commission 2019) at page 7.

<sup>78</sup> EU Strategy on Victims’ Rights (2020-2025).

<sup>79</sup> EU Strategy on Victims’ Rights (2020-2025) at page 16.

- [1.43] Provisions addressing compensation for victims in these legal instruments show that state compensation for victims of violent crime is now firmly established as part of an appropriate state response to violent crime.<sup>80</sup> The shift at the European level signifies a key development in the underlying imperative for providing fair and appropriate compensation. Such state-funded compensation is now recognised as a legal right, not merely a gesture of state solidarity or acknowledgement of harm.

## **(b) Implications of the right to state compensation**

### *(i) A rights-based approach to compensating victims of crime*

- [1.44] In this Report, the Commission has taken a human rights-based approach to its proposals for a statutory scheme for compensating victims of crimes of violence. In doing so, the Commission has considered the rights contained in the Irish Constitution, the Charter of Fundamental Rights of the European Union, and the European Convention on Human Rights, alongside fundamental rule of law principles.
- [1.45] The starting point for a human rights-based approach is that victims of crimes of violence have a right to justice.<sup>81</sup> A human rights perspective sees the violent offender as trespassing on the victim's freedom and autonomy.<sup>82</sup> Criminal justice is a means of defending the victim's personal dignity and rights against the offender's attack. It encompasses sanctions that aim at redressing the offence, including prosecuting and sentencing a convicted offender and facilitating the compensation of victims.<sup>83</sup> Under a human rights-based approach, if the offender is unable to compensate the victim themselves, the state has a duty to step in to provide compensation to the victim for the harm they have suffered as a consequence of the offence.<sup>84</sup> According to the FRA:

“The move from needs-based rhetoric to human rights language changes profoundly the relationship between the victim and the state. The victim is no longer pleading for help on the basis of their vulnerability, pressing needs and deservingness, but demanding

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<sup>80</sup> See for example the Council of Europe, European Convention on the Compensation of Victims of Violent Crimes 1983 (ETS No 116); United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).

<sup>81</sup> Milquet, *Strengthening Victims' Rights: From Compensation to Reparation for a New EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at page 14.

<sup>82</sup> European Union Agency for Fundamental Rights, “Victims' rights as standards of criminal justice – Justice for violence of violent crime, Part I” (2019) at page 30.

<sup>83</sup> European Union Agency for Fundamental Rights, “Victims' rights as standards of criminal justice – Justice for violence of violent crime, Part I” (2019) at page 26.

<sup>84</sup> Milquet, *Strengthening Victims' Rights: From Compensation to Reparation for a New EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at page 14.

that the state should take seriously what it owes to the individuals living on its territory and their human rights. The state is no longer in the comfortable and patronising position of a more or less generous Good Samaritan, but a duty bearer indebted to the individuals living under its jurisdiction as rights holders.”<sup>85</sup>

- [1.46] The Commission considers that victims’ rights must be at the core of the statutory compensation scheme, and the application process must be fair, accessible, and responsive to victims’ needs to ensure this. This is directly relevant to the Commission’s proposals on eligibility criteria, exclusions, payments of compensation, legal representation, accessibility, and sequencing, as these proposals have particularly significant implications for human rights. There are many rights that must be considered in order to devise a victim-centred, rights-based approach, including rights protected under the Irish Constitution and a range of European sources. These are discussed below.

## *(ii) Rights at issue*

### *The Constitution*

- [1.47] First and foremost, all Irish law must comply with the fundamental rights contained in the Constitution, which the Supreme Court has confirmed is “the principal source for the protection of rights in Ireland”.<sup>86</sup> The Constitution gives rise to both positive and negative obligations on the part of the State – it obliges the State to vindicate certain rights or interests without unduly or disproportionately interfering with the rights of others. Article 40.3.1° provides that “[t]he state guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.” This includes rights such as the right to life,<sup>87</sup> the person,<sup>88</sup> bodily integrity,<sup>89</sup> equality,<sup>90</sup> privacy,<sup>91</sup> and fair procedures.<sup>92</sup>

### *European Union law*

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<sup>85</sup> European Union Agency for Fundamental Rights, “Victims’ rights as standards of criminal justice – Justice for violence of violent crime, Part I” (2019) at page 17.

<sup>86</sup> *Gorry v Minister for Justice and Equality* [2020] IESC 55 at para 209, [2024] 1 IR 666 at para 287 (McKechnie J).

<sup>87</sup> Article 40.3.2° of the Constitution of Ireland.

<sup>88</sup> Article 40.3.2° of the Constitution of Ireland.

<sup>89</sup> Article 40.3.1° of the Constitution of Ireland; *Ryan v Attorney General* [1965] IR 294.

<sup>90</sup> Article 40.1° of the Constitution of Ireland.

<sup>91</sup> Article 40.3.1° of the Constitution of Ireland; *McGee v Attorney General* [1974] IR 284; *Norris v Attorney General* [1984] 3 IR 361.

<sup>92</sup> Article 40.3.1° of the Constitution of Ireland; *Re Haughey* [1971] IR 217.



- [1.48] The Charter of Fundamental Rights of the European Union ("the Charter") enshrines a wide array of fundamental rights into the legal order of the EU.<sup>93</sup> As a result of the primacy of EU law and the doctrine of direct effect, any action by Member States taken within the scope of EU law must comply with EU requirements.<sup>94</sup> The doctrine of direct effect means, in practice, that individuals may claim rights directly under EU law and enforce those rights before national courts. The provisions of the Charter are fully binding provisions of primary EU law, enjoying the same status as provisions of the EU Treaties.<sup>95</sup> Article 51(1) of the Charter provides that its provisions are addressed to Member States when they are implementing Union law.<sup>96</sup> Member States act within the scope of Union law where they apply Treaty provisions<sup>97</sup> or implement EU acts, including where they transpose directives into national law.<sup>98</sup>
- [1.49] The statutory scheme proposed in this Report will serve to fulfil Ireland's obligations under the Compensation Directive and the Victims' Rights Directive, and will therefore be "implementing Union law". Both the Compensation Directive and Victims' Rights Directive also expressly provide that their contents must be read in light of the fundamental rights and principles recognised by the Charter.<sup>99</sup>

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<sup>93</sup> European Union Agency for Fundamental Rights, "EU Charter of Fundamental Rights" <<https://fra.europa.eu/en/eu-charter>> accessed 23 March 2026.

<sup>94</sup> The doctrine of direct effect means, in practice, that individuals may claim rights directly under EU law and enforce those rights before national courts. Case 26/62 *Van Gend en Loos v Nederlandse Administratie der Belastingen* ECLI:EU:C:1963:1; Case 6/64 *Costa v ENEL* ECLI:EU:C:1964:66; Case 11/70 *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* ECLI:EU:C:1970:114.

<sup>95</sup> Article 6 of the consolidated version of the Treaty on European Union [2012] OJ C 326/13; Craig and de Búrca, *EU Law: Text, Cases, and Materials* 6th ed (Oxford University Press 2015) at page 390.

<sup>96</sup> In Case C-532/15 *Eurosaneamientos* ECLI:EU:C:2016:932 at para 52, the CJEU has explained that: "the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law ... if such national legislation falls within the scope of EU law, the Court ... must provide all the guidance as to interpretation needed in order for the national court to determine whether that legislation is compatible with the fundamental rights". See also Case C-617/10 *Åklagaren v Hans Åkerberg Fransson* ECLI:EU:C:2013:105.

<sup>97</sup> Case 222/86 *Union nationale des entraîneurs et cadres techniques professionnels du football (Unectef) v Georges Heylens and others* ECLI:EU:C:1987:442 at paras 14 – 16.

<sup>98</sup> Case 222/84 *Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary* ECLI:EU:C:1986:206 at paras 13 – 21; Joined Cases C-465/00, C-138/01, and C-139/01 *Rechnungshof v Österreichischer Rundfunk and Others* ECLI:EU:C:2003:294 at paras 68 – 91; Joined Cases C-20/00 and C-64/00 *Booker Aquaculture Ltd, trading as Marine Harvest McConnell and Hydro Seafood GSP Ltd v The Scottish Ministers* ECLI:EU:C:2003:397 at paras 88 – 92. Lenaerts and Van Nuffel, *European Union Law* 3rd ed (Sweet and Maxwell 2011) at para 22-025.

<sup>99</sup> Recital 14 of the Compensation Directive (2004/80/EC) states: "This Directive respects the fundamental rights and observes the principles reaffirmed in particular by the Charter of

- [1.50] Certain Charter rights are of particular relevance for the statutory scheme. The FRA have stated that the right to an effective remedy and a fair hearing by an independent and impartial tribunal, protected under Article 47(1) of the Charter, includes the right to payment of compensation.<sup>100</sup> Other important rights include the rights to the integrity of the person,<sup>101</sup> equality,<sup>102</sup> non-discrimination,<sup>103</sup> protection of personal information,<sup>104</sup> the rights of the elderly,<sup>105</sup> the rights of people with disabilities,<sup>106</sup> and the rights of the child.<sup>107</sup>
- [1.51] The directives themselves are also sources of rights. The Compensation Directive provides for the right of victims of violent intentional crimes to state-funded compensation.<sup>108</sup> The Victims' Rights Directive confers additional, specific rights on victims of crime, such as the right to receive appropriate information, support, and protection, and to effectively participate in criminal proceedings.<sup>109</sup> In addition, this Directive provides in its recitals that it:
- “...seeks to promote the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-discrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial.”<sup>110</sup>
- [1.52] The CJEU decision in *Burdene* makes clear that the relevant rights in the Victims' Rights Directive should be taken into account when addressing the needs of all victims of crime. The Court stated that: “[s]ince both Directive 2004/80 and Directive 2012/29 concern the protection of victims of crime, they thus have overlapping fields of application”.<sup>111</sup> The Compensation Directive must therefore

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Fundamental Rights of the European Union as general principles of Community law.” See also Recital 66 of the Victims' Rights Directive (2012/29/EU), which contains very similar wording.

<sup>100</sup> European Union Agency for Fundamental Rights, “Victims' rights as standards of criminal justice – Justice for violence of violent crime, Part I” (2019) at page 34.

<sup>101</sup> Article 3 of the Charter of Fundamental Rights of the European Union (“the Charter”).

<sup>102</sup> Article 20 of the Charter.

<sup>103</sup> Article 21 of the Charter.

<sup>104</sup> Article 8 of the Charter.

<sup>105</sup> Article 25 of the Charter.

<sup>106</sup> Article 26 of the Charter.

<sup>107</sup> Article 24 of the Charter.

<sup>108</sup> Article 12(2) of the Compensation Directive (2004/80/EC).

<sup>109</sup> See the rights set out in Articles 3 – 24 of the Victims' Rights Directive (2012/29/EU).

<sup>110</sup> Recital 66 of the Victims' Rights Directive (2012/29/EU).

<sup>111</sup> Case C-126/23 *Burdene* EU:C:2024:937 at para 48. The Court held that “Directive 2012/29 is intended to set out the ‘horizontal framework for addressing the needs of all victims of

be read in light of the rights outlined in the Victims' Rights Directive. This means that the proposed statutory scheme must comply with the full range of victims' rights contained in the Victims' Rights Directive, where relevant, as well as the rights in the Charter.

*The European Convention on Human Rights*

- [1.53] Many of the rights protected by the Irish Constitution and the Charter are also protected by the European Convention on Human Rights ("ECHR"). Where there are corresponding rights in the Charter and the ECHR, Article 52(3) of the Charter provides that the meaning and scope of Charter rights shall be the same as those laid down by the ECHR.<sup>112</sup> Unlike the Constitution or the Charter, the ECHR does not have direct effect in Irish law.<sup>113</sup> However, the ECHR provides important protection for individuals' fundamental rights, and it may be relied upon to the extent allowed by the European Convention on Human Rights Act 2003. This includes that a court should, where possible, interpret a statutory provision or rule of law in a manner compatible with the ECHR,<sup>114</sup> and that every "organ of the state" should perform its functions in a manner compatible with the ECHR.<sup>115</sup>
- [1.54] Irish courts have discussed the question of whether the current scheme engages certain ECHR rights. For example, in *Kelly and Doyle v Criminal Injuries Tribunal*,<sup>116</sup> the Court of Appeal examined whether Article 6 of the ECHR applies to the determination of an application for state compensation by the Tribunal. Article 6(1) of the ECHR provides that the entitlement to a fair hearing by an independent and impartial tribunal is engaged where a person's "civil rights and obligations" are being determined. The Court stated that Article 6(1) does not apply to non-contentious and unilateral procedures which do not involve opposing parties and where there is no dispute over rights.<sup>117</sup> Ní Raifeartaigh J

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crime'. Since both Directive 2004/80 and Directive 2012/29 concern the protection of victims of crime, they thus have overlapping fields of application, as is apparent from recital 5 of Directive 2004/80".

<sup>112</sup> Article 52(3) of the Charter further states: "This provision shall not prevent Union law providing more extensive protection."

<sup>113</sup> *McD v L* [2009] IESC 81, [2010] 2 IR 199.

<sup>114</sup> Section 2(1) of the European Convention on Human Rights Act 2003: "In interpreting and applying any statutory provision or rule of law, a court shall, in so far as is possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State's obligations under the Convention provisions."

<sup>115</sup> Section 3(1) of the European Convention on Human Rights Act 2003: "Subject to any statutory provision (other than this Act) or rule of law, every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions."

<sup>116</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342.

<sup>117</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 108, citing the Council of Europe, *Guide on Article 6 of the European Convention on Human Rights: Right to a Fair Trial (Civil Limb)* (European Court of Human Rights 2013) at paras 4 – 7. See *Alaverdyan v*

considered the nature of an application before the Tribunal and initially noted that it “is not a court proceeding. It is not an adversarial procedure. Nor is it a proceeding in which the EU right to fair and appropriate compensation is itself in dispute.”<sup>118</sup>

- [1.55] However, the Court went on to highlight the decision of the European Court of Human Rights (“ECtHR”) in *Gustafsson v Sweden*.<sup>119</sup> *Gustafsson* concerned an application for compensation under the Swedish Board for Reparation to Victims of Crime.<sup>120</sup> When the applicant complained that the procedures adopted by the board violated Article 6(1), the Swedish Government argued that it was not applicable, as any right to compensation would not be of a civil nature within the meaning of the article. The ECtHR rejected this argument and held that there was a “genuine and serious dispute” within the meaning of Article 6, as the applicant’s eligibility for compensation under the scheme was in dispute.<sup>121</sup> The ECtHR was also of the opinion that the right to compensation could be categorised as a civil right under Article 6(1).<sup>122</sup> Ní Raifeartaigh J acknowledged that *Gustafsson* and the case at hand concerned different issues. *Gustafsson* concerned a dispute as to whether the applicant had suffered injuries in the course of a criminal act, whereas in *Kelly and Doyle* the issue was whether the applicant should be afforded legal aid. In her first judgment, Ní Raifeartaigh J stated that “the decision of the European Court of Human Rights would appear to suggest that the safer view for the Court to take is that a claim to the Irish Scheme *would* fall within the ambit of Article 6(1) of the Convention.”<sup>123</sup> However, she clarified in her later 2021 judgment on final orders and costs in the case that: “What was confirmed was that *even if* one assumed for the sake of the argument on legal aid/costs that the appellants fell within Article 6(1) of the Convention, this would not in any event bring them to the end-point they wished to reach, namely a right to legal aid and/or costs in proceedings before the Tribunal.”<sup>124</sup>
- [1.56] In the 2005 case of *CB v The United Kingdom*, which concerned an application to the UK Criminal Injuries Compensation Authority, the ECtHR observed that:

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*Armenia* App no 4523/04 (ECtHR 24 August 2010), where the ECtHR ruled a complaint under Article 6 inadmissible on the basis that there was no dispute or “contestation” at issue.

<sup>118</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 107 (Ní Raifeartaigh J).

<sup>119</sup> *Gustafsson v Sweden* App no 23196/94 (ECtHR 1 July 1997).

<sup>120</sup> The Swedish Board for Reparation to Victims of Crime is known as the “Brottsskadenämnden”.

<sup>121</sup> *Gustafsson v Sweden* App no 23196/94 (ECtHR 1 July 1997) at para 39.

<sup>122</sup> *Gustafsson v Sweden* App no 23196/94 (ECtHR 1 July 1997) at para 41.

<sup>123</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 112 (Ní Raifeartaigh J).

<sup>124</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2021] IECA 131 at para 16 (Ní Raifeartaigh J).

"In the proceedings in this case, the parties agreed that the right involved was a 'civil right' within the meaning of Article 6, section 1 of the Convention and both the High Court and Court of Appeal approached the case on the basis that Article 6 was applicable. *The Court will do the same* in examining whether paragraph 18, in excluding any funding of costs of making a claim, has deprived the applicant of a fair hearing of her claim to criminal injury compensation."<sup>125</sup> (Emphasis added).

- [1.57] In that case, the Court also stated that Article 47 of the Charter and Article 19 of the Treaty on European Union, which provides that Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law,<sup>126</sup> applied to the UK Criminal Injuries Compensation Scheme.
- [1.58] Ní Raifeartaigh J confirmed in *Kelly and Doyle* that CJEU caselaw establishes that the domestic rules for safeguarding an individual's rights under EU law must "(1) be no less favourable than those governing similar domestic actions (the principle of equivalence); and (2) not render practically impossible or excessively difficult the exercise of rights conferred by Community law (the principle of effectiveness)."<sup>127</sup> This means that a person must be able to access state compensation without excessive obstacles and in a manner that is possible and practical.
- [1.59] In light of the above, the Commission considers that to implement a victim-centred, rights-based approach, the proposed statutory scheme and the operation of the statutory body should comply with the relevant rights protected under the Constitution, the Charter, the Compensation Directive, the Victims' Rights Directive, and the ECHR. The analytical framework and detail of these rights are explored in the sections below.

### *(iii) Framework for analysing the limitation of rights*

- [1.60] Rights, where not absolute,<sup>128</sup> can be restricted or limited. Different rights instruments provide slightly different frameworks for how these limitations can be made in a permissible manner. In general, however, all limitations must be necessary and proportionate to achieve a legitimate aim. The proportionality test used to examine restrictions on constitutional rights was enunciated by the Irish High Court in *Heaney v Ireland*:

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<sup>125</sup> *CB v The United Kingdom* App no 35512/04 (ECtHR 25 August 2005) at page 6.

<sup>126</sup> Article 19(1) of the consolidated version of the Treaty on European Union [2012] OJ C 326/13.

<sup>127</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 100 (Ní Raifeartaigh J).

<sup>128</sup> Absolute rights include, for example, the right not to be tortured or enslaved.

“The objective of the impugned provision must be of sufficient importance to warrant overriding a constitutionally protected right. It must relate to concerns pressing and substantial in a free and democratic society. The means chosen must pass a proportionality test. They must:

- (a) be rationally connected to the objective and not be arbitrary, unfair or based on irrational considerations;
- (b) impair the right as little as possible, and
- (c) be such that their effects on rights are proportional to the objective.”<sup>129</sup>

[1.61] Article 52(1) of the EU Charter provides that any limitations on rights must meet the requirements of the principle of proportionality.<sup>130</sup> This restricts the authorities in the exercise of their powers by requiring a balance to be struck between the means used and the intended aim.<sup>131</sup> Limitations on rights may be made only if they are necessary and genuinely meet objectives of general interest to the European Union or the need to protect the rights and freedoms of others.<sup>132</sup> Article 52(4) provides that Charter rights resulting from constitutional traditions common to Member States should be interpreted in harmony with those traditions.

[1.62] Like the rights protected under the Constitution and the Charter, ECHR rights are generally not absolute. The principle of proportionality is also used by the European Court of Human Rights in its interpretation of the ECHR and limitations on the rights protected in that instrument.<sup>133</sup> Under ECHR case law, any restriction on rights must be proportionate to the legitimate aim pursued,<sup>134</sup> necessary in a democratic society, and must be the least restrictive means of achieving the relevant aim in the public interest.<sup>135</sup>

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<sup>129</sup> *Heaney v Ireland* [1944] 3 IR 593 at page 607 (Costello J).

<sup>130</sup> The full text of Article 52(1) provides: “Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.”

<sup>131</sup> Laenarts and Van Nuffel, *European Union Law* 3rd ed (Sweet and Maxwell 2011) at para 7-033.

<sup>132</sup> Article 52(1) of the Charter.

<sup>133</sup> Harris, O’Boyle, Bates and Buckley, *Harris, O’Boyle and Warbrick: Law of the European Convention on Human Rights* 5th ed (Oxford University Press 2023) at page 11.

<sup>134</sup> *Handyside v UK* App no 5493/72 (ECtHR 7 December 1976) at para 49.

<sup>135</sup> *Mouvement Raelien Suisse v Switzerland* App no 16354/06 (ECtHR 13 July 2012) at para 75.

*(iv) Implications for the proposed scheme*

- [1.63] As noted above, the rights-based approach is particularly relevant to the Commission's proposals regarding the structure of the statutory body, eligibility criteria, exclusions, payments of compensation, legal representation, the application process, and the scheme's interaction with the courts. These issues are explored in more depth below.

*Eligibility criteria*

- [1.64] Significant rights implications arise when considering appropriate eligibility criteria for victims. The Chapter on Defining Eligible Applicants and Crimes of Violence and the Chapter on Other Eligibility Requirements outline the criteria that the proposed statutory body should use in determining whether an applicant is eligible to apply to the statutory scheme for compensation.
- [1.65] The Compensation Directive provides that fair and appropriate compensation should be guaranteed to "victims of violent intentional crimes".<sup>136</sup> When defining who constitutes a "victim", the statutory scheme must reflect the principles set out in the Victims' Rights Directive. For example, Recital 19 states that a person should be considered a victim regardless of whether an offender is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between them. It also recognises that family members of a person whose death has been directly caused by a criminal offence could be harmed as a result of the crime.<sup>137</sup>
- [1.66] In line with the Compensation Directive, the Commission considers that an eligible victim must be a victim of a crime of violence. The Chapter on Defining Eligible Applicants and Crimes of Violence sets out a proposed definition of a "crime of violence" for the statutory scheme. It considers whether the definition should include offences of non-physical violence which do not necessarily result in physical injury, but which do violate the dignity and bodily integrity of the victim, such as harassment, stalking, or sexual offences. Article 1 of the Charter states that: "Human dignity is inviolable. It must be respected and protected." Article 3 provides: "Everyone has the right to respect for his or her physical and mental integrity."<sup>138</sup> In line with a rights-based approach, the Commission

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<sup>136</sup> Article 12(2) of the Compensation Directive (2004/80/EC).

<sup>137</sup> Recital 19 of the Victims' Rights Directive (2012/29/EU).

<sup>138</sup> In Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 35, the CJEU emphasised that "the integrity of the person must be understood as being both physical and mental." See also the unenumerated right to bodily integrity under Article 40.3.1° of the Constitution, set out in *Ryan v Attorney General* [1965] IR 294, and the right to protection of the person, set out in *Re D and Midland Health Board* [1987] IR 449; *A v Refugee Appeals Tribunal* [2011] IEHC 373.

considers that these rights must be taken into account when defining the parameters of a crime of violence.

#### *Exclusionary criteria*

- [1.67] In the Chapter on Exclusionary Criteria, the Commission considers the circumstances in which an otherwise eligible applicant may have their compensation payment reduced or refused by the statutory body, such as for problematic contributory conduct. The Commission considers that defining these circumstances requires consideration of the rights to equality and non-discrimination,<sup>139</sup> as it involves drawing distinctions between otherwise eligible applicants. To comply with these rights, it is important to ensure that exclusions under the statutory scheme are not arbitrary, vague, or based on any status that may be rooted in social, political, and cultural norms.

#### *Compensation payments*

- [1.68] The right to the integrity of the person is also relevant to the definition of “fair and appropriate compensation”. The CJEU in *LD* held that “measures to facilitate compensation to victims of crime should form part of the realisation of the objective of ensuring the protection of the persons concerned from harm”.<sup>140</sup> The Court highlighted that compensation must be capable of contributing to the reparation of any non-material harm, including harm related to pain and suffering.<sup>141</sup> The Court came to its conclusion because, among other reasons, the right to integrity protects both physical and mental integrity.<sup>142</sup> This issue is examined further in the Chapter on Types of Compensation and the Chapter on Determining Fair and Appropriate Compensation.

#### *Legal Assistance*

- [1.69] The issue of legal representation in proceedings before the proposed statutory body also raises particular rights considerations. In the Chapter on Legal Assistance, the Commission considers the implications of the right to effective access to justice under Article 47 of the Charter and Article 6 of the ECHR, and examines whether legal assistance is necessary to vindicate this right.

#### *Accessibility*

- [1.70] If making an application under the scheme is excessively burdensome or complicated, certain victims may find it difficult to access compensation, which

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<sup>139</sup> Article 40.1° of the Constitution; Articles 20 and 21 of the Charter; Article 14 of the European Convention on Human Rights (“ECHR”).

<sup>140</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 35.

<sup>141</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 36.

<sup>142</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 35.



may have implications for the right to fair procedures.<sup>143</sup> The level of information, support, and assistance provided will affect the accessibility of the scheme. How the application process is structured will also impact the rights of members of society who may require additional support, including the rights of children, the elderly, and people with disabilities.<sup>144</sup>

- [1.71] In addition, in order to protect a victim's right to dignity under Article 1 of the Charter, it is important that the statutory body is trauma-informed, victim-centred, and that there are supports in place to reduce the risk of secondary victimisation. These issues are addressed in the Chapter on the Structure of the Statutory Body and the Application Process.

*Sequencing and interaction with the courts*

- [1.72] The operation of the statutory scheme may also have implications for the fundamental rights of an accused. In the Chapter on Interaction with Court Proceedings, the Commission proposes that applications should be processed, in general, without waiting for the conclusion of a criminal investigation or the conclusion of civil or criminal proceedings in respect of the crime in question. However, it acknowledges that, in some circumstances, this may have implications for the alleged offender's right to a fair trial and so the Commission recommends that in such cases a decision could be made and published, subject to further redactions to protect anonymity; publication of a decision could be delayed until after the conclusion of court proceedings; or consideration of the victim's application would have to await the conclusion of criminal proceedings, where necessary in the interests of justice.<sup>145</sup>
- [1.73] A change in sequencing may also lead to requests from the accused for disclosure or discovery of documents in the possession or control of the statutory body, including any prior narrative account of the incident by the victim. Such requests may have implications for the victim's rights to privacy,<sup>146</sup> protection of

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<sup>143</sup> Article 40.1.3° of the Constitution; *Re Haughey* [1971] IR 217; Article 47 of the Charter; Article 6 of the ECHR.

<sup>144</sup> Articles 24, 25, and 26 of the Charter.

<sup>145</sup> The right to a fair trial is contained in Article 38.1° of the Constitution, Article 47 of the Charter, and Article 6 of the ECHR.

<sup>146</sup> Article 40.1.3° of the Constitution; *McGee v Attorney General* [1974] IR 284; *Norris v Attorney General* [1984] 3 IR 1; Article 7 of the Charter; Article 8 of the ECHR.

personal data,<sup>147</sup> dignity,<sup>148</sup> and personal integrity.<sup>149</sup> These issues are discussed in the Chapter on Interaction with Court Proceedings.

- [1.74] In the next Chapter, the Commission will examine objectives and guiding principles for the proposed statutory scheme. These proposals reflect the rights-based approach outlined in this Chapter.

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<sup>147</sup> Article 8 of the Charter; Article 8 of the ECHR. See also Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

<sup>148</sup> Article 1 of the Charter.

<sup>149</sup> Article 40.1.3° of the Constitution; *Ryan v Attorney General* [1965] IR 294; Article 3 of the Charter; Article 3 of the ECHR.

## CHAPTER 2 ESTABLISHING A STATUTORY SCHEME

### TABLE OF CONTENTS

|                  |                                                                       |           |
|------------------|-----------------------------------------------------------------------|-----------|
| <b>Chapter 2</b> | <b>Establishing a Statutory Scheme.....</b>                           | <b>39</b> |
| 1.               | <i>A statutory basis for a victim compensation scheme.....</i>        | <i>41</i> |
|                  | (a) Advantages of a statutory scheme.....                             | 41        |
|                  | (i) Providing for permanence.....                                     | 42        |
|                  | (ii) Consistency and predictability in decision-making.....           | 42        |
|                  | (iii) Independence.....                                               | 43        |
|                  | (iv) Articulating the scheme's objectives and guiding principles..... | 44        |
|                  | (v) Appeals.....                                                      | 44        |
|                  | (b) EU law requirements.....                                          | 45        |
|                  | (c) Submissions.....                                                  | 46        |
|                  | (d) Proposals for reform.....                                         | 46        |
| 2.               | <i>Objectives and guiding principles of the statutory scheme.....</i> | <i>47</i> |
|                  | (a) Introduction.....                                                 | 47        |
|                  | (b) Objectives.....                                                   | 49        |
|                  | (i) Comparative jurisdictions.....                                    | 49        |
|                  | (ii) Proposals for reform.....                                        | 50        |
|                  | (c) Guiding principles.....                                           | 53        |
|                  | (i) Comparative jurisdictions.....                                    | 53        |
|                  | (ii) Submissions.....                                                 | 55        |
|                  | (iii) Proposals for reform.....                                       | 57        |



## 1. A statutory basis for a victim compensation scheme

- [2.1] This Chapter examines why the Commission considers that the state-funded victim compensation scheme in Ireland should be put on a statutory basis. It outlines the advantages of this approach, as well as relevant European Union ("EU") law requirements. It then outlines the Commission's proposals and the rationale for including objectives and guiding principles in the proposed legislation that reflect a victim-centred and rights-based approach, as explored in the previous Chapter.

### (a) Advantages of a statutory scheme

- [2.2] The Commission considers that there are significant benefits to placing the Irish compensation scheme on a statutory basis. One of the primary advantages of a statutory scheme is that legislation would provide a clear and certain legal foundation for the scheme. This would, amongst other things, highlight the scheme's role in fulfilling Ireland's obligations under EU law and enshrine the scheme's broader importance in the Irish victims' rights landscape.
- [2.3] Case law from the Court of Justice of the European Union ("CJEU") has emphasised the importance of specificity, precision, and clarity when implementing directives.<sup>1</sup> As outlined in the previous Chapter, there are a number of EU directives that are relevant to the scheme. Clear, accessible, and efficient procedures are also required to avoid the secondary victimisation of victims.<sup>2</sup> The Commission considers that placing the scheme on a statutory basis would help to achieve these objectives. Legislation would ensure that the terms of the proposed scheme are clear and precise, and that victims' entitlements are easily identifiable and readily enforceable. A statutory basis also meets the key rule of law requirement that rights are enshrined in easily accessible legislation.
- [2.4] There are a number of further advantages to placing the proposed scheme on a statutory basis, each of which will be considered in turn. These include:
- (i) Providing for permanence;
  - (ii) Ensuring consistency and predictability in decision-making;

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<sup>1</sup> Case 427/07 *Commission v Ireland* ECLI:EU:C:2009:457 at para 55. See also Case C-197/96 *Commission v France* ECLI:EU:C:1997:155 at para 15; Case C-207/96 *Commission v Italy* ECLI:EU:C:1997:583 at para 26; and Case C-32/05 *Commission v Luxembourg* ECLI:EU:C:2006:749 at para 34, as cited in Case 427/07.

<sup>2</sup> Section 2 of the Criminal Justice (Victims of Crime) Act 2017 defines secondary victimisation as "victimisation that occurs indirectly through the response of institutions and individuals to the victim".

- (iii) Enshrining the independence of the statutory body;
- (iv) Articulating the proposed scheme's objectives and guiding principles;  
and,
- (v) Providing for statutory appeal mechanisms.

[2.5] These issues are explored in more detail below.

*(i) Providing for permanence*

[2.6] The Criminal Injuries Compensation Scheme ("the current scheme") operates without the structure and permanence that legislation would provide. In the Commission's view, the administrative, non-statutory nature of the current scheme is unsuitable for such an important and permanent element of the victims' rights landscape. The compensation scheme is not a temporary response to a single event or tragedy but rather addresses an ongoing need to provide compensation to victims of violent crime. Placing the proposed scheme on a statutory basis would emphasise its importance and help to ensure its permanence.

*(ii) Consistency and predictability in decision-making*

[2.7] Consistency is a fundamental aspect of fairness in providing for criminal injuries compensation, as it is in the determination of any other right or entitlement. The permanence and stability created by placing the scheme on a statutory basis would support the development of consistent decision-making. Importantly, consistency can mitigate against arbitrary decisions. In *PPA v Refugee Appeals Tribunal* the Supreme Court held that:

"It is not that a member of a tribunal is actually bound by a previous decision but consistency of decisions based on the same objective facts may, in appropriate circumstances, be a significant element in ensuring that a decision is objectively fair rather than arbitrary."<sup>3</sup>

[2.8] If the terms of the proposed statutory scheme are clear, accessible, and consistently applied by decision-makers, the outcome of applications should also be more predictable. This would enable victims to know whether they can apply to the proposed statutory scheme and what likely outcome they can expect, both at the outset of the process and in deciding whether to appeal a decision. Clarity and consistency would not only benefit applicants but would also assist decision-makers, and help administrators in managing practical matters.

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<sup>3</sup> *PPA v Refugee Appeals Tribunal* [2006] IESC 53, [2007] 4 IR 94 at para 24 (Geoghegan J).

- [2.9] The Commission considers that consistency and predictability in its decisions would also enhance trust in the proposed statutory scheme. Greater public confidence in the scheme would increase its legitimacy.

*(iii) Independence*

- [2.10] A further advantage of a statutory scheme is that the institutional independence of the statutory body, and the independence of its constituent members, would be enshrined in legislation. Currently, the staff of the secretariat of the Criminal Injuries Compensation Tribunal ("the Tribunal") are civil servants, employed by the Department of Justice and members of the Tribunal are appointed by the Minister for Justice for fixed terms. This may risk the perception that members of the Tribunal are not independent decision-makers and that the current scheme is over-reliant on the Department of Justice. Independence adds legitimacy to decisions and removes any perception that the functioning of the Tribunal may be dependent on political considerations.<sup>4</sup>
- [2.11] There are a number of legal imperatives for ensuring that the statutory body is both perceived to be, and is in fact, independent and impartial. Article 47<sup>5</sup> of the Charter of Fundamental Rights of the European Union ("the Charter") and Articles 6<sup>6</sup> and 13<sup>7</sup> of the European Convention on Human Rights ("ECHR") provide for a right to an effective remedy before an independent and impartial tribunal that is established by law when rights are violated. Article 19 of the Treaty on the European Union ("TEU") provides that "Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law."<sup>8</sup>

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<sup>4</sup> OECD, *Creating a Culture of Independence: Practical Guidance Against Undue Influence* (The Governance of Regulators 2017) at page 18  
<[https://www.oecd.org/en/publications/creating-a-culture-of-independence\\_9789264274198-en.html](https://www.oecd.org/en/publications/creating-a-culture-of-independence_9789264274198-en.html)> accessed 23 March 2026. See also OECD, *Being an Independent Regulator* (The Governance of Regulators 2016)  
<[https://www.oecd.org/en/publications/being-an-independent-regulator\\_9789264255401-en.html](https://www.oecd.org/en/publications/being-an-independent-regulator_9789264255401-en.html)> accessed 23 March 2026.

<sup>5</sup> Article 47 of the Charter of Fundamental Rights of the European Union ("the Charter") states: "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law..."

<sup>6</sup> Article 6(1) of the European Convention on Human Rights ("ECHR") states: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

<sup>7</sup> Article 13 of the ECHR states: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

<sup>8</sup> Article 19(1) of the Consolidated version of the Treaty on European Union [2012] OJ C 326/13.

As discussed in the previous Chapter, the Court of Appeal in *Kelly and Doyle v Criminal Injuries Tribunal* found that the recognition of a right to compensation in the case of *BV*<sup>9</sup> meant that the compensation scheme falls within the field of EU law as provided for in Article 19 TEU. The determination of claims for compensation by the Tribunal therefore attracts the protection of Articles 6 and 13 of the ECHR and Article 47 of the Charter.<sup>10</sup> Therefore, any new statutory body will need to comply with the requirements of independence and impartiality contained in both of these provisions.

- [2.12] The importance of the actual and perceived independence of administrative bodies when determining rights was also highlighted by the Supreme Court in *Zalewski v The Workplace Relations Commission*.<sup>11</sup> O'Donnell J stated that: "guaranteed impartiality and independence are... essential requirements for any adjudication within the scope of European law, or in accordance with Article 6 ECHR and the jurisprudence of the ECtHR."<sup>12</sup>

#### *(iv) Articulating the scheme's objectives and guiding principles*

- [2.13] A statutory scheme would allow for a statement of objectives and guiding principles that align with a modern, trauma-informed understanding of victims' needs. Outlining objectives and guiding principles in legislation can help to frame the work of the proposed statutory body, identify values that should underpin decision-making, and firmly establish the need for a rights-based approach to all procedures. The Commission's proposals for objectives and guiding principles are outlined in section 2 below.

#### *(v) Appeals*

- [2.14] The current scheme includes an internal appeal mechanism. If an applicant is dissatisfied with the initial decision, they may appeal internally (within the Tribunal). However, the terms of the current scheme do not provide a procedure for external appeals of the Tribunal's decisions. While Tribunal decisions are subject to judicial review,<sup>13</sup> the Commission considers that clarity and accessibility would be improved if the procedure for appeals were specified in statute. A new

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<sup>9</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566.

<sup>10</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 112 (Ní Raifeartaigh J).

<sup>11</sup> *Zalewski v The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24 at para 147, [2022] 1 IR 421 at para 148, where the Supreme Court emphasised that "[i]ndependence and impartiality are fundamental components of the capacity to administer justice".

<sup>12</sup> *Zalewski v The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24 at para 147, [2022] 1 IR 421 at para 148 (O'Donnell J).

<sup>13</sup> *State (Creedon) v Criminal Injuries Compensation Tribunal* [1988] IR 51.



proposal for internal and external appeals for the statutory body is outlined in the Chapter on the Structure of the Statutory Body and the Application Process.

### **(b) EU law requirements**

- [2.15] In addition to these fundamental reasons for establishing a statutory scheme, Ireland's obligations under EU law may also require that the proposed scheme be enshrined in legislation. In this regard, the *BV* case is highly significant.<sup>14</sup> In *BV*, the CJEU unequivocally held that Article 12(2) of the EU Directive relating to compensation to crime victims ("Compensation Directive")<sup>15</sup> grants victims of intentional violent crimes the right to fair and appropriate compensation. In light of the CJEU's affirmation of this right, the question arises as to whether the administrative basis of the current scheme may not be in line with Ireland's EU obligations to effectively administer the right under EU law.
- [2.16] Article 288 of the Treaty on the Functioning of the European Union provides that a directive shall be binding regarding the result to be achieved, but national authorities can choose the form and method of implementation. This allows Member States a degree of discretion and flexibility as to how directives are to be implemented in their national legal systems. However, the CJEU has also stated that "mere administrative practices, which by their nature may be altered at the whim of the administration" may not fulfil the need for proper implementation.<sup>16</sup> The CJEU has held that the provisions of a directive must be implemented "with the specificity, precision and clarity required in order to satisfy the need for legal certainty".<sup>17</sup> Therefore, where a directive confers rights, the full extent of those rights must be made clear in the implementing law at national level.
- [2.17] While the implementation of a directive does not necessarily require a legislative response in each Member State, the CJEU has suggested that there are only limited instances where directives that create rights for individuals can be implemented without specific legislative measures. In *Commission v Germany*, the CJEU stated that the implementation of a directive may not require legislative action where general principles of national constitutional or administrative law make it unnecessary, so long as those principles:

"guarantee that the national authorities will in fact apply the directive fully and that, where the directive is intended to create

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<sup>14</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566.

<sup>15</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims [2004] OJ J 261/15 ("Compensation Directive").

<sup>16</sup> Case 96/81 *Commission v Netherlands* ECLI:EU:C:1982:192 at para 12.

<sup>17</sup> Case 427/07 *Commission v Ireland* ECLI:EU:C:2009:457 at para 55. See also Case C-197/96 *Commission v France* ECLI:EU:C:1997:155 at para 15; Case C-207/96 *Commission v Italy* ECLI:EU:C:1997:583 at para 26; and Case C-32/05 *Commission v Luxembourg* ECLI:EU:C:2006:749 at para 34, as cited in Case 427/07.

rights for individuals, the legal position arising from those principles is sufficiently precise and clear and the persons concerned are made fully aware of their rights and, where appropriate, afforded the possibility of relying on them before the national courts.”<sup>18</sup>

- [2.18] As stated above, the Compensation Directive creates a right to compensation for victims of intentional violent crime. The Commission considers that placing Ireland’s compensation scheme on a statutory basis will more clearly meet the EU law requirements to ensure that the legal position arising from the right to compensation is sufficiently precise and clear, and that victims of crimes of violence are made fully aware of this right.

### **(c) Submissions**

- [2.19] In its Consultation Paper, the Commission asked consultees:

“Do you agree that legislation is necessary to underpin Ireland’s criminal injuries compensation process?”<sup>19</sup>

- [2.20] Submissions received in response to the Consultation Paper were strongly in favour of putting the proposed compensation scheme on a statutory basis. A number of submissions stated that the current approach creates uncertainty which adds to the stress and trauma faced by victims. This is an important point, as the Commission believes that the proposed scheme should be victim-centred and should minimise the potential for secondary victimisation.
- [2.21] Some consultees argued that creating a statutory basis for the scheme would make it more reliable, ensure consistency of practice, and improve access to compensation. Other responses stated that a statutory scheme would strengthen victims’ rights and make them more enforceable. These submissions highlight the importance of ensuring that the proposed scheme is properly accessible to anyone who is entitled to compensation under its provisions, and that a key aim of the scheme should be to vindicate victims’ rights.

### **(d) Proposals for reform**

- [2.22] The Commission considers that placing the proposed scheme on a statutory basis would enshrine the right to compensation in Irish law and provide a clear legal

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<sup>18</sup> Case 29/84 *Commission v Germany* ECLI:EU:C:1985:229 at para 23. In that case, the CJEU held at paragraph 31 that references to general principles of law by the German Government was not sufficient to establish that national law fully guaranteed compliance with the precise and detailed provisions of directives.

<sup>19</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 224, question 3.1.

foundation for the scheme. Setting out the provisions of the scheme in legislation would make it more accessible to victims and would increase public awareness of victims' entitlement to compensation. It would also ensure that the application of the terms of the scheme is consistent and predictable, and would minimise the risk of arbitrary decision-making.

- [2.23] The Commission is of the view that the statutory body should be independent of the Department of Justice in order to comply with the principles set out in Article 47 of the Charter and Articles 6 and 13 of the ECHR. As discussed further in the Chapter on the Structure of the Statutory Body and the Application Process and the Chapter on Administration of the Statutory Body and Statutory Scheme, the Commission considers that the statutory body should have its own administrative staff and that decision-makers (also referred to in the Report as assessment and adjudication officers) should be appointed by the Minister for Justice after a Public Appointments Service competition. The Commission considers that enshrining the administrative autonomy and appointment processes of the proposed body in statute would enhance both its actual and perceived independence.

**R. 2.1 The Commission recommends** that a rights-based, victim-centred, state-funded scheme for compensating victims of crimes of violence be put on a statutory basis.

**R. 2.2 The Commission recommends** that the independence and impartiality of the statutory body be enshrined in statute.

## 2. Objectives and guiding principles of the statutory scheme

### (a) Introduction

- [2.24] The current scheme does not expressly articulate its purpose or underlying principles. State-funded compensation is not based on any criminal culpability on the part of the State, and so it is not compensation in the ordinary sense, i.e. from wrongdoer to wronged person. Commentators have noted that many victim compensation schemes fail to include a sound theoretical foundation, resulting in moral judgments being made during decision-making on compensation as a way of overcoming "the theoretical vagueness of state compensation".<sup>20</sup> It has been argued that the inclusion of a "clear mission and rationale" for state-funded compensation helps remove barriers to accessing the system for victims of

<sup>20</sup> Buck, "State Compensation to Crime Victims and the Principle of Solidarity: Can Theoretical Analysis Contribute to a Future European Framework?" (2005) 13(2) European Journal of Crime, Criminal Law and Criminal Justice 148 at page 168.

crime.<sup>21</sup> In this section, the Commission considers whether including objectives in the statutory scheme would assist in communicating and promoting the rationale for the scheme; and whether including guiding principles could assist with ensuring a victim-centred approach and consistent decision-making.

- [2.25] The Victorian Law Reform Commission, in reviewing the victim compensation scheme in Victoria, also addressed this issue. It emphasised that the inclusion of objectives and guiding principles in legislation serves a dual purpose. First, objectives and guiding principles guide decision-makers and others involved in the administration of the scheme in making any decision or taking any action under the scheme. Second, the inclusion of clear statements about the scheme's intent and purpose enables all stakeholders to better identify legislative intent and assists the courts when there is a question of statutory interpretation.<sup>22</sup>
- [2.26] The Commission notes that in recent Irish legislation providing for the operation of statutory bodies, the legislature has included objectives or guiding principles. For example, the Assisted Decision-Making (Capacity) Act 2015 provides guiding principles that should be followed when an intervention is being made in respect of a relevant person<sup>23</sup> under the Act.<sup>24</sup> These principles include that there shall be no intervention unless it is necessary, and that any intervention shall be made in a manner that restricts a person's rights and freedom of action as little as possible.<sup>25</sup> The Policing, Security and Community Safety Act 2024 sets out "policing principles" to which the Garda Commissioner and Policing and Community Safety Authority must have regard.<sup>26</sup> The Mental Health Acts 2001 and 2018 also provide for guiding principles in respect of children. These must be

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<sup>21</sup> Rutledge, "Looking a Gift Horse in the Mouth – the Underutilization of Crime Victim Compensation Funds by Domestic Violence Victims" (2011) 19 Duke Journal of Gender Law and Policy 223 at page 235.

<sup>22</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 11.9. In this context, the principle of statutory interpretation outlined by Murray J in *Crilly v T & J Farrington Ltd* is particularly relevant: "when the meaning of the statute is clear and definite and open to one interpretation only in the context of the statute as a whole, that is the meaning to be attributed to it." *Crilly v T & J Farrington Ltd* [2001] IESC 60, [2001] 3 IR 251 at page 295. See *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43, [2022] 2 ILRM 313.

<sup>23</sup> "Relevant person" is defined as "(a) a person whose capacity is in question or may shortly be in question in respect of one or more than one matter, (b) a person who lacks capacity in respect of one or more than one matter, or (c) a person who falls within *paragraphs (a) and (b)* at the same time but in respect of different matters". Section 2(1) of the Assisted Decision-Making (Capacity) Act 2015.

<sup>24</sup> Section 8 of the Assisted Decision-Making (Capacity) Act 2015.

<sup>25</sup> Section 8(5) and (6) of the Assisted Decision-Making (Capacity) Act 2015.

<sup>26</sup> Section 4 of the Policing, Security and Community Safety Act 2024.

given due regard when a decision is being made concerning the care or treatment of a child under those Acts.<sup>27</sup>

- [2.27] In considering what the objectives and guiding principles of the statutory scheme should be, the Commission has considered EU and national law requirements, and recent developments in victims' rights, as outlined in the previous Chapter. The Commission recognises that state-funded compensation is a right of victims of violent crime, and its recommendations have been informed by the rights in the Victims' Rights Act<sup>28</sup> and other relevant rights contained in the Constitution and European law.<sup>29</sup> The Commission has also considered consultee submissions, as well as the objectives and guiding principles provided for in other jurisdictions. Objectives and guiding principles are dealt with separately below.

## **(b) Objectives**

### *(i) Comparative jurisdictions*

- [2.28] The Commission examined the legislation providing for victim compensation schemes in a wide range of countries. While the majority of jurisdictions do not include a statement of objectives in statute, some more recently drafted schemes in Australia provide interesting models. Most Australian jurisdictions include "purpose" or "objectives" provisions in their victim compensation legislation. These jurisdictions include Victoria, Queensland, the Australian Capital Territory, Northern Territory, and South Australia. A number of common objectives can be identified among these schemes.<sup>30</sup>
- [2.29] All of these jurisdictions include the concept of aiding victim recovery as an objective. For example, the Queensland Act aims "to help victims of acts of violence to recover from the acts by giving them financial assistance",<sup>31</sup> and the Victorian Act similarly has the objective "to assist victims in their recovery from acts of violence by providing financial assistance".<sup>32</sup>
- [2.30] The scheme in Victoria expressly states an objective "to enable victims to receive financial assistance under this Act, noting that such assistance is not intended to

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<sup>27</sup> Section 4A of the Mental Health Act 2001. This section was inserted by the Mental Health (Amendment) Act 2018 but has not been commenced as of date of publication of this Report.

<sup>28</sup> Criminal Justice (Victims of Crime) Act 2017.

<sup>29</sup> See the introductory Chapter of this Report for a discussion of the rights-based approach adopted in this Report.

<sup>30</sup> For completeness, the sole objective identified in the New South Wales scheme is "to establish a scheme for the provision of support for victims of acts of violence": See section 17 of the Victims Rights and Support Act 2013 (New South Wales).

<sup>31</sup> Section 3(2)(a) of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>32</sup> Section 5(b) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

reflect the level of compensation that may be available to victims at common law or otherwise”.<sup>33</sup>

- [2.31] A number of schemes include an objective to complement other services provided by the state to victims of acts of violence.<sup>34</sup>
- [2.32] Another common objective of victim compensation is to recognise the impact of the violent crime on victims. For example, the South Australian Act aims to provide compensation to victims “as an acknowledgement of the harm they suffer from the criminal offending”.<sup>35</sup> The Victorian Act goes further, aiming “to recognise victims of crime, and the impact of acts of violence on victims, by providing a respectful forum for victims to be heard and to have their experiences properly acknowledged by the State”.<sup>36</sup>
- [2.33] The Commission considers that these objectives are victim-centred and articulate clearly the well-being, needs, and treatment of victims as the priorities of the relevant schemes.

#### *(ii) Proposals for reform*

- [2.34] The Commission considers that including objectives in the proposed statute could have both a practical and symbolic effect for the operation of the statutory body. A clear statement of objectives would express the purpose of the statutory scheme, outline its underlying philosophy, and identify its specific aims. This would help both victims and decision-makers to understand the rationale for the proposed statutory scheme, and could help to manage victims’ expectations of the compensation process generally. It would also justify other elements of the scheme, such as the eligibility criteria.<sup>37</sup>
- [2.35] The primary aim of the Commission’s proposed objectives is to ensure that the statutory body takes a victim-centred approach, where victims’ rights and recovery are paramount.
- [2.36] The first proposed objective is that the scheme should acknowledge, on behalf of the State, the impact of the crime of violence on the victim. In its Consultation Paper, the Commission proposed “[a]cknowledgement and solidarity” as a

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<sup>33</sup> Section 5(d) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>34</sup> Section 6(d) of the Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory); section 5(c) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria); section 3(2)(d) of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>35</sup> Section 3(d) of the Victims of Crime Act 2001 (South Australia).

<sup>36</sup> Section 5(a) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>37</sup> Eligibility of applicants under the proposed statutory scheme is discussed in further detail in the Chapter on Defining Eligible Applicants and Crimes of Violence, the Chapter on Other Eligibility Requirements, and the Chapter on Well-Meaning Intervenors.

guiding principle for the statutory body.<sup>38</sup> Since then, the Commission has decided to recommend the inclusion of a statement of objectives, as well as guiding principles, in the statutory scheme. The Commission considers that it would be more appropriate to include this proposal as an objective rather than a guiding principle.

- [2.37] The Commission received several responses in relation to the proposal about “acknowledgement and solidarity”. One submission raised concerns that this is at odds with the guiding principle “(b) compensation as of right”. It was argued that the shift to a rights-based conception of victimisation, largely because of EU law and policy, should result in the removal of references to acknowledgement and solidarity in the language associated with victim compensation.
- [2.38] As discussed above, the Commission considers that the overarching rationale for putting the state-funded compensation scheme in Ireland on a statutory basis is the need for legal clarity. The Commission’s proposals for reform are also informed by the need to fulfil the EU right to fair and appropriate compensation for victims of intentional violent crime. However, the Commission considers that maintaining an objective to express solidarity with victims for their suffering may serve an important purpose for victims. Victims of crime have expressed a need for the harm to be acknowledged in order to aid in their recovery from trauma. In addition, an acknowledgement of victims’ suffering may impact how victims are treated throughout the application process, informing a sensitive and empathic process. Submissions emphasised that this was very important for victims.
- [2.39] A central purpose of the scheme is to ensure that the right of victims of intentional violent crime to compensation is realised. In this regard, the Commission proposes to include an objective to “assist in the victim’s recovery from the crime of violence by providing fair, appropriate and timely compensation”. From this statement it should be clear to victims that the scheme is there to help them in their recovery from their injuries through the provision of financial assistance, and that such assistance should be provided promptly. It also reflects the language of the Compensation Directive that victims are entitled to “fair and appropriate” compensation.
- [2.40] Other objectives proposed by the Commission are aimed at ensuring that victims are heard and assisted throughout the process of applying for compensation. The Commission recommends that the statutory scheme should provide a respectful

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<sup>38</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 224, question 3.2: “The Commission seeks to identify the guiding principles that should be reflected in any legislation, ... Do you agree that the following would be appropriate guiding principles to be included? (a) Reparation; (b) Compensation as of right; (c) Acknowledgement and solidarity; and (d) Minimisation of secondary victimisation.”

For a discussion of the submissions received in response to the Commission’s proposals on guiding principles, see the section on “Guiding principles” below.

forum for victims to be heard, as appropriate to each individual. Another proposed objective for the statutory scheme is that the application process should be easily accessible. This would place an onus on the staff of the statutory body to ensure that victims are assisted as they make their application and are able to access the scheme's supports without unnecessarily burdensome administrative hurdles. This is in line with a key recommendation in the EU Strategy on Victims' Rights (2020-2025).<sup>39</sup>

[2.41] The current scheme also compensates individuals who have been injured in the course of intervening in the commission of a crime or saving a human life. In the Chapter on Well-Meaning Intervenors in this Report, the Commission discusses this issue and recommends that well-meaning intervenors in certain circumstances should be compensated by the proposed statutory scheme. The compensation of well-meaning intervenors should therefore also be reflected in the scheme's objectives.

[2.42] Therefore, the Commission recommends the following objectives for the statutory compensation scheme.

The scheme should:

- acknowledge, on behalf of the State, the impact of the crime of violence on the victim;
- provide a respectful forum for victims to be heard, as appropriate to each individual;
- assist in the victim's recovery from the crime of violence by providing fair, appropriate, and timely compensation in accordance with the terms of the compensation scheme;
- enable the victim of a crime of violence to apply for compensation in an easily accessible process;
- complement other victims' services; and,
- where appropriate, compensate well-meaning intervenors.

[2.43] The Commission envisions that all staff and decision-makers of the statutory body working directly with victims should have regard to these objectives when interacting with victims.

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<sup>39</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Strategy on victims' rights (2020-2025), COM (2020) 258 at page 18.



**R. 2.3 The Commission recommends** that the objectives for the statutory scheme should be to:

- (1) acknowledge, on behalf of the State, the impact of the crime of violence on the victim;
- (2) provide a respectful forum for victims to be heard, as appropriate to each individual;
- (3) assist in the victim's recovery from the crime of violence by providing fair, appropriate, and timely compensation as determined in accordance with the compensation scheme;
- (4) enable the victim of a crime of violence to apply for compensation in an easily accessible process;
- (5) complement other victims' services; and,
- (6) where appropriate, compensate well-meaning intervenors.

### (c) Guiding principles

[2.44] While objectives can be seen as a statement of the purposes of victim compensation, guiding principles can be understood to be a framework of principles that should guide decision-making or any other action of the statutory body. Guiding principles would constitute a list of principles which must be considered by any person exercising any function under the statute. They could inform how the scheme should be interpreted and implemented by the statutory body, including the requirements for it to operate in a victim-centred, trauma-informed manner.

#### (i) *Comparative jurisdictions*

[2.45] A number of common law jurisdictions include guiding principles in legislation that set out victims' rights generally, including Alberta,<sup>40</sup> Québec,<sup>41</sup> New Brunswick,<sup>42</sup> and Prince Edward Island<sup>43</sup> in Canada, and New South Wales<sup>44</sup> in Australia. These statutes deal with a broader range of victims' rights than the right to compensation, such as the rights to information and support, so not all of the guiding principles are relevant to this Report. However, some of the broader guiding principles are instructive as they enshrine how victims should be treated

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<sup>40</sup> Section 2 of the Victims of Crime and Public Safety Act 2000 (Alberta).

<sup>41</sup> Sections 1 – 6 of The Act to assist victims of criminal offences and promote their recovery (Québec).

<sup>42</sup> Sections 2 – 11 of the Victim Services Act 2016 (New Brunswick).

<sup>43</sup> Section 2 of the Victims of Crime Act (Prince Edward Island).

<sup>44</sup> Section 6 of the Victims Rights and Support Act 2013 (New South Wales).

in general. For example, the principles in the Victims of Crime and Public Safety Act 2000 in Alberta include:

- victims should be treated with courtesy, compassion and respect;
- the privacy of victims should be considered and respected to the greatest extent possible;
- all reasonable measures should be taken to minimise inconvenience to victims;
- victims should receive benefits and reimbursements under that Act promptly;
- the views, concerns and representation of victims are an important consideration in criminal justice processes; and
- the needs, concerns and diversity of victims should be considered in the development and delivery of programs and services and in related education and training.<sup>45</sup>

[2.46] These principles, particularly that victims should be treated with courtesy, compassion, and respect for their dignity, privacy, and convenience, were common themes in victims' rights legislation in other Canadian provinces.

[2.47] The Australian State of Victoria was the only jurisdiction identified by the Commission that included guiding principles in legislation which specifically regulates state-funded victim compensation – namely, the Victims of Crime (Financial Assistance Scheme) Act 2022. The Commission considers that this Act is therefore of particular relevance to the proposed statutory scheme, as the guiding principles are specifically targeted at victim compensation.

[2.48] The Victims of Crime (Financial Assistance Scheme) Act 2022 in Victoria states:

“In making a decision or taking action under this Act, a person must have regard to the following principles—

- (a) this Act and the scheme that it provides are to support the wellbeing and dignity of victims;
- (b) victims should be protected from further trauma, intimidation or distress;
- (c) the needs of victims, including their safety and wellbeing, are of paramount importance;
- (d) the needs of victims may vary;

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<sup>45</sup> Section 2 of the Victims of Crime and Public Safety Act 2000 (Alberta).

- (e) subject to the requirements of this Act, the scheme should be accessible and flexible in providing assistance to victims;
- (f) the scheme should promote cultural safety for victims who are of Aboriginal or Torres Strait Islander descent by—
  - (i) acknowledging Aboriginal and Torres Strait Islander people as descendants of Australia's first people; and
  - (ii) acknowledging that Aboriginal and Torres Strait Islander people have been disproportionately affected by the criminal justice system in a way that has contributed to criminalisation, disconnection, intergenerational trauma and entrenched social disadvantage; and
  - (iii) acknowledging that victims of Aboriginal or Torres Strait Islander descent have cultural rights and familial and Aboriginal community connections relevant to assistance under this Act."<sup>46</sup>

[2.49] The principles of the Victorian Act are victim-centred and articulate clearly the well-being, needs, and treatment of victims as the priorities of the system. These guiding principles were recommended by the Victorian Law Reform Commission ("VLRC"), which emphasised the importance of clearly expressing that the scheme is intended for the benefit of victims, with victims' well-being at its centre.<sup>47</sup> The VLRC stated that guiding principles "speak to community expectations and standards and provide a picture of the broader policy context underpinning the relevant legislation".<sup>48</sup>

*(ii) Submissions*

[2.50] In its Consultation Paper, the Commission suggested a number of guiding principles which would underpin the proposed legislation on criminal injuries compensation. The Commission asked consultees the following:

"The Commission seeks to identify the guiding principles that should be reflected in any legislation, so as to ensure that the provision of state compensation to victims of crime accords with a more modern, trauma-responsive approach to the needs of crime

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<sup>46</sup> Section 6 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>47</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 11.76.

<sup>48</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 11.22.

victims. Do you agree that the following would be appropriate guiding principles to be included?

- (a) Reparation;
- (b) Compensation as of right;
- (c) Acknowledgement and solidarity;<sup>49</sup> and,
- (d) Minimisation of secondary victimisation.

Are there additional or different guiding principles that should be reflected in legislation in this context?"<sup>50</sup>

[2.51] Submissions received in response to the Consultation Paper were unanimously in favour of including guiding principles in the proposed statutory compensation scheme. Support was expressed by all consultees for the inclusion of:

- reparation;
- compensation as of right; and,
- minimisation of secondary victimisation.

[2.52] Several consultees suggested adding guiding principles of a more practical nature, such as:

- compensation without delay;
- ensuring transparent and consistent decision-making;
- ensuring access to the scheme without discrimination; and,
- treating individuals with dignity and respect.

[2.53] These suggestions align with a human rights-based approach, underpinned by fair procedures, non-discrimination, and a victim-centred approach.

[2.54] The suggestion of including the guiding principle of "treating individuals with dignity and respect" is related to one of the guiding principles proposed in the Commission's Consultation Paper – "minimisation of secondary victimisation". The inclusion of both principles would ensure that the guiding principles reflect a compensation system with victims at its centre.

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<sup>49</sup> As explained above, the Commission now considers that it is more appropriate to include "acknowledgement and solidarity" in the "objectives" proposals.

<sup>50</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 224, question 3.2.

[2.55] A number of submissions suggested the inclusion of “ensuring accessibility” or “ensuring equal access to the scheme” as guiding principles. These principles are related and can be considered to incorporate several aims:

- the scheme should be fair, simple, and easy to understand;
- the scheme should have a reasonably swift and efficient application process;
- appropriate additional measures should be put in place for any victim who may require specific support to make and sustain a claim for compensation; and,
- no one should be discriminated against while applying to the scheme and engaging with the statutory body.

[2.56] The Commission has considered these submissions carefully in developing its proposals, which are set out below.

*(iii) Proposals for reform*

[2.57] The Commission considers that the inclusion of guiding principles in the statutory scheme could play an important role in outlining the values that should inform the exercise of any powers or functions under the statutory scheme. The Commission agrees with the Australian Law Reform Commission that guiding principles in legislation “can perform an important symbolic and educative role in the application and interpretation of the law, as well as for the general community”.<sup>51</sup>

[2.58] Guiding principles would inform both how victims are treated and how decisions are made. Guiding principles could also minimise the potential for secondary victimisation within the compensation process by guiding the approach of staff and decision-makers of the statutory body when interacting with victims. In this regard, the Commission recommends that the scheme should ensure that all victims are treated with dignity and respect and should aim to prevent secondary victimisation by providing appropriate and trauma-informed support for victims throughout the compensation process.

[2.59] The Commission also recommends that the guiding principles expressly state that the compensation scheme should be accessible to victims without discrimination. Guiding principles can operate as a clear signal to all stakeholders that the scheme is to operate in a certain manner. Victims from minority backgrounds or

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<sup>51</sup> Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence: Improving Legal Frameworks* (ALRC Consultation Paper 1, NSWLRC Consultation Paper 9 2010) at page 189.

with particular disabilities or needs can be reassured through a clear principle that the scheme is intended to be accessible without discrimination.

- [2.60] Guiding principles could potentially help to improve the quality of decision-making. A guiding principle requiring fair, consistent, and transparent decision-making signals this intent to victims and may serve as a reminder to the decision-maker of their duty to do so. In addition, applying the same guiding principles at each stage of the decision-making process could improve the consistency of decisions. This could reduce the risk of arbitrary outcomes and promote fairness for all victims. Increased consistency enhances predictability, allowing applicants and victims to understand and anticipate the outcome of the compensation process with greater confidence.
- [2.61] Guiding principles can also improve transparency. By clearly defining guiding principles in statute, victims and those working within the statutory scheme can better understand how decisions are made and on what basis. This transparency reinforces trust in the fairness and reliability of the system, ensuring it serves its purpose of prioritising victims' needs.
- [2.62] The guiding principles proposed by the Commission below reflect a broad understanding of victims as rights holders, in line with the rights-based approach adopted by the Commission in this Report. The proposed guiding principles aim to ensure that victims' rights are recognised and respected, and an environment is fostered where victims are always treated with respect and dignity. The proposed guiding principles clearly express that the statutory scheme exists to benefit victims and will aim to ensure that victims are placed at the centre of decision-making.
- [2.63] The Commission recommends the following guiding principles for the statutory scheme, which should be considered by any person exercising any function or making a decision under the proposed statute:
- (1) The scheme should vindicate the right of victims of crimes of violence to fair and appropriate compensation and in so doing:
    - (a) provide an appropriate contribution towards compensating victims for the harm they have suffered, as determined in accordance with the compensation scheme;
    - (b) ensure that all victims are treated with dignity and respect;
    - (c) aim to prevent secondary victimisation by providing appropriate and trauma-informed support for victims throughout the compensation process;
    - (d) ensure the compensation scheme is accessible to victims of crimes of violence without discrimination;

- (e) compensate victims without undue delay.
- (2) The scheme should ensure fair, consistent and transparent decision-making.

**R. 2.4 The Commission recommends** that when exercising any function or making a decision under the proposed statute, the statutory body should have regard to the following principles:

- (1) This scheme should vindicate the right of victims of crimes of violence to fair and appropriate compensation and in so doing:
  - (a) provide an appropriate contribution towards compensating victims for the harm they have suffered, as determined in accordance with the compensation scheme;
  - (b) ensure that all victims are treated with dignity and respect;
  - (c) aim to prevent secondary victimisation by providing appropriate and trauma-informed support for victims throughout the compensation process;
  - (d) ensure the compensation scheme is accessible to victims of crimes of violence without discrimination;
  - (e) compensate victims without undue delay.
- (2) This scheme should ensure fair, consistent and transparent decision-making.

# CHAPTER 3 FUNDING THE STATUTORY SCHEME

## TABLE OF CONTENTS

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|                  |                                            |           |
|------------------|--------------------------------------------|-----------|
| <b>Chapter 3</b> | <b>Funding the Statutory Scheme.....</b>   | <b>60</b> |
| 1.               | <i>Introduction.....</i>                   | <i>61</i> |
| 2.               | <i>Current scheme .....</i>                | <i>61</i> |
| 3.               | <i>Submissions.....</i>                    | <i>62</i> |
| 4.               | <i>Alternative sources of funding.....</i> | <i>63</i> |
|                  | (a) Offender levies .....                  | 63        |
|                  | (b) The Court Poor Box.....                | 66        |
| 5.               | <i>Proposals for reform .....</i>          | <i>67</i> |



## 1. Introduction

- [3.1] In this Chapter, the Commission outlines how the Criminal Injuries Compensation Scheme (“the current scheme”) is funded and identifies challenges associated with the current funding model. It examines how state-funded victim compensation schemes in other jurisdictions are funded, and highlights consultees’ views. The Commission then explores some options for the Government and makes proposals for a funding model for the statutory scheme.

## 2. Current scheme

- [3.2] The Commission understands that financial constraints faced by the Criminal Injuries Compensation Tribunal (“the Tribunal”) have, at times, hindered its ability to process compensation claims efficiently and make timely awards.<sup>1</sup> Currently, the Oireachtas provides a cash-limited annual budget to the Tribunal.<sup>2</sup> Once the allocated budget is exhausted, any compensation claims that are still pending must be deferred to the next financial year. This includes applications that are undecided, and applications that are decided but not yet awarded. This means that victims can wait up to a year to receive compensation after a decision has been made in respect of their application. Although the Tribunal can apply to the Department of Justice for additional funding, whether this application will be successful or not is unpredictable. There is no guarantee or obligation on the Department to provide sufficient funds to meet all compensation awards within any given period.
- [3.3] These delays can exacerbate the stress and financial hardship experienced by applicants, many of whom are already dealing with trauma, and can potentially lead to secondary victimisation. The Commission considers that the Tribunal’s financial limitations directly undermine its capacity to meet the needs of all applicants in a timely and effective manner. This calls into question the adequacy of the current funding model in fulfilling the State’s obligations under the European Union (“EU”) Directive relating to compensation to crime victims (“Compensation Directive”).<sup>3</sup>
- [3.4] The expansion of funding sources for victim compensation is a key issue addressed at the EU level. In her Report to the European Commission President on Strengthening Victims’ Rights, Special Advisor Milquet emphasised the importance of victim compensation as a component of the right to an effective

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<sup>1</sup> Discussed in Chapter 6 of the Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022).

<sup>2</sup> Paragraph 17 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>3</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims [2004] OJ L 261/15 (“Compensation Directive”).

remedy, as contained in Article 13 of the European Convention on Human Rights and Article 47 of the Charter of Fundamental Rights of the European Union.<sup>4</sup> Milquet frames state-funded compensation as a means of providing redress to the victim where the offender is unable to provide compensation, which is often the case.<sup>5</sup>

- [3.5] In the EU Strategy on Victims' Rights (2020-2025),<sup>6</sup> the European Commission highlighted that insufficient allocations from national budgets is a common reason why victims have difficulty accessing compensation.<sup>7</sup> It recommends that Member States make their national schemes of compensation more victim-friendly by "increasing available amounts of compensation by adapting national budgets".<sup>8</sup> It further recommends that Member States "[e]nsure that fair and appropriate state compensation for violent, intentional crimes, including victims of terrorism is reflected in the national budgets".<sup>9</sup> A consistent and adequate funding model is therefore required for the statutory scheme.

### 3. Submissions

- [3.6] In its Consultation Paper, the Commission asked consultees whether additional sources of funding for the statutory scheme should be considered, stating that:

"The Commission considers that a steady and consistent funding model is essential to the effective and efficient functioning of any victim compensation scheme. The Commission seeks consultees' views as to whether some of that funding should come from court fines and the confiscated proceeds of crime and/or sources other than the Exchequer."<sup>10</sup>

- [3.7] The majority of responses were supportive of the suggestion that the scheme could seek additional funding from sources other than the Exchequer. However, some responses highlighted that other sources of funding should be additional

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<sup>4</sup> Milquet, *Strengthening Victims' Rights: From Compensation to Reparation for a New EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at page 14.

<sup>5</sup> Milquet, *Strengthening Victims' Rights: From Compensation to Reparation for a New EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at page 15.

<sup>6</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU Strategy on victims' rights (2020-2025), COM (2020) 258 ("EU Strategy on Victims' Rights (2020-2025)").

<sup>7</sup> EU Strategy on Victims' Rights (2020-2025) at page 16.

<sup>8</sup> EU Strategy on Victims' Rights (2020-2025) at page 17.

<sup>9</sup> EU Strategy on Victims' Rights (2020-2025) at page 18.

<sup>10</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC 67-2022) at page 224, question 3.3.

to – and not a substitute for – central funds (“central funds” refers to the money held and used by the Government). Rather, it should be supplementary in order to ensure that the proposed statutory body does not become dependent on these additional, and unpredictable, sources. Other responses were against seeking alternative sources of funding altogether and were in favour of properly funding the statutory body by increasing the budget allocation from central funds.

- [3.8] Some consultees suggested that there should be a mechanism for the State to pursue offenders to recoup some or all of the cost of compensation. These responses highlighted the provision in the EU Directive establishing minimum standards on the rights, support and protection of victims of crime (“Victims’ Rights Directive”) that Member States should promote and facilitate offender-paid compensation.<sup>11</sup> These issues will be addressed in detail in the Chapter on Offender Compensation and the Chapter on Preventing Double Compensation.

## 4. Alternative sources of funding

- [3.9] The Commission considers that the statutory scheme should be fully funded from predictable and sufficient government funds. However, the Commission notes that Milquet, Special Advisor to the European Commission President, in her Report on strengthening victims’ rights, has recommended that the funds for victims’ services could include external resources.<sup>12</sup> The Commission notes various suggestions by consultees regarding alternative sources of funding. The Commission therefore explores a number of alternative methods of funding below.
- [3.10] The Commission also reviewed the funding arrangements in several other common law jurisdictions and found that, while the majority of compensation schemes are primarily financed by state central funds, some jurisdictions make use of alternative sources of funding, either to supplement state funding or to fund the entire scheme. These include offender levies and the equivalent of the Court Poor Box.

### (a) Offender levies

- [3.11] The Commission observes that levies or surcharges imposed on convicted offenders are a common source of funding for victim services. These levies are financial penalties applied to all offenders found guilty of certain offences,

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<sup>11</sup> Article 16 of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L 315/57 (“Victims’ Rights Directive”). See further the Chapter on Offender Compensation.

<sup>12</sup> Milquet, *Strengthening Victims’ Rights: From Compensation to Reparation for a New EU Victims’ Rights Strategy 2020-2025* (European Commission 2019) at page 53.

typically at the time of sentencing. The monies received may be ringfenced to supplement funding for victim services.

- [3.12] For example, in Northern Ireland, where the court is imposing a sentence on certain convicted offenders, the court must, in addition, order the offender to pay an "offender levy".<sup>13</sup> Revenue from the offender levy is ring-fenced and used to resource the non-statutory Victims of Crime Fund.<sup>14</sup> This Fund allocates revenue to projects that support victims and witnesses in the criminal justice process, including the Northern Ireland Criminal Injuries Compensation Service.<sup>15</sup> The levy is collected and enforced by the courts in the same way as a fine,<sup>16</sup> and the court has the ability to reduce<sup>17</sup> or cancel<sup>18</sup> all or part of the levy in certain circumstances. The Northern Ireland Assembly has explained that the principal aim of the offender levy is to make offenders more accountable for the harm they cause by requiring them to make a financial contribution towards support services to victims of crime.<sup>19</sup>
- [3.13] In the United States, the Crime Victims Fund, established in 1984 by the Victims of Crime Act, is a federal initiative funded exclusively through fines and penalties imposed on federal offenders rather than government funding.<sup>20</sup> Each State receives an annual grant out of this federal fund to operate victim services and compensation schemes.<sup>21</sup> This funding arrangement was designed to "provide limited Federal funding to the States, with minimal bureaucratic 'strings attached,'

<sup>13</sup> Section 1(2) of the Justice Act (Northern Ireland) 2011.

<sup>14</sup> Northern Ireland Assembly, "Justice Bill 2010: Explanatory and Financial Memorandum" (2011) at para 24  
<[https://archive.niassembly.gov.uk/legislation/primary/2010/niabill1\\_10\\_amended\\_cs\\_efm.htm](https://archive.niassembly.gov.uk/legislation/primary/2010/niabill1_10_amended_cs_efm.htm)> accessed 23 March 2026.

<sup>15</sup> Victims of Crime Fund, "Victims of Crime Fund 2024-25" <<https://www.justice-ni.gov.uk/publications/victims-crime-fund>> accessed 23 March 2026.

<sup>16</sup> Section 2 of the Justice Act (Northern Ireland) 2011.

<sup>17</sup> Section 1(5) of the Justice Act (Northern Ireland) 2011: Where the court considers it would be appropriate to make a compensation order under other legislative provisions, but the offender has insufficient means to pay both the offender levy and the amounts under those orders, the court must reduce the offender levy accordingly.

<sup>18</sup> Section 4(3) of the Justice Act (Northern Ireland) 2011: A court may remit all or part of an offender levy if (a) the court imposed both a fine and an offender levy on the offender, or (b) the offender has defaulted in paying the fine and the court either commits that person to prison or makes a supervised activity order.

<sup>19</sup> Northern Ireland Assembly, "Justice Bill 2010: Explanatory and Financial Memorandum" (2011) at para 53  
<[https://archive.niassembly.gov.uk/legislation/primary/2010/niabill1\\_10\\_amended\\_cs\\_efm.htm](https://archive.niassembly.gov.uk/legislation/primary/2010/niabill1_10_amended_cs_efm.htm)> accessed 23 March 2026.

<sup>20</sup> Office for Victims of Crime, "Crime Victims Fund: Overview" (US Department of Justice) <<https://ovc.ojp.gov/about/crime-victims-fund>> accessed 23 March 2026.

<sup>21</sup> Chapter 201 of the Victims Compensation and Assistance Act of 1984 ("VOCA") Pub L 98-473 (United States).

for direct compensation and service programs to assist victims of crime”.<sup>22</sup> The Office for Victims of Crime administers the funds collected for the Crime Victims’ Fund.

- [3.14] Similar offender levies or surcharges are used in numerous other common law jurisdictions, including England and Wales,<sup>23</sup> Canada,<sup>24</sup> and some Australian states.<sup>25</sup>
- [3.15] The Commission notes that there are a number of advantages to adopting offender levies. Such levies have been used to generate significant revenue, providing much-needed financial support for victim services. In addition, the Commission notes that funding victim services in this way could have a therapeutic effect for victims, because it could be seen to hold offenders accountable by requiring them to contribute to compensation payments.<sup>26</sup>
- [3.16] However, the Commission also acknowledges concerns about the impact that an offender levy may have on offenders with low or no means. A mandatory levy may have a disproportionate impact on people who are already struggling financially. Douglas and Chrzanowski have criticised the Queensland levy in particular, stating that because there is no possibility of a waiver or discretionary reduction in that jurisdiction, it is likely to have a discriminatory effect on the most vulnerable in society.<sup>27</sup>
- [3.17] The introduction of an offender levy is likely to require additional resources to operate and enforce, which would have a significant impact on the courts system in Ireland. Any recommendation in relation to offender levies would require the weighing up of competing policy considerations. These policy considerations include, for example, resource management, cost-benefit evaluations, and interaction with existing structures. The Commission has not engaged in such evaluations as it considers that they are beyond the remit of this Report.

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<sup>22</sup> United States Senate Report No 98-497 (1984) at 1.

<sup>23</sup> Sections 42 and 43 of the Sentencing Act 2020 (England and Wales).

<sup>24</sup> Section 737(1) of the Criminal Code (Canada).

<sup>25</sup> In New South Wales, the Victims’ Rights and Support Act 2013 introduced the Victims Support Levy; In Queensland, offender levies are imposed on offenders by the Penalties and Sentences Regulation 2015.

<sup>26</sup> See, for example, the discussion by the Victorian Law Reform Commission in its *Report on the Review of the Victims of Crime Assistance Act 1996* (2018) at para 18.149.

<sup>27</sup> Douglas and Chrzanowski, “A Consideration of the Legitimacy and Equity of Queensland’s Offender Levy” (2013) 24(3) *Current Issues in Criminal Justice* 317 at page 326.

**(b) The Court Poor Box**

- [3.18] The Commission examined the operation of the Court Poor Box in Ireland in its 2005 Report, *The Court Poor Box: Probation of Offenders*.<sup>28</sup> The Court Poor Box is a non-statutory mechanism whereby a court (usually the District Court) may direct a defendant in criminal proceedings to make a payment to a charity, with the understanding that no conviction will be recorded against them. The payment is usually accompanied by a dismissal of the charge under section 1 of the Probation of Offenders Act 1907. The fund exists as a means of helping largely first-time offenders avoid a conviction for minor, non-violent crimes.<sup>29</sup> Their donation is generally lodged by the defendant with the court and paid by the Courts Service to a charity. In 2024, the Court Poor Box paid out just over €1.67 million to charities across Ireland.<sup>30</sup>
- [3.19] In its 2005 Report, the Commission recommended that the Court Poor Box should be maintained as a positive form of restorative justice,<sup>31</sup> but should be significantly reformed to address inconsistencies and a lack of transparency in its use.<sup>32</sup> The Commission proposed establishing a statutory fund to replace the payments currently made under the Court Poor Box system.<sup>33</sup> This fund would be called the Reparation Fund,<sup>34</sup> and it would be administered by the Department of

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<sup>28</sup> Law Reform Commission, *Report on the Court Poor Box: Probation of Offenders* (LRC 75-2005).

<sup>29</sup> Courts Service, "Court Poor Box pays out over One Million Euro in 2023 to hundreds of charities across the country" (24 June 2024) <<https://www.courts.ie/news/court-poor-box-pays-out-over-one-million-euro-in-2023-to-hundreds-of-charities-across-the-country-1>> accessed 23 March 2026.

<sup>30</sup> Law Society Gazette, "Court poor box pays out €1.67 million to charities" (3 June 2025) <<https://www.lawsociety.ie/gazette/top-stories/2025/june/court-poor-box-pays-out-1.67-million-to-charities>> accessed 23 March 2026.

<sup>31</sup> Law Reform Commission, *Report on the Court Poor Box: Probation of Offenders* (LRC 7-2005) at para 1.41.

<sup>32</sup> Law Reform Commission, *Report on the Court Poor Box: Probation of Offenders* (LRC 75-2005) at para 1.42.

<sup>33</sup> Recommendation 5.19 of the Law Reform Commission, *Report on the Court Poor Box: Probation of Offenders* (LRC 75-2005).

<sup>34</sup> Recommendation 5.20 of the Law Reform Commission, *Report on the Court Poor Box: Probation of Offenders* (LRC 75-2005).

Justice.<sup>35</sup> The funds would be ring-fenced<sup>36</sup> and be used to assist programmes aimed at preventing offending behaviour and assisting victims of crime.<sup>37</sup>

- [3.20] The Commission acknowledges the potential of using funds from the Court Poor Box or a reformed parallel mechanism to assist in funding the statutory body. However, the Commission also highlights the risk that the statutory body could become overly reliant on unpredictable funds which may be insufficient to meet its costs. While the Court Poor Box, or a reformed version of it, may serve as a supplementary measure, long-term core funding must be secured from central funds to guarantee the statutory body's consistent ability to meet victims' needs.

## 5. Proposals for reform

- [3.21] The Commission considers that the specific question of what sources of funding are appropriate for the statutory body are primarily a matter of policy and not law. The Commission's statutory function is to keep the law under review and to conduct research with a view to reforming the law and formulating proposals for law reform.<sup>38</sup> The Commission's role is limited to making recommendations concerning the development of the law. It is not a branch of Government, or a Government Department, and it cannot make 'policy' decisions and generally does not make 'policy' recommendations. However, the funding of the proposed statutory body will impact its ability to provide effective compensation for victims of crime. In particular, underfunding of the statutory body is likely to undermine its key purpose of delivering timely and appropriate compensation. Therefore, the Commission considers that a recommendation on adequate financing is within its remit.
- [3.22] The Commission views the limitations of a cash-limited annual budget as impinging on the fairness and adequacy of compensation granted under the scheme, and as unsatisfactory in terms of ensuring that victims receive compensation in a timely manner. The EU Strategy on Victims' Rights (2020-2025) underscores the importance of this issue, encouraging Member States to consider increasing the budgets allocated to victim compensation programmes.<sup>39</sup> The allocation of sufficient and reliable funding to the statutory body will be necessary to alleviate the current issues created by a cash-limited budget.

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<sup>35</sup> Recommendation 5.23 of the Law Reform Commission, *Report on the Court Poor Box: Probation of Offenders* (LRC 75-2005).

<sup>36</sup> Recommendation 5.21 of the Law Reform Commission, *Report on the Court Poor Box: Probation of Offenders* (LRC 75-2005).

<sup>37</sup> Recommendation 5.22 of the Law Reform Commission, *Report on the Court Poor Box: Probation of Offenders* (LRC 75-2005).

<sup>38</sup> Section 4(1) of the Law Reform Commission Act 1975.

<sup>39</sup> EU Strategy on Victims' Rights (2020-2025) at pages 16 – 17.

[3.23] The Commission recommends that the funding arrangement for the proposed statutory body be on a multi-annual basis and that funding should come from central government funds. This would allow the statutory body to request additional funds within the same year it last received funds. It would remove the limitations and challenges of an annually funded cash-limited scheme, while also allowing flexibility in the allocation of funds to facilitate an adequate response to the statutory body's funding needs. The Commission considers that it is open to the Government to consider alternative sources of funding as supplementary funding.

[3.24] The Commission also recommends that the statutory scheme should state that the funding for the administration of the body should be provided by the Oireachtas, as sanctioned by the Minister for Public Expenditure and Reform. A similar provision is found in other statutes outlining the administrative procedures for adjudicative bodies, such as the International Protection Appeals Tribunal and the Workplace Relations Commission, which reads as follows:

"The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas."<sup>40</sup>

[3.25] The Commission considers that a similar provision would be appropriate for the statute establishing the proposed scheme.

- R. 3.1 **The Commission recommends** that the statutory body be adequately funded from central Government funds.
- R. 3.2 **The Commission recommends** that the statutory body be funded on a multi-annual basis.
- R. 3.3 **The Commission recommends** that the statutory scheme should provide that the expenses incurred by the Minister for Justice in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

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<sup>40</sup> Section 4 of the International Protection Act 2015 and Section 5 of the Workplace Relations Act 2015.



# CHAPTER 4

## STRUCTURE OF THE STATUTORY BODY AND THE APPLICATION PROCESS

### Table of Contents

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|       |                                                                    |    |
|-------|--------------------------------------------------------------------|----|
| 1.    | <i>Introduction</i> .....                                          | 71 |
| 2.    | <i>The form of the proposed new body</i> .....                     | 71 |
|       | (a) Current scheme.....                                            | 71 |
|       | (b) EU law and policy.....                                         | 72 |
|       | (c) Comparative jurisdictions.....                                 | 74 |
| (i)   | <i>EU Member States</i> .....                                      | 74 |
| (ii)  | <i>United Kingdom</i> .....                                        | 76 |
| (iii) | <i>New Zealand</i> .....                                           | 77 |
| (iv)  | <i>Victoria</i> .....                                              | 78 |
|       | (d) Submissions.....                                               | 78 |
|       | (e) Proposals for reform.....                                      | 79 |
| 3.    | <i>The information and assistive tier</i> .....                    | 81 |
|       | (a) Overview.....                                                  | 81 |
|       | (b) Current scheme.....                                            | 81 |
|       | (c) Comparative jurisdictions.....                                 | 83 |
|       | (d) Submissions.....                                               | 85 |
|       | (e) Proposals for reform.....                                      | 86 |
| (i)   | <i>Information and assistance in the application process</i> ..... | 87 |
| (ii)  | <i>Support for cross-border applications</i> .....                 | 88 |
| (iii) | <i>Information and assistance in accessing support</i> .....       | 89 |
| (iv)  | <i>Identification of complex issues</i> .....                      | 89 |
| 4.    | <i>The assessment and adjudicative tier</i> .....                  | 92 |
|       | (a) Overview.....                                                  | 92 |
|       | (b) Current scheme.....                                            | 92 |
|       | (c) Proposals for reform.....                                      | 93 |
| 5.    | <i>The appeals tier</i> .....                                      | 95 |
|       | (a) Current scheme.....                                            | 95 |
|       | (b) Comparative jurisdictions.....                                 | 96 |
|       | (c) Submissions.....                                               | 98 |
|       | (d) Proposals for reform.....                                      | 99 |

|       |                                                           |     |
|-------|-----------------------------------------------------------|-----|
| (i)   | <i>Internal appeals</i> .....                             | 99  |
| (ii)  | <i>External appeals</i> .....                             | 100 |
| (iii) | <i>Onward appeals from the High Court</i> .....           | 102 |
| 6.    | <i>The application process</i> .....                      | 103 |
| (a)   | Introduction .....                                        | 103 |
| (b)   | Current scheme.....                                       | 104 |
| (c)   | Submissions .....                                         | 105 |
| (d)   | Proposals for reform.....                                 | 107 |
| (i)   | <i>Applications</i> .....                                 | 107 |
| (ii)  | <i>Requests from the applicant</i> .....                  | 110 |
| (iii) | <i>Certificate of authority and data protection</i> ..... | 111 |

## 1. Introduction

- [4.1] This Chapter sets out the Commission's recommendations for the form and structure of the proposed statutory body. It also outlines the Commission's proposals for a victim-centred application process for the proposed statutory scheme.
- [4.2] To achieve the objective of vindicating the right to fair and appropriate compensation, the Commission recommends the establishment of a new statutory body that would be independent from Government. In order to enable the statutory body to operate in a victim-centred, efficient, and effective way, in line with the objectives proposed in the Chapter on Establishing a Statutory Scheme, the Commission proposes that this body would be composed of three tiers, each with distinct functions. The three tiers would be an information and assistive tier, an assessment and adjudication tier, and an appeals tier.
- [4.3] The Chapter includes the Commission's proposals for the functions of each tier, a proposed internal and onward appeals process, and how the application process can meet the needs of victims of crime.

## 2. The form of the proposed new body

### (a) Current scheme

- [4.4] As addressed in the Chapter on Background and a Rights-Based Approach, the Criminal Injuries Compensation Tribunal ("the Tribunal") was established by the Criminal Injuries Compensation Scheme ("the current scheme") in 1974.<sup>1</sup> It is an administrative scheme, and the Tribunal has continued to operate on a non-statutory basis since its inception.
- [4.5] The Tribunal is administered by the Department of Justice. Tribunal members are appointed by the Minister for Justice. They are qualified legal professionals who participate in the Tribunal on a part-time basis.<sup>2</sup> Tribunal members make decisions on eligibility and the amounts of awards. The Tribunal has a secretariat, situated in the Department of Justice, which receives applications from victims,

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<sup>1</sup> The Criminal Injuries Compensation Tribunal is established by paragraph 16 of the Criminal Injuries Compensation Scheme. The most recent version of the Criminal Injuries Compensation Scheme is effective from 31 January 2025. The terms and conditions of the scheme, last updated July 2025, are available here: <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/terms-and-conditions-of-the-criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

<sup>2</sup> The staffing of the Tribunal is discussed in further detail in the Chapter on Administration of the Statutory Body and Statutory Scheme.

gathers the necessary information for each application, assists victims in completing application forms, and arranges for payments to be made.

## **(b) EU law and policy**

### *Cross-border cases*

- [4.6] The European Union ("EU") Directive relating to compensation to crime victims ("Compensation Directive") provides for specific administrative procedures to be adopted by state-funded compensation schemes in cross-border cases.<sup>3</sup> Article 3 provides that Member States shall establish or designate a body to be responsible for facilitating a victim of crime's right to submit an application for compensation.<sup>4</sup> This is called an 'assisting authority'.<sup>5</sup> Member States must also establish or designate a body to be responsible for deciding applications, known as the 'deciding authority'.<sup>6</sup> In addition, Member States must also "endeavour to keep to a minimum the administrative formalities required of an applicant for compensation".<sup>7</sup>
- [4.7] The Compensation Directive sets out a range of specific requirements for the application process in cross-border cases. Applications must be transferred between the assisting and deciding authorities "as quickly as possible".<sup>8</sup> The deciding authority must provide specific information to both the assisting authority and the applicant, including "if possible, an indication of the approximate time by which a decision on the application will be made".<sup>9</sup> The assisting authority should provide general guidance to the applicant on how to provide "supplementary information" to the decision-maker.<sup>10</sup> It should also facilitate the applicant or any other person such as a witness or an expert to be heard by the decision-makers, including by telephone or "video-conferencing",<sup>11</sup> in line with national law.

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<sup>3</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims [2004] OJ L 261/15 ("Compensation Directive").

<sup>4</sup> Article 1 of the Compensation Directive (2004/80/EC) provides: "Member States shall ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the applicant for compensation is habitually resident, the applicant shall have the right to submit the application to an authority or any other body in the latter Member State."

<sup>5</sup> Article 3(1) of the Compensation Directive (2004/80/EC).

<sup>6</sup> Article 3(2) of the Compensation Directive (2004/80/EC).

<sup>7</sup> Article 3(3) of the Compensation Directive (2004/80/EC).

<sup>8</sup> Article 6 of the Compensation Directive (2004/80/EC).

<sup>9</sup> Article 7 of the Compensation Directive (2004/80/EC).

<sup>10</sup> Article 8 of the Compensation Directive (2004/80/EC).

<sup>11</sup> Article 9(1)(a) of the Compensation Directive (2004/80/EC)

*Relevance of the Victims' Rights Directive*

- [4.8] In the case of *Burdene*,<sup>12</sup> the Court of Justice of the European Union ("CJEU") made it clear that the Compensation Directive should be interpreted in light of the EU Directive establishing minimum standards on the rights, supports and protection of victims of crime ("Victims' Rights Directive").<sup>13</sup> According to the CJEU, the Victims' Rights Directive is "intended to set out the 'horizontal framework for addressing the needs of all victims of crime'".<sup>14</sup> Recital 9 of the Victims' Rights Directive provides that "victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground".<sup>15</sup> It also emphasises the need to avoid secondary victimisation.<sup>16</sup> It proposes that this can be achieved through the provision of victim services, including by providing information, support, and compensation in a coordinated way to reduce repeat interactions with state and non-state agencies.<sup>17</sup> The Directive encourages Member States to develop 'sole points of access' or 'one-stop shops', that address victims' needs throughout criminal proceedings, including "the need to receive information, assistance, support, protection and compensation".<sup>18</sup>

*Milquet Report*

- [4.9] Milquet, Special Advisor to the European Commission President, in her report on Strengthening Victims' Rights ("the Milquet Report") recommended a national single contact point for victims, where they can access information, receive personal support and contact state compensation authorities directly.<sup>19</sup> The Milquet Report outlines that this contact point could be "responsible for the state compensation national structure".<sup>20</sup> It uses the single point of contact set up in the Netherlands following a terrorist attack as a good example of a one-stop shop.<sup>21</sup> This online

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<sup>12</sup> Case C-126/23 *Burdene* EU:C:2024:937.

<sup>13</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA ("Victims' Rights Directive").

<sup>14</sup> Case C-126/23 *Burdene* EU:C:2024:937 at para 48.

<sup>15</sup> Recital 9 of the Victims' Rights Directive (2012/29/EU).

<sup>16</sup> Recital 9 of the Victims' Rights Directive (2012/29/EU).

<sup>17</sup> Recital 62 of the Victims' Rights Directive (2012/29/EU).

<sup>18</sup> Recital 62 of the Victims' Rights Directive (2012/29/EU).

<sup>19</sup> Milquet, *Strengthening Victims' Rights: from Compensation to Reparation for a new EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at page 41.

<sup>20</sup> Milquet, *Strengthening Victims' Rights: from Compensation to Reparation for a new EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at page 41.

<sup>21</sup> Milquet, *Strengthening Victims' Rights: from Compensation to Reparation for a new EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at page 41.

platform offered victims information from state authorities, support organisations, and experts, and facilitated contact with different bodies and services through one contact point.<sup>22</sup>

### *EU Strategy on Victim's Rights*

- [4.10] The EU Strategy on Victims' Rights (2020-2025),<sup>23</sup> which was informed by the Milquet Report, clearly recommends that EU Member States improve coordination between those providing support to victims.<sup>24</sup> It proposes that Member States should "ensure a coordinated and horizontal approach to victims' rights".<sup>25</sup> The Strategy states that, at national level, it is crucial to bring together all those who come into contact with victims, including police, judicial authorities, court staff, victim support services, practitioners, and compensation authorities.<sup>26</sup>

### **(c) Comparative jurisdictions**

- [4.11] Comparative jurisdictions use a variety of structures for their state-funded compensation bodies. Some, like the current scheme in Ireland, are administered by government departments, but others are independent bodies, and others have adopted the one-stop-shop approach for certain victims of crime.

#### *(i) EU Member States*

##### *France*

- [4.12] In France, victims of crime can request compensation from the Guarantee Fund for Victims of Terrorist Acts and Other Offences.<sup>27</sup> Victims file claims to a Crime Victims' Compensation Board ("CIVI") attached to each regional court.<sup>28</sup> Each CIVI is composed of two judges and a lay person.<sup>29</sup> The CIVI will send the claim to the Fund, which is responsible for offering an amount of compensation.<sup>30</sup> The Fund

<sup>22</sup> Milquet, *Strengthening Victims' Rights: from Compensation to Reparation for a new EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at page 41.

<sup>23</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Strategy on Victims' Rights (2020-2025), Brussels COM (2020) 258 ("EU Strategy on Victims' Rights (2020-2025)").

<sup>24</sup> EU Strategy on Victims' Rights (2020-2025) at page 3.

<sup>25</sup> Part 4 of the EU Strategy on Victims' Rights (2020-2025) at page 19.

<sup>26</sup> Part 4 of the EU Strategy on Victims' Rights (2020-2025) at page 19.

<sup>27</sup> Fonds de Garantie des Victimes (Guarantee Fund for Victims of Terrorist Acts and Other Offences), "The missions of compensation of FGTI" <<https://www.fondsdegarantie.fr/en/fgti-2/the-missions-of-compensation/>> accessed 23 March 2026.

<sup>28</sup> Article 706-4 of the Code of Criminal Procedure (France).

<sup>29</sup> Article 706-4 of the Code of Criminal Procedure (France).

<sup>30</sup> Article 706-5-1 of the Code of Criminal Procedure (France).

makes victims an offer of compensation which the victim may accept or reject. If the offer is accepted by the victim, it becomes a statement of agreement which is sent to CIVI for approval.<sup>31</sup> Where a victim rejects the offer or where the Fund rejects a claim, the CIVI will carry out an investigation of the case.<sup>32</sup> The CIVI may set an amount of compensation which must then be paid by the Fund.<sup>33</sup>

- [4.13] France has also established an online 'one-stop shop' information portal for victims of terrorism.<sup>34</sup> The portal provides victims and their "loved ones" with information about organisations and government authorities that provide medical, psychological, financial and legal support, as well as information about compensation services. The Milquet Report praised the efficiency of the French inter-ministerial delegate on victims' rights, particularly the French Cross-Government Victim Support Unit ("CIAV"), which can be activated when a terrorist attack occurs.<sup>35</sup> CIAV acts as the institutional contact point for victims and their families and coordinates the actions of all relevant government ministries.<sup>36</sup>

### *Germany*

- [4.14] Victim compensation in Germany is governed by Book 14 of the German Social Code.<sup>37</sup> The German Federal Ministry of Labour and Social Affairs operates as the central authority with responsibility for victim compensation. It acts as both an assisting authority and a central point of contact for victims within the meaning of the Compensation Directive.<sup>38</sup> At a local level, the "Länder" (federal states) act as the social compensation agencies and as decision-makers on compensation claims.<sup>39</sup> Victims must file applications for compensation with the local State Pension Office responsible for their place of residence.<sup>40</sup>

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<sup>31</sup> Article 706-5-1 of the Code of Criminal Procedure (France).

<sup>32</sup> Article 706-5-1 of the Code of Criminal Procedure (France).

<sup>33</sup> Article 706-6 of the Code of Criminal Procedure (France).

<sup>34</sup> Government of France, "One-stop victims' information and declaration portal" (13 August 2024) <<https://www.info.gouv.fr/guide-victimes-en>> accessed 23 March 2026.

<sup>35</sup> Milquet, *Strengthening Victims' Rights: From Compensation to Reparation for a new EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at page 41.

<sup>36</sup> Government of France, "Crisis services" (28 February 2024) <<https://www.info.gouv.fr/guide-victimes-en/crisis-services>> accessed 23 March 2026.

<sup>37</sup> Social Code Book XIV (Social Compensation) (Germany).

<sup>38</sup> Section 114 of the Social Code Book XIV (Social Compensation) (Germany).

<sup>39</sup> Section 111 of the Social Code Book XIV (Social Compensation) (Germany).

<sup>40</sup> Federal Ministry of Justice and Consumer Protection, "Compensation for victims - Statutory compensation under Book Fourteen of the Social Code" <[https://www.hilfe-info.de/Webs/hilfeinfo/EN/HelpAndAdvice/FinanzielleHilfen/Opferentschaedigung/Opferentschaedigung\\_node.html](https://www.hilfe-info.de/Webs/hilfeinfo/EN/HelpAndAdvice/FinanzielleHilfen/Opferentschaedigung/Opferentschaedigung_node.html)> accessed 23 March 2026.

*Netherlands*

- [4.15] In the Netherlands, the Victims' Compensation Fund, established in 1976, is an independent administrative body of the Ministry of Justice and Security.<sup>41</sup> The Fund implements the Violent Crimes Compensation Fund Act and a Policy Manual available online explains how the Fund operates.<sup>42</sup>
- [4.16] After a terrorist attack on a passenger jet in July 2014, resulting in significant fatalities, the Dutch government established an online platform to support the victims. As noted above, the Milquet Report highlighted this platform as an example of a 'one-stop-shop' that provided a single point of contact for victims to access a range of relevant support services. The platform provided a centralised system for victims to find information from various authorities, support organisations and experts, including the Compensation Fund. The platform also facilitated contact between the victims and different support organisations.<sup>43</sup>

*(ii) United Kingdom**Northern Ireland*

- [4.17] Victim compensation in Northern Ireland is managed by the Compensation Services, an office within the Department of Justice.<sup>44</sup> The Compensation Services administers a number of schemes for compensating victims of crime: including one for victims of crimes leading to personal injury,<sup>45</sup> and another for compensating victims of property damage.<sup>46</sup> It receives applications and forwards them to the Secretary of State. The Secretary of State is responsible for deciding, in accordance with the Scheme, what awards should be made in individual cases and how they should be paid.<sup>47</sup> Decisions of the Secretary of

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<sup>41</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 4 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>42</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 4 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>43</sup> Milquet, *Strengthening Victims' Rights: from Compensation to Reparation for a new EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at page 41.

<sup>44</sup> Northern Ireland Department of Justice, "Compensation services" <<https://www.justice-ni.gov.uk/topics/compensation-services>> accessed 23 March 2026.

<sup>45</sup> Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>46</sup> Criminal Damage (Compensation) (Northern Ireland) Order 1977, as amended by the Criminal Damage (Compensation) (Amendment) (Northern Ireland) Order 2009.

<sup>47</sup> Paragraph 2 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).



State can be appealed to the Criminal Injuries Compensation Appeals Panel for Northern Ireland.<sup>48</sup>

- [4.18] As an office of the Department of Justice, which forwards cases to the Secretary of State, the Compensation Services cannot be said to be an independent body.

*England, Scotland and Wales*

- [4.19] The Criminal Injuries Compensation Authority ("CICA") exists as an executive agency under the Ministry of Justice. It administers the Criminal Injuries Compensation Scheme 2012.<sup>49</sup>
- [4.20] The CICA is currently classed as an Executive Agency sponsored by the Ministry of Justice.<sup>50</sup> This means that the CICA retains a level of independence which allows it to exercise its functions, but it is ultimately accountable to the Secretary of State for Justice.

*(iii) New Zealand*

- [4.21] In New Zealand, victims of serious crime can receive financial support from the Victim Assistance Scheme for costs related to the crime, the justice process, and their recovery.<sup>51</sup> This scheme does not have a statutory basis. An organisation called 'Manaaki Tāngata | Victim Support' administers the Victim Assistance Scheme on behalf of the Ministry for Justice, based on the guidelines to the scheme.<sup>52</sup>
- [4.22] Separate to the Victim Assistance Scheme, if a person suffers an injury or someone dies as a result of the crime, applicants can receive assistance from the Accident Compensation Corporation ("ACC").<sup>53</sup> The ACC can cover a range of

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<sup>48</sup> Paragraph 3 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>49</sup> Paragraph 135 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>50</sup> Criminal Injuries Compensation Authority, "About our services" <<https://www.gov.uk/government/organisations/criminal-injuries-compensation-authority/about/about-our-services>> accessed 23 March 2026.

<sup>51</sup> Victims Information, "Ways to Get Support" <<https://victimsinfo.govt.nz/en/information-for-victims/>> accessed 23 March 2026.

<sup>52</sup> Victim Support, "About the Victim Assistance Scheme" <<https://www.victimsupport.org.nz/financial-assistance>> accessed 23 March 2026. See also Victim Information, "Guidelines for the Victim Assistance Scheme" <<https://victimsinfo.govt.nz/en/guidelines-for-the-victim-assistance-scheme/>> accessed 23 March 2026.

<sup>53</sup> Victims Information, "Financial Support: Accident Compensation Corporation" <[Information for Victims | Victims Information](#)> accessed 23 March 2026.

injuries including physical injuries, injuries caused by treatment, conditions that come on gradually from work, and mental injuries.<sup>54</sup>

*(iv) Victoria*

- [4.23] In the Australian state of Victoria, the Financial Assistance Scheme was established by the Victims of Crime (Financial Assistance Scheme) Act 2022. Decisions on compensation are made by the "scheme decision-maker"<sup>55</sup> who is employed by the Department of Justice and Community Safety. Updated Guidelines on the administration of the Financial Assistance Scheme were published in 2025.<sup>56</sup>

**(d) Submissions**

- [4.24] In its Consultation Paper, the Commission sought views on the most appropriate form for the body that administers the statutory scheme. Three options were identified by the Commission for the future body:
- (1) Remain under the remit of the Department of Justice;
  - (2) Bring the scheme under the remit of an existing State body with expertise in personal injury assessments; or
  - (3) Create a new specialist body to administer the scheme.<sup>57</sup>
- [4.25] Consultees expressed the view that to ensure independence, the statutory scheme should not remain under the remit of the Department of Justice. The majority of responses suggested that a new specialist body should administer the statutory scheme. A number of responses expressly disagreed with placing responsibility within an existing state body such as the Injuries Resolution Board (previously known as the Personal Injuries Assessment Board). Consultees expressed concerns about the potential lack of experience in dealing with the particular needs of victims of crime in existing bodies. Consultees also noted a perceived reluctance to engage in extensive redesigns of such bodies to accommodate victims of crimes of violence.
- [4.26] In the Consultation Paper, the Commission also considered whether a 'one-stop-shop model' could be introduced, allowing victims to access information, advice,

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<sup>54</sup> Accident Compensation Corporation, "Injuries we cover" <[Injuries we cover](#)> accessed 23 March 2026.

<sup>55</sup> Section 52 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>56</sup> Victoria State Government, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 94 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 23 March 2026.

<sup>57</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 96, question 3.4.

support, and compensation from the same institution, and asked for opinions on this proposal.<sup>58</sup> Some consultees supported the idea of the statutory body acting as a 'one-stop shop'. However, the majority of respondents did not believe that the statutory body should serve this role. Some responses noted that the current system of victim support in Ireland may not suit a 'one-stop shop', given the diverse array of victim support organisations and the different types of support that they provide. Other consultees were open to the idea of centralising victim supports but favoured a collaborative approach, where the statutory body would work alongside existing victim services through service level agreements. The majority of responses favoured increased cooperation between the compensation body and victim services.

### **(e) Proposals for reform**

[4.27] The Commission remains of the view previously expressed in its Consultation Paper that the proposed body should be:

- (1) established in legislation;
- (2) adequately and consistently funded;
- (3) adequately staffed by a permanent core team who are appropriately skilled and regularly trained;
- (4) operated with administrative efficiency; and
- (5) trauma responsive.<sup>59</sup>

[4.28] Taking into account the requirements of the Compensation Directive and the Victims' Rights Directive, as well as the views of consultees, the Commission considers that the statutory body tasked with making decisions on compensating victims of crime should also be independent in its functioning and should be sensitive to the specific needs of victims of crime.

[4.29] The Commission recommends that the statutory body should be a specialist independent body. The statutory body should ensure that the process of applying for compensation is designed to meet the specific needs of victims of crime, including that it is simple, accessible and trauma-informed.

[4.30] In order to meet these aims, the Commission recommends that the statutory body should have three tiers:

- (1) an information and assistive tier;
- (2) an assessment and adjudicative tier; and

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<sup>58</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 97, question 3.8.

<sup>59</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at para 3.72.

(3) an appeals tier.

[4.31] The Commission gave some consideration to the 'one-stop-shop' model, as discussed above. In particular, it considered whether to recommend that the statutory body should provide supports to victims beyond compensation, such as by integrating broader support services into the statutory body. However, it concluded that this would not fit the current model of service delivery in Ireland and that, for now, it would be preferable for the statutory body to be dedicated to the issue of compensation. It also considers that a proposal for reform leading to a 'one-stop shop' model is beyond the scope of this Report. That said, it remains open to the Government to consider how to improve coordination between victim support bodies to ensure that victims receive appropriate and timely support and to minimise the possibility of secondary victimisation as they seek support. The Government may wish to consider supporting the establishment of a 'one-stop shop' for victims in the future.

[4.32] Instead, in order to facilitate greater coordination between the proposed statutory body and other relevant bodies, the Commission recommends that the statutory body should have a function to cooperate with any person or body that it considers appropriate in relation to any matter connected to its functions, including other bodies that provide victim support services.

**R. 4.1 The Commission recommends** that a specialist independent body be established on a statutory basis to administer the statutory victim compensation scheme.

**R. 4.2 The Commission recommends** that the statutory body should be:

- (1) adequately and consistently funded;
- (2) adequately staffed by a permanent core team who are appropriately skilled and regularly trained;
- (3) operated with administrative efficiency;
- (4) trauma informed; and
- (5) victim-centred.

**R. 4.3 The Commission recommends** that the statutory body should have three tiers:

- (1) an information and assistive tier;
- (2) an assessment and adjudicative tier; and
- (3) an appeals tier.

**R. 4.4 The Commission recommends** that the statutory body should have a function to cooperate with any person or body that it considers appropriate in relation to any matter connected to its functions, including other bodies that provide victim support services.

### 3. The information and assistive tier

#### (a) Overview

[4.33] As noted above, the Commission is recommending that the proposed statutory body should have an information and assistive tier. The intention is to ensure that the statutory body has a specific function to assist victims of crimes of violence in their applications for compensation and that particular staff members are tasked with fulfilling this function. The Commission considers that this would make the application process easier for victims and would significantly assist in embedding a victim-centred approach in the work of the statutory body.

#### (b) Current scheme

[4.34] Some of the functions that the Commission is proposing for the information and assistive tier are currently carried out for the Tribunal by a secretariat located within the Department of Justice. The secretariat assists victims in completing application forms and gathers information relating to each application.<sup>60</sup> An email address and helpline number for the secretariat are provided on the application forms for both fatal and non-fatal cases.<sup>61</sup> After an application is submitted, secretariat staff may tell the applicant which documents are necessary to support the application and to allow the Tribunal to make a decision.

[4.35] No individual member of staff is allocated to a specific victim. The Commission understands that this can lead to back-and-forth communication between the applicant and the various members of staff of the Tribunal dealing with their application.

[4.36] There are two application forms; one for fatal injuries and one for non-fatal injuries. Both are accompanied by a certificate of authority, which the applicant

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<sup>60</sup> Criminal Injuries Compensation Scheme, "Your questions answered" <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/criminal-injuries-compensation-scheme-your-questions-answered/#what-the-tribunal-is>> accessed 23 March 2026.

<sup>61</sup> Criminal Injuries Compensation Scheme, "Application Forms" <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

must sign.<sup>62</sup> It permits Tribunal staff to request information and documents on the applicant's behalf. For example, staff may request information from the Revenue Commissioners to confirm income, from An Garda Síochána to verify details of the criminal incident, and from medical practitioners to obtain records relating to the injuries sustained, as well as from a range of other sources.<sup>63</sup> However, the applicant is ultimately responsible for providing the required information.

[4.37] Applicants who do not provide the necessary documents may face consequences, including the refusal or reduction of an award of compensation for failing to provide reasonable assistance to the Tribunal.<sup>64</sup> Many applications have been refused because of a failure to provide sufficient documentation at the Tribunal's request. In the past four years, over 500 applications were refused for a failure to provide reasonable assistance to the Tribunal.<sup>65</sup>

[4.38] The Commission notes that the task of gathering substantial and often complex documentation can be challenging for victims of crimes of violence, in particular for those with reduced capacity due to serious injuries or those struggling with trauma. The Commission understands that there are currently no official protocols in place between the Tribunal and other bodies to assist with the efficient sharing of documents or information for the processing of applications to the Criminal Injuries Compensation Scheme. The secretariat also has no official channels for communicating with victim support services.

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<sup>62</sup> Criminal Injuries Compensation Scheme, "Application Forms" <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

<sup>63</sup> These other sources are listed in the application form, and include:

- The Garda Síochána Ombudsman Commission,
- The Department of Social Protection, the Department of Agriculture and the Health authorities,
- The applicant's employer(s),
- The applicant's health insurance provider,
- The applicant's financial advisers,
- Any other relevant parties.

See Criminal Injuries Compensation Scheme, "Application Forms" <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

<sup>64</sup> Paragraph 10 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>65</sup> See Criminal Injuries Compensation Scheme, "Decisions by the Criminal Injuries Compensation Tribunal" (8 September 2025) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/collections/decisions-by-the-criminal-injuries-compensation-tribunal/#paragraph-10-previously-11-need-to-provide-all-reasonable-assistance>> accessed 23 March 2026.

### (c) Comparative jurisdictions

- [4.39] In recent years, studies in a number of jurisdictions have recommended making the application process for compensation more accessible and supportive for victims of crime. Some of these studies are outlined below. Failure to provide such support is recognised as a factor in retraumatising victims and a reason why many compensation applications are unsuccessful. According to research by victim support organisations across Europe, over two-thirds of compensation authorities cite incomplete files as one of the main reasons for not granting compensation.<sup>66</sup>

#### *Netherlands*

- [4.40] A study of the Dutch victim compensation scheme found that victim satisfaction was more closely tied to how victims were treated by those administering the scheme than to the award of compensation itself.<sup>67</sup> The study highlighted that the quality of interpersonal interactions and a sense of fairness in the process were central in shaping victims' perceptions.<sup>68</sup> It identified several key factors that contributed to increased satisfaction levels, including the length of time taken to process applications.<sup>69</sup> A streamlined and efficient application process appeared to have a meaningful impact on victims' overall experiences, highlighting the importance of procedural efficiency alongside sensitive and respectful treatment.

#### *England and Wales*

- [4.41] A comprehensive study by the Victims' Commissioner in England and Wales in 2019 examined victims' experiences of the statutory victim compensation scheme. It found that the application process led to victims re-experiencing their trauma by requiring them to recount their victimising event.<sup>70</sup> Delays in decision-making and award payments, poor and confusing communication about progress of cases, and the frustration of handling reviews and appeals contributed to

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<sup>66</sup> Milquet, *Strengthening Victims' Rights: from Compensation to Reparation for a new EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at page 26.

<sup>67</sup> Kunst, Koster and Van Heugten, "Performance Evaluations and Victim Satisfaction with State Compensation for Violent Crime: A Prospective Study" (2017) 32(19) *Journal of Interpersonal Violence* 3027 at page 3037.

<sup>68</sup> Kunst, Koster and Van Heugten, "Performance Evaluations and Victim Satisfaction with State Compensation for Violent Crime: A Prospective Study" (2017) 32(19) *Journal of Interpersonal Violence* 3027.

<sup>69</sup> Kunst, Koster and Van Heugten, "Performance Evaluations and Victim Satisfaction with State Compensation for Violent Crime: A Prospective Study" (2017) 32(19) *Journal of Interpersonal Violence* 3027 at page 3037.

<sup>70</sup> Victims' Commissioner for England and Wales, *Compensation without re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation* (2019) at page 98.

secondary victimisation.<sup>71</sup> The Victims' Commissioner summarised her recommendations to the government by stating that the scheme should be simplified and organised in a way that de-traumatises victims.<sup>72</sup> She recommended that targeted support be provided to certain groups of victims to help them apply for criminal injuries compensation.<sup>73</sup> She also recommended providing a single point of contact or named caseworker at the Criminal Injuries Compensation Authority to all victims that avoids going through the customer service centre. This would prevent victims from having to repeat their stories and would help build trust with the Authority.<sup>74</sup> She also recommended creating pathways for information to flow directly to the CICA from other state agencies.<sup>75</sup>

### Victoria

- [4.42] In its 2018 review of the Victorian victims' compensation scheme, the Victorian Law Reform Commission noted that the documentation required to support an application can be overwhelming for victims.<sup>76</sup> To reduce the administrative burden on victims, it recommended that the scheme decision-maker should be able, with the applicant's consent, to obtain any information, evidence or documentation it considers necessary to determine an application.<sup>77</sup> The Victorian Commission also recognised that navigating victim support is often difficult, as the services and supports available to victims can be fragmented. It suggested that scheme decision makers should provide information to victims about the relevant legislation and available support services to assist recovery, and that they may refer victims to those supports.<sup>78</sup> Both recommendations were later reflected in the Victims of Crime (Financial Assistance Scheme) Act 2022.<sup>79</sup>

<sup>71</sup> Victims' Commissioner for England and Wales, *Compensation without re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation* (2019) at page 97.

<sup>72</sup> Victims' Commissioner for England and Wales, *Compensation without re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation* (2019) at page 98.

<sup>73</sup> Victims' Commissioner for England and Wales, *Compensation without re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation* (2019) at page 104.

<sup>74</sup> Victims' Commissioner for England and Wales, *Compensation without re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation* (2019) at page 107.

<sup>75</sup> Victims' Commissioner for England and Wales, *Compensation without re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation* (2019) at page 107.

<sup>76</sup> Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (2018) at para 5.254.

<sup>77</sup> Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (2018) at para 14.29.

<sup>78</sup> Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (2018) at para 9.36.

<sup>79</sup> Sections 53(1)(c) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).



#### (d) Submissions

- [4.43] In its Consultation Paper, the Commission asked for views on how the application process could be improved and how administrative burdens could be reduced.<sup>80</sup> Submissions stated that navigating the current system can be difficult, confusing, and can lead to secondary victimisation. Consultees stated that miscommunications, delays in responding to victims and failures to actively seek important documents in a timely manner can prolong the application process significantly. They highlighted that these challenges are even greater for applicants who do not have access to legal or other support services. Consultees noted that without guidance, navigating the complexities of the application process can be overwhelming. Applicants can struggle to understand the requirements of the scheme, miss critical deadlines, or find it difficult to communicate effectively with Tribunal staff. Submissions outlined that a lack of administrative support not only prolongs the application process but can also increase the emotional and psychological impact on applicants who may already be coping with traumatic experiences.
- [4.44] Some consultees expressed the view that providing additional support to applicants would reduce the need for legal professionals to be involved in the application process. They also expressed the view that it would reduce the risk of secondary victimisation. Specifically, advocacy and support or intermediary services were recommended for applicants who have trouble communicating (for example there should be provision for accompaniment at hearings). Consultees also suggested that applicants should be able to give evidence through video link, and consultees stated that access to competent interpreters was important.
- [4.45] Consultees stated that the process for applying for compensation should be straightforward so as not to add to the stress of victims. One consultee recommended that there should be at least one “designated, named liaison person who can train organisations that assist victims of crime with the application process.” They stated that outreach should not be limited to just victim support organisations but should include other sectors such as homeless and disability services. Some consultees said the statutory body should have a statutory duty to inform victims where they can access other services.
- [4.46] Other consultees mentioned the need for legal assistance generally. This issue and the proposal for accompaniment at hearings is explored by the Commission in the Chapter on Legal Assistance.

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<sup>80</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 205, question 6.1.

**(e) Proposals for reform**

- [4.47] The Commission considers that a central objective of the proposed statutory scheme is to make the process easier to navigate, so that victims have a better overall experience when seeking compensation for the harm suffered by them. Reducing actual, perceived, or potential procedural barriers is an important part of vindicating the right to access compensation.
- [4.48] The Commission therefore recommends an information and assistive tier within the statutory body, which would proactively provide direct assistance to victims as they apply for compensation. The intention is that staff of this tier would provide applicants with general information about the terms of the statutory scheme and the application process. The assistive tier would serve as the main communication link between the statutory body and applicants. Clear, regular, and trauma-informed communication between the statutory body and applicants would help ensure that the statutory scheme is victim-centred, accessible, and user-friendly. This kind of scheme would support both the objectives of the proposed statutory scheme as laid out in the Chapter on Background and a Rights-Based Approach, and key aims of the Compensation Directive, the Victims' Rights Directive and the EU Strategy on Victims' Rights (2020-2025), including the imperative to minimise secondary victimisation.
- [4.49] Another main function of the information and assistive tier would be to help victims access or liaise with other bodies, including victim support services, in line with the discussion above on the need for better coordination between victims' services.
- [4.50] An example of a state body providing both coordination and liaison assistance can be seen in the Garda Victim Liaison Office ("GVLO") and Family Liaison Office. The GVLO is an office within the Garda National Protective Services Bureau and is responsible for formulating policy for An Garda Síochána in relation to victims and supporting the implementation of the Victims' Charter. In addition, the GVLO "liaises with government funded victim support organisations, and criminal justice and other state agencies, regarding issues of mutual interest to improve services to victims of crime".<sup>81</sup> The GVLO also provides support to the Family Liaison Officers, who are individual Gardaí appointed to victims of crime and their families in serious cases such as murder, fatal road traffic accidents, or false imprisonments.<sup>82</sup>

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<sup>81</sup> See An Garda Síochána, "Garda Victim Liaison Office (GVLO)" <<https://www.garda.ie/en/about-us/organised-serious-crime/garda-national-protective-services-bureau-gnpsb/garda-victim-liaison-office-gvlo/>> accessed 23 March 2026.

<sup>82</sup> See An Garda Síochána, "Garda Victim Liaison Office (GVLO)" <<https://www.garda.ie/en/about-us/organised-serious-crime/garda-national-protective-services-bureau-gnpsb/garda-victim-liaison-office-gvlo/>> accessed 23 March 2026.

- [4.51] The assistive tier in the statutory body would fulfil a similar dual role. Staff would provide information and assistance to the victim throughout the application process and could liaise with and assist victims in accessing other services. Staff would also provide assistance to residents of Ireland, injured as a result of a crime of violence in another EU Member State, who wish to apply for compensation in that Member State, as discussed in more detail below.
- [4.52] A third role would be to identify complex issues in applications and highlight options for the applicant, such as the option to request an interim payment or for an advance decision on a contribution to legal costs. These functions are explored in more detail below.

*(i) Information and assistance in the application process*

- [4.53] The main duty of the assistive tier would be to guide applicants through the compensation process. This would include providing information to potential applicants who have not yet applied, such as by explaining the terms of the scheme, to assist them in understanding whether they are likely to be eligible. When a person decides to make an application for compensation, they would be supported throughout the process, whether they apply online or in person. Staff would help applicants complete their application forms, ensuring that all necessary details and correct documents are included.
- [4.54] The Commission recommends that a staff member of the assistive tier would be appointed to every applicant who wishes to apply for compensation. This would reduce the risk of applicants having to repeat their experience of the crime to multiple staff members. This can be retraumatising and was identified by consultees as a potential trigger in the current application process.
- [4.55] The Commission considers that providing direct assistance to applicants from the beginning of the process could help reduce delays and improve procedural efficiency. This would include being available to answer questions and keeping applicants informed about decisions and expected timelines. The relevant staff member could also help an applicant gather supporting documentation for their application. The challenges faced by applicants in gathering complex documentation highlight the need for a streamlined approach to information gathering. Such assistance could help ensure that victims can access the statutory scheme without undue administrative or other burdens.
- [4.56] As noted in the previous section, the Commission considers that the assistive tier should cooperate with any person or body it considers appropriate in relation to any matter connected to its functions. This would include requesting documentation to assist an applicant in completing their application, where requested by the applicant, where it is otherwise necessary to complete an application, or where necessary for a fair determination.

- [4.57] The Commission considers it important that the statutory body should have the power to conclude operational protocols or memoranda of understanding with other state and non-state bodies, such as the Director of Public Prosecutions (“DPP”), An Garda Síochána and the Health Service Executive. This would aid cooperation and clarity in relation to requests for further information between the statutory body and other relevant bodies. Other bodies may also wish to request information from the statutory body, such as the DPP. Information sharing in the context of court proceedings is addressed in the Chapter on Interaction with Court Proceedings.
- [4.58] The Commission recognises that certain documents, including medical reports, can take time to assemble and some injuries take time to settle, so in certain cases, some delays will be unavoidable. In some of these cases, as discussed in the Chapter on Types of Compensation the Commission is recommending that interim payments be made available where necessary for urgent and verifiable payments.

*(ii) Support for cross-border applications*

- [4.59] Currently, when an Irish resident is injured through a violent crime in another EU Member State, staff at the Tribunal in Ireland assist them in applying for compensation from the other Member State’s compensation scheme.<sup>83</sup> The assistance provided includes translation of relevant documentation, such as application forms and correspondence.<sup>84</sup> This is in line with Article 1 of the Compensation Directive and its recitals, which require Member States to introduce a system of cooperation between authorities of Member States to facilitate access to compensation in cases where the crime was committed in a Member State other than that of the victim’s residence.<sup>85</sup> The system should ensure that victims of crime can “always turn to an authority in their Member State of residence” and should ease “practical and linguistic difficulties that occur in a cross-border situation”.<sup>86</sup> The system should contain provisions which allow the crime victim to “find the information needed to make the application and for allowing for efficient cooperation between the authorities involved”.<sup>87</sup>

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<sup>83</sup> Department of Justice, *The Victims’ Charter* (2024) at page 91  
<<https://www.gov.ie/en/victims-charter/publications/access-the-full-charter/>> accessed 23 March 2026.

<sup>84</sup> Department of Justice, *The Victims’ Charter* (2024) at page 94  
<<https://www.gov.ie/en/victims-charter/publications/access-the-full-charter/>> accessed 23 March 2026.

<sup>85</sup> Recital 11 of the Compensation Directive (2004/80/EC).

<sup>86</sup> Recital 12 of the Compensation Directive (2004/80/EC).

<sup>87</sup> Recital 13 of the Compensation Directive (2004/80/EC).

- [4.60] The Commission recommends that the statutory body should similarly provide assistance with cross-border applications when a resident of Ireland wishes to apply for compensation in another EU country where they were injured as a result of a crime of violence.<sup>88</sup> This should include provision of information, translation services and cooperation with the relevant authorities across the EU. Similar supports should also be provided for applications by Irish residents to compensation bodies in the United Kingdom.

*(iii) Information and assistance in accessing support*

- [4.61] The statutory body should also provide information about external support services to applicants. This would enhance the compensation process for victims and aid their recovery. Research shows that victims appreciate being given information about support services at all stages of the criminal justice system.<sup>89</sup> Ease of access to these services not only improves victims' satisfaction,<sup>90</sup> but also strengthens perceptions of procedural justice within the overall system. Providing this information and helping applicants access these services would also help to minimise secondary victimisation,<sup>91</sup> and improve coordination among services.<sup>92</sup>
- [4.62] The Commission recommends that the information and assistive tier be specifically tasked with providing information and assistance to applicants in accessing victim support services. One way to provide information is by having an updated, comprehensive website with links to the websites of victim support services. Provision of assistance may include helping the applicant to identify and access the appropriate service.

*(iv) Identification of complex issues*

- [4.63] While the majority of applications to the statutory body are expected to be straightforward, some cases may be complex and require legal support. This is particularly true where exclusion criteria may apply, as discussed in the Chapter

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<sup>88</sup> The Commission considers that this assistance will fulfil Ireland's obligations under article 1 of the Compensation Directive (2004/80/EC), which provides that "Member States shall ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the applicant for compensation is habitually resident, the applicant shall have the right to submit the application to an authority or any other body in the latter Member State."

<sup>89</sup> Healy, "Exploring Victims' Interactions with the Criminal Justice System: A Literature Review" (Department of Justice and Equality 2019) at page 9.  
<<https://assets.gov.ie/122886/12269037-6e49-4878-8800-0c93cbfc1c01.pdf>> accessed 23 March 2026.

<sup>90</sup> De Prince, Belknap, Labus, Buckingham and Gover, "The Impact of Victim-focused Outreach on Criminal Legal System Outcomes Following Police-reported Intimate Partner Abuse" (2012) 18 Violence Against Women 861 at page 881.

<sup>91</sup> As required by Recital 9 of the Victims' Rights Directive (2012/29/EU).

<sup>92</sup> EU Strategy on Victims' Rights 2020-2025 at pages 19 – 20.

on Exclusionary Criteria, or where assessing the impact of a victim's injuries, including long-term effects, is not straightforward. In such cases, applicants may struggle to navigate the compensation process without legal assistance, especially where the statutory body holds an oral hearing, extensive questions about the case are raised, or there is a dispute about how the terms of the scheme should be applied.

- [4.64] The Chapter on Legal Assistance addresses the potential need for legal assistance and how such assistance might be funded. In that Chapter, the Commission recommends that in certain cases there should be a facility for advance decisions on a contribution to legal costs. However, such a decision can only be made where it is necessary; where an applicant cannot otherwise access a legal adviser, and where an applicant cannot otherwise vindicate their right to an effective remedy without advance approval that the statutory body will make a contribution to their costs. The assistive tier can identify those applicants who may need such legal support either because their application is particularly complex or because of their personal circumstances. Staff could inform the applicant about the criteria for applying for an advance decision on a contribution to costs and support them in making this request in their application form, or otherwise.
- [4.65] Similarly, staff at the assistive tier could inform an applicant about the criteria for requesting an interim payment of compensation in their application form, where it is clear that the applicant may be eligible. Interim payments are discussed in the Chapter on Types of Compensation. In general, they (interim payments) would only be made where the statutory body is satisfied that an applicant is highly likely to succeed in their application and such a payment is necessary to meet an urgent and verifiable expense.
- [4.66] The Commission considers that it should be explicitly stated on the statutory body's website and public-facing documentation that staff members at the assistive tier have a duty to maintain confidentiality in relation to applicants' personal information. This duty would not apply where the sharing of information is necessary for the processing of an application, for example, for repayment where there has been a duplication of payment or for another lawful purpose.
- [4.67] The assistive tier could also have the function of arranging for compensation to be paid to victims following a successful application.
- [4.68] The Commission recommends that the functions of the information and assistive tier would include:
- (1) Providing information and assistance to applicants, but not legal advice, in their application for compensation,
  - (2) Forwarding all applications and other requests, such as for interim payments or an advance decision on a contribution to costs, to the assessment and adjudicative tier;

- (3) Cooperating with any person or body that it considers appropriate in relation to any matter connected to its functions, including by seeking documentation to assist an applicant to complete their application in the following circumstances:
  - where requested by the applicant
  - where otherwise necessary to complete an application or
  - where necessary for a fair determination of the application.
- (4) Proposing operational protocols or memoranda of understanding with other state bodies that it considers relevant to its work;
- (5) Providing information and assistance to applicants in accessing victim support services; and
- (6) Providing assistance with cross-border applications when a resident of Ireland wishes to apply for compensation in another EU Member State where they were harmed as a result of a crime of violence. This should include:
  - access to information,
  - translation of relevant documents,
  - cooperating with equivalent authorities in other EU Member States.

**R. 4.5 The Commission recommends** that the functions of the information and assistive tier would include:

- (1) Providing information and assistance, but not legal advice, to victims in their application for compensation;
- (2) Forwarding all applications and other requests, such as for interim payments or an advance decision on a contribution to costs, to the assessment and adjudicative tier;
- (3) Cooperating with any person or body that it considers appropriate in relation to any matter connected to its functions, including by seeking documentation to assist an applicant to complete their application in the following circumstances:
  - (a) where requested by the applicant,
  - (b) where otherwise necessary to complete an application, or
  - (c) where necessary for a fair determination of the application.
- (4) Proposing operational protocols or memoranda of understanding with other state bodies that it considers relevant to its work;
- (5) Providing information and assistance to victims in accessing victim support services; and
- (6) Providing assistance with cross-border applications when a resident of Ireland wishes to apply for compensation in another EU Member State where they were harmed as a result of a crime of violence. This should include:

- (a) access to information,
- (b) translation of relevant documents,
- (c) cooperating with equivalent authorities in other EU Member States.

**R. 4.6 The Commission recommends** that it should be explicitly stated on the statutory body's website and public-facing documentation that staff members and decision-makers at the statutory body have a duty to maintain confidentiality in relation to applicants' personal information. This duty would not apply where the sharing of information is necessary for the processing of an application, for example for repayment where there has been a duplication of payment, or for another lawful purpose.

## 4. The assessment and adjudicative tier

### (a) Overview

- [4.69] The Commission recommends that the second tier of the statutory body would be an assessment and adjudicative tier. Completed applications would be forwarded by the information and assistive tier to this tier. Applications would be evaluated and adjudicated upon by a single decision-maker, known as an assessment and adjudication officer of the statutory body. The Chapter on Administration of the Statutory Body and Statutory Scheme details how these officers would be appointed.
- [4.70] Assessment and adjudication officers would decide whether an application is eligible for compensation, whether any exclusion applies, and the appropriate amount of compensation to be granted. In addition, they would make decisions on any preliminary questions such as whether an advance decision on costs or an interim payment would be appropriate. These officers are also referred to as decision-makers in this Report.

### (b) Current scheme

- [4.71] The current scheme provides that there are three avenues that an application may take depending on the amount of compensation claimed:
- If the amount of compensation is less than €3,000, a decision may be made by a 'duly authorised officer.'<sup>93</sup> The Commission understands that no duly authorised officers are currently appointed to the Tribunal.

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<sup>93</sup> Duly authorised officers are provided for by paragraph 24 of the Criminal Injuries Compensation Scheme (31 January 2025). The term "duly authorised officer of the Tribunal" is not defined in the terms of the Scheme but refers to a staff member of the Department of Justice assigned to provide administrative support to the Tribunal.



- If the amount of compensation claimed is less than €75,000, a single member of the Tribunal decides the application.
- If the amount of compensation claimed is greater than €75,000, a panel of three members of the Tribunal decide the application.<sup>94</sup>

[4.72] Applications are generally determined based on the supporting documents which are provided with the application form, including medical or other reports. The Tribunal does not make a decision until a Garda report is received and the Garda investigation is concluded. The Tribunal considers assessments of loss of earnings through employer statements, social welfare reports, or actuarial assessments.<sup>95</sup>

### **(c) Proposals for reform**

[4.73] The Commission recommends that all applications should be decided in the first instance by a single decision-maker at the assessment and adjudicative tier. Decision-makers would be formally appointed as such to the assessment and adjudication role in the statutory body. They would sit as a single decision-maker at the assessment and adjudicative tier, and/or as part of a three-person panel of decision-makers at the appeals tier. All applications would be initially assessed and adjudicated on by a single decision-maker, regardless of the amount of compensation likely to be involved or under consideration. The Commission considers that a consistent approach to decisions would be enhanced by this rationalisation of procedure.

[4.74] The single decision-maker would decide on eligibility, the amount of compensation, interim payments and contributions to costs, including advance decisions. If the applicant accepts the decision and the proposed payment at this stage, their application would be concluded, and a staff member of the information and assistive tier would organise the payment of any compensation.

[4.75] The decision-maker may also consider whether an oral hearing may be necessary, in particular where they may want to hear from the applicant directly. As discussed further in the Chapter on the Administration of the Statutory Body and Statutory Scheme, the decision-maker should take account of an applicant's request when making this decision.

[4.76] The Chapter on the Administration of the Statutory Body and Statutory Scheme and the Chapter on Interaction with Court Proceedings discuss the power of the statutory body to publish its decisions in full, in redacted form or, in certain

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<sup>94</sup> Paragraph 24 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>95</sup> Criminal Injuries Compensation Scheme, "Your questions answered" <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/criminal-injuries-compensation-scheme-your-questions-answered/>> accessed 23 March 2026.

circumstances, to delay publication. The decision-maker at the assessment and adjudicative should also make these decisions.

[4.77] The decision-maker at the assessment and adjudicative tier may also decide that an applicant is excluded from obtaining compensation. The grounds for such exclusions are discussed in the Chapter on Exclusionary Criteria. As explained in detail in that Chapter, the Commission recommends that where a decision-maker of the statutory body decides that the public interest exclusion should apply, they must forward the application to a panel of three assessment and adjudication officers of the statutory body to approve the decision to reduce or refuse the compensation payment on public interest grounds. This extra level of approval is required because the public interest exclusion is regarded by the Commission as an exceptional discretion, which should be used very rarely.

[4.78] The Commission recommends that the functions of the assessment and adjudicative tier would include:

- (1) Deciding whether an applicant is eligible for the scheme;
- (2) Deciding whether or not an interim payment should be made, where requested by an applicant, (in line with the criteria outlined in the Chapter on Types of Compensation);
- (3) Deciding whether to make provision for an advanced decision on a contribution towards the cost of the applicant's legal assistance, where requested by an applicant, (in line with the criteria outlined in the Chapter on Legal Assistance);
- (4) Deciding whether an oral hearing is appropriate;
- (5) Deciding whether an applicant is eligible for a payment under the scheme and, if so, determining the appropriate payment;
- (6) Deciding whether to make a contribution towards the cost of the applicant's necessary legal assistance following an application, if requested by an applicant;
- (7) Deciding how and when to publish decisions;
- (8) Considering whether the public interest exclusion may apply, and, if so, forwarding the application to a three-member panel of the statutory body to approve the decision on eligibility and quantum.

**R. 4.7 The Commission recommends** that the functions of the assessment and adjudicative tier would include:

- (1) Deciding whether an applicant is eligible for the scheme;

- (2) Deciding whether an interim payment should be made, where requested by an applicant (in line with the criteria outlined in the Chapter on Types of Compensation);
- (3) Deciding whether to make provision for an advanced decision on a contribution towards the cost of the applicant's legal assistance or advice, where requested by an applicant (in line with the criteria outlined in the Chapter on Legal Assistance);
- (4) Deciding whether an oral hearing is appropriate;
- (5) Deciding whether an applicant is eligible for a payment under the scheme and, if so, determining the appropriate amount of payment;
- (6) Deciding whether to make a contribution towards the cost of an applicant's legal assistance following an application, if requested by an applicant;
- (7) Deciding how and when to publish the decisions of the statutory body;
- (8) Considering whether the public interest exclusion may apply, as outlined in the Chapter on Exclusionary Criteria, and, if so, forwarding the application to a three-member panel of the statutory body for approval of the decision on eligibility and amount of payment.

## 5. The appeals tier

[4.79] The Commission recommends that the statutory body have a third tier to hear appeals against decisions on both eligibility and amounts of payment made by the assessment and adjudication officers at the assessment and adjudicative tier. The appeals tier could also hear appeals in relation to decisions on contributions to costs or decisions on interim payments. Appeals would be heard by a panel of three assessment and adjudication officers of the statutory body, which should not include the original assessment and adjudication officer.

### (a) Current scheme

[4.80] Under the current scheme, all appeals are decided internally.<sup>96</sup> If an applicant indicates in writing that they wish to appeal the initial decision, the application is reconsidered as if it was being heard for the first time, and a new decision is made (known as a *de novo hearing*, in legal terminology).

<sup>96</sup> Criminal Injuries Compensation Scheme, "Instruction 1: Three-month deadline for acceptance of Tribunal decision" (updated 10 December 2022) <<https://www.gov.uk/government/publications/instruction-1-three-month-deadline-for-acceptance-of-tribunal-decision>> accessed 23 March 2026.

- [4.81] A decision made by a single-member panel is appealed to a panel of three members. A decision made by a panel of three members is also appealed to a panel of three members. The current scheme provides that members on the appeal panel should differ from those who made the original decision.<sup>97</sup>
- [4.82] Paragraph 19 of the current scheme provides that the Tribunal is free to draw up and publish any instructions it considers necessary regarding the procedure for administering the scheme. Instruction 1 made under paragraph 19 states that applicants have three months to accept or appeal a decision of the Tribunal in writing.<sup>98</sup> Applicants also have three months to accept a decision on appeal. No further appeals currently exist from final decisions of the Tribunal, though applicants have the right to apply for judicial review of the final decision of the Tribunal.<sup>99</sup>

*Judicial review of decisions of the Tribunal*

- [4.83] Tribunal decisions can be challenged through judicial review by the High Court. Judicial review generally focuses on the decision-making process and not ordinarily on the merits of a decision. It aims to assess whether the decision-making process was reasonable, unbiased, fair, and within the Tribunal's authority. If the decision is deemed to have breached a legal requirement, the court may quash the unlawful decision and require a new decision to be made.

*Appeals on a point of law*

- [4.84] There is no option to appeal a decision on a point of law to a court under the current scheme, other than by way of judicial review.

**(b) Comparative jurisdictions**

- [4.85] The Commission considered the approaches of comparative jurisdictions in relation to both external appeal mechanisms and internal appeal mechanisms.

*Northern Ireland and England, Scotland and Wales – External appeal mechanisms*

- [4.86] The victim compensation schemes in Northern Ireland and in England, Scotland and Wales have separate appeals bodies. In Northern Ireland, decisions made by the Compensation Service may be appealed to the Criminal Injuries

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<sup>97</sup> Paragraph 24 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>98</sup> Criminal Injuries Compensation Scheme, "Instruction 1: Three-month deadline for acceptance of Tribunal decision" (updated 7 October 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/instruction-1-three-month-deadline-for-acceptance-of-tribunal-decision/>> accessed 23 March 2026. This instruction was signed by the Tribunal Chairperson on June 2020 and became effective from 10 December 2020.

<sup>99</sup> *State (Hayes) v Criminal Injuries Compensation Tribunal* [1982] ILRM 210.

Compensation Appeals Panel for Northern Ireland (the "CICAPNI").<sup>100</sup> Where the appeal is against a decision not to waive the time limit or not to re-open a case, the case will be heard by a single adjudicator.<sup>101</sup> A member of the Panel's staff may refer an appeal for an oral hearing if the appeal is against a decision: not to make an award; to make an award, including a reduced award; to seek repayment of an award; or to reconsider an award before it has been paid.<sup>102</sup> Where such an appeal is not referred for an oral hearing, it will be decided by a single adjudicator.<sup>103</sup> Where an appeal is referred for an oral hearing, it will be heard by two adjudicators.<sup>104</sup> There is no appeal available from decisions of the Panel.<sup>105</sup>

In England, Scotland and Wales, decisions of the Criminal Injuries Compensation Authority may be appealed to the First-tier Tribunal (Criminal Injuries Compensation) also known as the Criminal Injuries Compensation Tribunal.<sup>106</sup> This Tribunal is within the Social Entitlement Chamber, one of 7 chambers of the First-tier Tribunal. Decisions of the Tribunal may be decided by a single judge without a hearing, or up to three Tribunal members at an oral hearing.<sup>107</sup> There is no right to appeal the decision of the Criminal Injuries Compensation Tribunal, however its decision may be judicially reviewed.<sup>108</sup>

#### *California – Internal appeal mechanism*

- [4.87] In California, appeals on the application of the terms of the scheme are held internally.<sup>109</sup> The California Victim Compensation Board must provide a hearing for any applicant who contests a staff recommendation to deny all or part of their

<sup>100</sup> Paragraph 3 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>101</sup> Paragraph 69 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>102</sup> Paragraph 72 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>103</sup> Paragraph 73 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>104</sup> Paragraph 75 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>105</sup> Paragraph 3 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>106</sup> Paragraph 125 of the Criminal Injuries Compensation Scheme 2012 (England, Scotland and Wales).

<sup>107</sup> Courts and Tribunal Judiciary, "Work of the Criminal Injuries Compensation Tribunal (CICT)" <<https://www.judiciary.uk/courts-and-tribunals/tribunals/first-tier-tribunal/social-entitlement-chamber/criminal-injuries-compensation-tribunal/work-of-the-criminal-injuries-compensation-tribunal-cict/>> accessed 23 March 2026.

<sup>108</sup> Section 38(1) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.

<sup>109</sup> Section 13959 of the California Government Code.

compensation application. At this hearing, the onus is on the applicant to establish their case for compensation under the relevant provision of the scheme.<sup>110</sup>

*Victoria – Internal and external appeal mechanism*

- [4.88] In Victoria, if a victim is dissatisfied with a decision of the Financial Assistance Scheme, they can apply for an internal review of the decision.<sup>111</sup> Internal reviews are conducted by more senior decision-makers who examine the application to ensure that the original decision was reasonable, given the evidence available.<sup>112</sup> Internal reviews may be requested, for example, for decisions to refuse applications for assistance, decisions about the amount of assistance, and decisions requiring repayment of assistance.<sup>113</sup>
- [4.89] Internal reviews are not permitted where they relate to interim assistance, unless the issue arises as part of a final decision, or on legal costs.<sup>114</sup> If an applicant remains dissatisfied following an internal review, they may apply to the Victorian Civil and Administrative Tribunal for an external review of the decision.<sup>115</sup>

**(c) Submissions**

- [4.90] In its Consultation Paper, the Commission asked whether consultees favoured the establishment of an external appeals mechanism to a court or to a body such as the Ombudsman on a compensation decision.<sup>116</sup> A number of consultees expressed the view that there should be an external appeal and that appeals were an important feature of a statutory scheme.

<sup>110</sup> The relevant provisions being the factors of eligibility established by section 13955 of the California Government Code.

<sup>111</sup> Victoria State Government, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 109 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 23 March 2026.

<sup>112</sup> Victoria State Government, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 109 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 23 March 2026.

<sup>113</sup> Victoria State Government, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 109 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 23 March 2026.

<sup>114</sup> Victoria State Government, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 109 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 23 March 2026.

<sup>115</sup> Victoria State Government, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 110 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 23 March 2026.

<sup>116</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 206, question 6.9.

- [4.91] In terms of the form of the body to hear appeals, responses were split between favouring a formal appeal to a body such as a court, and an informal appeal to a body such as the Ombudsman. The responses that favoured a formalised appeal noted that an appeal to a court would permit the affirmation or overturning of decisions. An informal process to the Ombudsman was supported on the basis that it would assist in timely decisions and would maintain a level of informality. Submissions emphasised that appeal processes should not lead to further delays and appeals must be dealt with expeditiously.

#### **(d) Proposals for reform**

##### *(i) Internal appeals*

- [4.92] The Commission considers that the introduction of a separate statutory appeals body, like those of the schemes in England, Scotland and Wales, and in Northern Ireland, would increase the formality and costs of appeals rather than streamlining or simplifying the process. The Commission does not believe that the establishment of a new statutory appellate body would achieve efficiency, which is a key objective of the proposed statutory scheme.
- [4.93] The Commission recommends that there should be an internal appeals tier within the statutory body. Appeals from a single member at the assessment and adjudicative tier should be heard by a panel of three members at the appeals tier. This panel should not contain the original decision-maker.
- [4.94] The appeals tier should be able to hear appeals on issues of law and issues of fact. Issues of law might include how the terms of the scheme have been interpreted. This might include decisions about whether the harm is attributable to a crime of violence, and how factors of eligibility and exclusion have been applied to reduce or refuse an application. Issues of fact might include questions relating to eligibility, the amount of payments or contributions to costs.
- [4.95] The appeals tier should have the power to hold an entirely new hearing. Alternatively, the hearing can be restricted to particular issues, where not all aspects of the original decision are appealed by the applicant. Decisions on appeal would be the final decision of the statutory body.
- [4.96] The Commission considers that appeals on contributions to costs should only be 'on the record' meaning there will not be a new oral hearing for such appeals. This is discussed further in the Chapter on Legal Assistance.

- R. 4.8 **The Commission recommends** that the statutory body should have an internal appeals tier.
- R. 4.9 **The Commission recommends** that appeals from a single decision-maker at the assessment and adjudicative tier should be heard by a panel of three decision-makers at the appeals tier.
- R. 4.10 **The Commission recommends** that the panel hearing an appeal should not include the original decision-maker.
- R. 4.11 **The Commission recommends** that decisions on appeal are the final decision of the statutory body.
- R. 4.12 **The Commission recommends that** the appeals tier should have the power to determine the application at an entirely new hearing or the hearing can be restricted where not all aspects of the decision are appealed by the applicant.
- R. 4.13 **The Commission recommends** that appeals on contributions to costs, as outlined in the Chapter on Legal Assistance, should only be 'on the record' meaning there will not be a new oral hearing for such appeals.

*(ii) External appeals*

- [4.97] The Commission recommends an avenue of external appeal to the courts. However, this avenue should be restricted to issues arising from the application of the law. An appeal on a point of law is usually the primary mode of appealing the decisions of non-court adjudicative bodies. This reflects a degree of deference to the special expertise of these bodies, which could be undermined if courts reviewed the factual issues in all appealed cases.<sup>117</sup>
- [4.98] The Commission considers that court supervision of decision-making ensures consistency, fairness, and accountability, improving the quality of decision-making. It introduces important safeguards to the process, including the oversight of legal proceedings by a judge who is fully independent of the statutory body, and can enhance public trust in the statutory scheme.
- [4.99] The Commission considers that it is desirable that the operation of the statutory scheme be subject to external review, particularly for issues which are of general application to all applicants. The Commission therefore recommends that applicants should have the right to appeal a decision by the appeals tier to the High Court, but only on a point of law.
- [4.100] The Commission does not recommend a full right of appeal that would involve a full rehearing of the case on both law and facts. An applicant would have the opportunity to appeal decisions involving facts or amounts of compensation to

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<sup>117</sup> See further Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Round Hall 2019) at para 11.48.



the internal appeals tier. An appeal on a point of law would challenge a decision on the grounds that the law was misinterpreted or incorrectly applied and is a common appeal from the decisions of administrative bodies.<sup>118</sup>

- [4.101] The Commission recommends that an appeal to the High Court on a point of law could also incorporate grounds previously available only for judicial review (such as bias or unreasonableness) to create a hybrid appeal process to the High Court. There is precedence for this approach in the Competition Act 2002, as amended by the Competition (Amendment) Act 2022.<sup>119</sup> This approach can help to avoid litigants issuing duplicate sets of proceedings and arguments about the scope of the appeal.
- [4.102] By integrating judicial review grounds into the appeal process, the appeal and review process can be streamlined to ensure that all questions of fairness and legal error are capable of being reviewed in one set of proceedings. The Commission considers that this could be valuable for victims from the perspective of reducing the risk of secondary victimisation because it would reduce the number of potential proceedings. A third benefit of providing for such a hybrid appeal to the High Court is that it provides an opportunity for critical legal questions, which are directly relevant to victims and the statutory scheme, to be authoritatively resolved. Such appeals can create clear precedents that can guide future decisions made by the statutory body. This would enhance the consistency and authority of the statutory body's decisions.
- [4.103] The Commission notes that while it is not recommending a general avenue of external appeal based purely on points of facts or evidence, judicial review grounds, such as unreasonableness or bias, could in certain circumstances encompass reconsideration of facts or evidence.
- [4.104] Finally, with regard to the appropriate remedies available in such appeals, the Commission recommends that the High Court should be able to make any order that the statutory body would have been able to make in reaching its decision, for example in relation to the eligibility of the applicant. The High Court should make such a decision where possible. The Commission considers that the High Court could remit the case back to the statutory body for decision but only where it is not possible for the High Court to make a new decision.

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<sup>118</sup> Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Round Hall 2019) at paras 11-61 – 11-63. See also *Mara v Hummingbird Ltd* [1982] ILRM 421.

<sup>119</sup> See Part 2H of the Competition Act 2002, as amended by the Competition (Amendment) Act 2022.

- R. 4.14 The Commission recommends** that a right of appeal to the High Court should exist from final determinations of the statutory body, but only on a point of law.
- R. 4.15 The Commission recommends** that an external appeal to the High Court can incorporate points of law and grounds traditionally reserved for judicial review proceedings.
- R. 4.16 The Commission recommends** that the High Court should be able to:
- (a) confirm the decision, or
  - (b) overturn that decision and replace it with a decision that the High Court considers appropriate or, where it is not possible for the High Court to make a new decision,
  - (c) remit the decision back to the statutory body.

*(iii) Onward appeals from the High Court*

- [4.105] It is desirable from the perspective of achieving finality that appeals from the statutory body to the High Court are not generally subject to onward appeals. The Supreme Court has noted that this is particularly true in the case of “administrative decisions which have been heard and determined on their merits”<sup>120</sup> and contributes to bringing about “earlier than might otherwise be the case, finality in judicial review of the validity of certain administrative decisions”.<sup>121</sup> To balance the need to limit the scope of onward appeals with the potential for exceptionally important points of law to be appealed, the Commission considers that there should be a threshold for onward appeals from the High Court.
- [4.106] The Commission considers that it is appropriate to limit the scope of onward appeals from the High Court to the Court of Appeal to questions of law which are of exceptional importance and are in the public interest. Well-tested precedents for such a threshold can be found in a number of existing statutes that contain the formulation that “no further appeals from the High Court should be permitted, except with leave of the High Court which leave shall only be granted where the Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Court of Appeal”.<sup>122</sup> This concept has been discussed at

<sup>120</sup> *Re Illegal Immigrants (Trafficking) Bill 1999* [2000] IESC 19 at para 110, [2000] 2 IR 360 at page 400 (Keane CJ).

<sup>121</sup> *Re Illegal Immigrants (Trafficking) Bill 1999* [2000] IESC 19 at para 120, [2000] 2 IR 360 at page 402 (Keane CJ).

<sup>122</sup> See for example section 12(4)(a) of the Transport (Dublin Light Rail) Act 1996; section 13(6) of the Irish Takeover Panel Act 1997; section 16(11) of the European Arrest Warrant Act 2003 (as amended); section 18 of Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

length by the courts<sup>123</sup> and would therefore be familiar to and understood by practitioners and judges. This threshold also ensures that only cases that raise exceptional points of general application proceed to the next level of appeal.

**R. 4.17 The Commission recommends** that no appeal should be permitted to the Court of Appeal unless the High Court certifies that there is a point of law of exceptional public importance and that an appeal is desirable in the public interest.

## 6. The application process

### (a) Introduction

[4.107] As discussed in the Chapter on Background and a Rights-Based Approach, the Commission is recommending a victim-centred and rights-based approach to administering the statutory scheme. The CJEU has confirmed that the Compensation Directive should be interpreted in line with the Victims' Rights Directive.<sup>124</sup> The Victims' Rights Directive asserts that "victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind".<sup>125</sup> The Directive also references the need to ensure that child victims<sup>126</sup> can access their rights, victims with disabilities are able to "benefit fully from the rights set out" in the Directive "on an equal basis with others"<sup>127</sup> and that:

"Information and advice provided by competent authorities, victim support services and restorative justice services should, as far as possible, be given by means of a range of media and in a manner which can be understood by the victim. Such information and advice should be provided in simple and accessible language."<sup>128</sup>

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<sup>123</sup> See *Fallon v An Bord Pleanála* [1992] 2 IR 380; *Kenny v An Bord Pleanála (No 2)* [2001] 1 IR 704; *Arklow Holidays v An Bord Pleanála* [2007] 4 IR 112; *O'Donoghue v Martin* [2020] IEHC 297; *Dellway Investments Limited v NAMA* [2010] IEHC 375; *Irish Asphalt Limited v An Bord Pleanála* [1996] 2 IR 179.

<sup>124</sup> Case C-126/23 *Burdene* EU:C:2024:937 at para 48. The Court held that "Directive 2012/29 is intended to set out the 'horizontal framework for addressing the needs of all victims of crime'. Since both Directive 2004/80 and Directive 2012/29 concern the protection of victims of crime, they thus have overlapping fields of application, as is apparent from recital 5 of Directive 2004/80."

<sup>125</sup> Recital 9 of the Victims' Rights Directive (2012/29/EU).

<sup>126</sup> Recital 14 of the Victims' Rights Directive (2012/29/EU).

<sup>127</sup> Recital 15 of the Victims' Rights Directive (2012/29/EU).

<sup>128</sup> Recital 21 of the Victims' Rights Directive (2012/29/EU).

- [4.108] The Commission considers that this requires the statutory body to engage with victims in an accessible manner that facilitates the proper provision of information to victims and ensures a smooth and efficient application process. The Commission addresses this issue below with reference to means of communication, the form, content and process for applications for compensation and how the assistive tier can best provide support to victims as they go through the application process.
- [4.109] The Commission notes that the EU Compensation Directive provides for certain administrative requirements in relation to cross-border applications for compensation. For example, it provides in article 4 that: "Member States shall ensure that potential applicants for compensation have access to essential information on the possibilities to apply for compensation, by any means Member States deem appropriate." Article 5, entitled "assistance to the applicant" provides that the assisting authority will provide information, application forms, and general guidance to an applicant.

### **(b) Current scheme**

- [4.110] Currently, the Government hosts a webpage for the Criminal Injuries Compensation Scheme on a generic government website.<sup>129</sup> This webpage introduces the scheme, contains the terms and conditions, provides information about making an application, has a frequently asked questions section and hosts the Decisions of the Tribunal. It also provides an email address and phone number for the Tribunal.
- [4.111] In order to make an application, applicants must download the relevant application form from the Tribunal's webpage and then may send either a hard copy in the post or a soft copy by email. There are two application forms. One is to be used in the case of non-fatal injuries and another is to be used for fatal injuries. Both forms include advice about how to complete the form and outline the supporting documentation required.
- [4.112] Both forms include a certificate of authority. This certificate requires the applicant to acknowledge that they have read and understood the information outlined within the application form and certificate, and to confirm that the information provided on the application form is "true to the best of [their] knowledge". The certificate requires the applicant to:

- notify the Tribunal of any change to their circumstances,

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<sup>129</sup> Government of Ireland, "Criminal Injuries Compensation Scheme" <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/campaigns/criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

- acknowledge that if they provide false information this may lead to a reduction or refusal of compensation,
- accept that any discrepancy in their tax record may lead to a reduction or refusal,
- accept that no payment by the Tribunal should result in double compensation,
- undertake to inform the Tribunal of any ongoing or planned legal proceedings or other compensation paid or to be paid to the applicant arising from any legal proceedings concerning the relevant incident,
- certify that they understand that data will be retained and will be subject to the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (as amended),
- certify that they understand that decisions of the Tribunal may be made publicly available, appropriately redacted,
- accept the terms of the scheme in relation to eligibility and time limits,
- accept time limits reasonably set by the Tribunal for return of documentation,
- authorise a range of bodies to provide reports to the Tribunal at its request.<sup>130</sup>

### (c) Submissions

[4.113] In its Consultation Paper, the Commission referred to publicly available information where victims had described the current application process as “extremely stressful and overwhelming, especially at a time when day to day living was difficult”; and “complicated and add[ing] to applicants’ grief and anxiety in the wake of their tragic loss”.<sup>131</sup> The Commission asked consultees for their views on the format of the application process, whether it was generally

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<sup>130</sup> These include medical practitioners, An Garda Síochána, Fiosrú, the Revenue Commissioners, the Department of Social Protection, Department of Agriculture and the Health authorities, the applicant’s employers, the applicant’s health insurance provider, the applicant’s financial advisors and “any other relevant parties”. See Criminal Injuries Compensation Scheme, “Application Forms” <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

<sup>131</sup> The Commission was referring to information provided by the victim support group “Support after Homicide”, shared at a webinar organised by the Victims’ Rights Alliance in 2021. See Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 175 and 176.

easy or difficult to complete, and how the process could be improved.<sup>132</sup> Submissions stated that the application process was “unnecessarily bureaucratic”, “cumbersome” and presented “major difficulties” for cross-border applicants who did not have English as their first language.

- [4.114] The Commission further asked whether an online application process would reduce administrative obstacles and increase accessibility.<sup>133</sup> Responses were unanimous in supporting the introduction of an online application process. However, a strong majority also stated that a paper application should be retained to facilitate those with lower levels of computer literacy or those who prefer handwritten applications.
- [4.115] The Commission also asked whether an online application process would only be suitable for certain classes of claims such as minor claims, and if paper applications should be retained for other types of claims.<sup>134</sup> No responses were in favour of a classification system in which lesser claims could be made online and larger claims made otherwise. Consultees indicated broad support for an online application process to be introduced alongside a paper-based application for all applicants to increase efficiency and accessibility.
- [4.116] The Commission is aware that the section for the applicant to permit staff of the Tribunal to seek information and collect documents from third parties on the applicant’s behalf can be confusing for applicants because applicants are told both that they are responsible for providing certain documents themselves,<sup>135</sup> and they are told to authorise the Tribunal to seek those same documents. Research submitted to the Commission highlights the inconsistency of applicants’ experiences in this regard.<sup>136</sup> Some applicants reported being required to gather documents themselves, while others reported that Tribunal staff collected documents on their behalf. This suggests a lack of clarity about when the Tribunal is responsible for collecting documents and when the applicant is responsible for providing them.

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<sup>132</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 205, question 6.1.

<sup>133</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 205, question 6.2.

<sup>134</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 205, question 6.2(1).

<sup>135</sup> Paragraph 10 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>136</sup> See further O’Driscoll, “‘Trundled Along, Almost Unheard of, Almost Inaccessible’: Understanding Access to State Compensation for Victims of Violent Crime in Ireland and the European Union” (PhD thesis, Dublin City University 2025).

## (d) Proposals for reform

### (i) Applications

- [4.117] The Commission recommends that the application process should be not only accessible, efficient and fair but also designed to make the applicant's experience as simple and straightforward as possible.
- [4.118] The Commission believes that provision for online applications, in addition to the options currently available, would significantly enhance accessibility. Online application systems are already in use in comparable jurisdictions. For example, the system used by the Northern Ireland Criminal Injuries Compensation Scheme not only allows applicants to apply to the scheme online but also enables them to check the progress of their application at any time.<sup>137</sup>
- [4.119] The Commission has previously recommended the increased use of information communication technology ("ICT") in the administration of justice.<sup>138</sup> In the context of victim compensation, the Milquet Report has recommended that state compensation schemes should be digitised to achieve simplification.<sup>139</sup> In light of this, the Commission recommends the provision of an updated and comprehensive bespoke website for the statutory body. The website should be user accessible and provide multiple language options.
- [4.120] Incorporating an online application procedure as part of a new bespoke website for the statutory scheme could greatly reduce the administrative burden on both applicants and staff. An online application system would make the process more accessible and user-friendly. The Commission envisages that an online portal would include a facility both to make applications, and to track and review the status of an application, so victims can easily access updates on the process. The integration of an online system would also make it easier to share information and collaborate with other relevant bodies, including victim support services.
- [4.121] However, the Commission recognises that digital literacy should not be taken for granted and that for some victims, a paper application would be more accessible.

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<sup>137</sup> See Northern Ireland Direct, "Apply for compensation or check progress of your claim" <<https://www.nidirect.gov.uk/services/apply-compensation-or-check-progress-your-claim>> accessed 23 March 2026.

<sup>138</sup> Law Reform Commission, *Report on Suspended Sentences* (LRC 123-2020) at para 8.9: "The Commission also recommends that the ICT architecture underpinning court processes should be examined, and that consideration be given to streamlining and modernising the ICT systems in each agency of the criminal justice system, and ensuring their interoperability, so as to facilitate a collaborative and efficient approach to the operation of the criminal justice system."

<sup>139</sup> Recommendation 28 in Milquet, *Strengthening Victims' Rights: From Compensation to Reparation for a New EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at page 54.

It therefore recommends the retention of paper-based applications that can be posted to the Tribunal alongside the introduction of an online application system.

- [4.122] A third method of filling in applications could be in person. The Commission recognises that some applicants may need significant assistance with filling in the details and understanding what is required of them. Staff at the information and assistive tier could provide a deeply valuable service in this regard.
- [4.123] Providing multiple methods of filling in the application, along with appropriate supports would also reduce the likelihood of applications being refused due to being incomplete. Research by O'Driscoll has assessed the challenges faced by victims who have applied to the current scheme and had incomplete applications refused by decision-makers.<sup>140</sup> His research shows that where assistance is proactively given by staff members at the application stage, a refusal on the basis of incomplete applications is less likely.<sup>141</sup>

#### *Plain language*

- [4.124] The Commission believes that the application process can be significantly improved by providing a clearly worded, precise and structured application form. Application forms should be drafted and explained in straightforward and easily understandable language to increase accessibility.
- [4.125] The application form should be accompanied by a guidance note. This note should explain the entire application process, all documents required and who should or can obtain them. It should also explain all of the victim's rights throughout the process, including the right to request an oral hearing at first instance; the right to appeal a decision by the statutory body; an explanation of the circumstances in which an applicant can apply for an interim payment and when an applicant can apply for a contribution to costs to cover legal assistance. Including this information would help applicants understand from the outset what the compensation process will entail and what they can expect.

#### *Multiple languages*

- [4.126] Under the EU Compensation Directive, the Irish scheme must accept claims from EU nationals for injuries arising from crimes of violence that occur in Ireland.<sup>142</sup>

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<sup>140</sup> See further O'Driscoll, "'Trundled Along, Almost Unheard of, Almost Inaccessible': Understanding Access to State Compensation for Victims of Violent Crime in Ireland and the European Union" (PhD thesis, Dublin City University 2025) at page 174.

<sup>141</sup> See further O'Driscoll, "'Trundled Along, Almost Unheard of, Almost Inaccessible': Understanding Access to State Compensation for Victims of Violent Crime in Ireland and the European Union" (PhD thesis, Dublin City University 2025) at page 187.

<sup>142</sup> Recitals 11, 12 and 13 of the Compensation Directive (2004/80/EC). See also Article 11 of the Compensation Directive, which states that information may be transmitted between the assisting and deciding authority in the official language of the Member State or "another language of the Community institutions that that Member State has indicated it can accept



As mentioned above, application forms are currently only available in English, with no translated versions provided. This lack of translation services may create a barrier for foreign national applicants seeking compensation. The Commission believes that to better meet the objectives of the Compensation Directive in facilitating cross-border applications, and to recognise that many applicants resident in Ireland do not have Irish or English as a first language, application forms should be available in multiple languages. Translation and interpretation services should also be available where necessary. The Commission notes the requirement that application forms should also be available in Irish to ensure compliance with duties under the Official Language Act 2003.<sup>143</sup>

#### *Multiple applications*

[4.127] There may be situations where the same incident gives rise to applications from a number of applicants. This could be family members in cases of fatal injuries. Or, it may be that there were a number of victims who suffered harm, arising out of the same crime of violence. The Commission considers that such applications may be made together and the statutory body may consider them at the same time. As addressed in the Chapter on Administration of the Statutory Body and Statutory Scheme, the Commission is recommending that the statutory body should have the power to join applications where they relate to the same crime of violence.

**R. 4.18 The Commission recommends** that a bespoke website be created for the statutory body that contains an online application procedure where applicants can make and track their application.

**R. 4.19 The Commission recommends** that application forms may be made:

- online,
- by post, or
- in-person.

**R. 4.20 The Commission recommends** that application forms should be:

- as accessible as possible;

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with the exception of (i) the full text of decisions taken by the deciding authority, where the use of languages shall be governed by the law of its Member State; (ii) reports drawn up following a hearing in accordance with Article 9(1)(b), where the use of languages shall be determined by the assisting authority, subject to the requirement that it corresponds to one of the languages of the Community institutions.”

<sup>143</sup> Public bodies are prescribed by the Minister in the Official Languages Act 2003, as amended by the Official Languages (Amendment) Act 2021. The CICT is prescribed as a public body by the Minister in the Official Languages Act 2003, as amended by the Official Languages (Amendment) Act 2021. The Minister may prescribe the contents and layout of official forms to be in Irish or in both Irish and English.

- worded in plain language;
- available in multiple languages; and
- accompanied by a guidance note.

*(ii) Requests from the applicant*

[4.128] Applicants could also indicate that they wish to make particular requests to the statutory body on the application form. They may want to request an interim payment, as discussed in the Chapter on Types of Compensation, or an advance decision on a contribution to costs, as discussed in the Chapter on Legal Assistance.

[4.129] Where an applicant wishes to make such a request, they can indicate their intention to make the request in the application form and the reasons they are making the request. The information and assistive tier should then explain the criteria for such payments and furnish the applicant with a separate application form. As discussed above, staff of the information and assistive tier could support and inform applicants in regard to whether they meet these criteria. The relevant staff member of the information and assistive tier could then indicate on the form, perhaps by ticking a box, that they consider the applicant meets the criteria, but they will not make a decision on this issue. The assessment and adjudicative tier will make the relevant decision on these requests.

**R. 4.21 The Commission recommends** that an applicant can indicate that they wish to request an interim payment on their application form, and provide detailed reasons for making this request. (This recommendation is also in the Chapter on Types of Compensation.)

**R. 4.22 The Commission recommends** that an applicant can indicate that they wish to request an advance payment on a contribution to costs on their application form, and provide detailed reasons for making this request. (This recommendation is also in the Chapter on Legal Assistance.)

**R. 4.23 The Commission recommends** that where an applicant has indicated that they wish to make a request as outlined above, the information and assistive tier should then explain the criteria for such payments to applicants, and take the following steps:

- (1) furnish the applicant with a separate application form to make such requests,
- (2) support applicants to understand whether they are likely to meet these criteria,
- (3) indicate on the relevant form that they consider the applicant is likely to meet the criteria, and

(4) forward to the assessment and adjudicative tier for a decision on these requests.

*(iii) Certificate of authority and data protection*

- [4.130] As noted above, both application forms for the current scheme contain a certificate of authority. The Commission recommends that the application form for the statutory scheme should also provide for a certificate of authority, where the applicant is requested to acknowledge the terms of the scheme, provide certain information and make certain undertakings.
- [4.131] Like the certificate of authority for the current scheme, the Commission recommends that the certificate of authority for the statutory scheme should require the applicant to acknowledge that they have read and understood the information outlined within the application form and certificate of authority, and confirm that the information provided on the application form is true to the best of their knowledge.
- [4.132] The certificate of authority for the current scheme provides for the applicant to permit the Tribunal to gather documents on their behalf.<sup>144</sup> The Commission notes that there is a lack of clarity in relation to when it might do so, as discussed above. In light of this, the Commission recommends that the situations where the statutory body can or will collect documents should be outlined.
- [4.133] It should be clear that the initial burden to collect all supporting documentation should lie with the applicant. However, the statutory body may request documents from other bodies in circumstances where:
- requested by the applicant, or
  - necessary to complete an application, or
  - necessary for a fair determination.
- [4.134] This would allocate a clear responsibility to the statutory body for following up on missing documents, not just with an applicant but also at source, such as directly with a medical practitioner for details of an injury.
- [4.135] The Commission recognises that issues may arise where an applicant is unwilling or unable to provide relevant details, such as the name of a medical practitioner, to the statutory body, which may hinder the pursuit of relevant documents. The Commission recommends an obligation on applicants to provide reasonable

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<sup>144</sup> See Criminal Injuries Compensation Scheme, "Application Forms" <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

assistance to the statutory body, with certain limited exceptions, in the Chapter on Other Eligibility Requirements.

- [4.136] As noted above, in the certificate of authority for the current scheme, victims are required to authorise the Tribunal to notify various external bodies of the victim's application and the Tribunal's related decision.<sup>145</sup> The Commission recommends that the certificate of authority for the statutory scheme should, likewise, provide for the applicant to give consent for information-sharing with other relevant bodies and authorise external bodies to provide information to the statutory body. This may be necessary for the processing of their application or for another reason. For example, the statutory body may need to share information with other bodies where compensation covering the same harm may be provided by another source (known as double compensation). This issue is explored in the Chapter on Preventing Double Compensation.
- [4.137] In the Chapter on Preventing Double Compensation, the Commission recommends that an applicant must inform the statutory body of other payments they have received, or potential payments they expect to receive, covering the same expenses or losses arising from the crime of violence. This includes past payments, for example from insurance companies, their employer, or the Department of Social Protection, and any alternative avenues they are considering for compensation for the crime of violence, such as taking a case against the alleged offender in the civil courts. This undertaking should be in the certificate of authority.
- [4.138] The Commission also recommends that the applicant should be required to undertake to inform the statutory body should they receive a subsequent payment from another source covering the same losses as their compensation payment. Information about how payments by the statutory body may be recovered in the event of a double payment should also be included in the application form or guidance note. This issue is discussed in detail in the Chapter on Preventing Double Compensation.
- [4.139] The Commission also recommends that should an applicant have taken, or intends to take, civil proceedings against the offender for the same crime of violence, the applicant should inform the statutory body of the details of their legal representatives. The applicant should also be asked to give their consent to contact from the statutory body to their legal representatives seeking any information on separate compensation payments intended to cover the same losses as applied for under the statutory scheme, and potentially for an

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<sup>145</sup> See Criminal Injuries Compensation Scheme, "Application Forms" <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

appropriate undertaking regarding repayment. This issue is further discussed in the Chapter on Preventing Double Compensation.

- [4.140] The certificate of authority should also inform applicants that their application forms and any other information or document related to their application may be subject to requests for discovery or disclosure in any potential civil or criminal proceedings, and the victim may be subject to examination or cross-examination on this material relating to their application when they are giving evidence in subsequent court proceedings. These issues are explored in more detail in the Chapter on Interaction with Court Proceedings. In that Chapter, the Commission recommends that a victim's informed, voluntary and written consent should always be sought before any information or documents are shared externally following a request for discovery or disclosure, in the absence of a court order. The Commission also recommends that the statutory body should make clear to a victim that a decision not to consent to requests for disclosure or discovery will have no adverse consequences for their application for compensation.
- [4.141] As noted above, in the certificate of authority for the current scheme an applicant confirms that they understand that their personal data may be retained by the Tribunal for the purposes of determining applications under the scheme,<sup>146</sup> and will be processed in accordance with the GDPR and the Data Protection Act 2018.<sup>147</sup> Likewise, in all instances where an applicant's personal data may be shared, the statutory body will have to conform with relevant data protection law, including the GDPR and the Data Protection Act 2018.
- [4.142] The Commission notes that individuals have the right to have their personal data handled lawfully, fairly, and in a transparent manner by public bodies, and only where it is relevant, essential, and necessary to do so.<sup>148</sup> This should be stated explicitly in the certificate of authority for the statutory scheme in order to explain to victims how their personal data will be protected in accordance with the law.

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<sup>146</sup> See Criminal Injuries Compensation Scheme, "Application Forms" <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

<sup>147</sup> See Criminal Injuries Compensation Scheme, "Application Forms" <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

<sup>148</sup> Data Protection Commission, "Data Sharing in the Public Sector" (April 2019) <<https://www.dataprotection.ie/sites/default/files/uploads/2019-05/190418%20Guidance%20on%20Data%20Sharing%20in%20the%20Public%20Sector.pdf>> accessed 3 March 2026.

[4.143] The Commission notes that compensation schemes in other jurisdictions<sup>149</sup> and similar statutory bodies in Ireland<sup>150</sup> have their own data protection policies or statements specifically relating to their work. Typically, they highlight the circumstances in which data about an applicant can be shared or how this will be done. The Data Protection Commission states that individuals “need to be informed as to how their personal information is used and for what purpose, who has access to it, and how the sharing of that information will impact them”.<sup>151</sup> The Commission recommends that the statutory body publish such a statement, explaining when and how an applicant’s data will be shared, in compliance with relevant data protection rules.

[4.144] In light of the above, the Commission proposes that the application form for the statutory scheme should contain a certificate of authority which includes provision for the applicant to:

- acknowledge that they understand the eligibility criteria and the exclusions outlined in the scheme, and that the presence of any exclusionary criteria may lead to a reduction or refusal of compensation,
- inform the proposed statutory body in the certificate of authority of:
  - past payments, including damages, settlement or other compensation covering any costs or losses associated with their injury,
  - any alternative avenues they are considering for compensation, and
- authorise the statutory body to seek documents on the applicant’s behalf where:
  - requested by the applicant, or
  - necessary to complete an application or
  - necessary for a fair determination;

<sup>149</sup> See, for example, in France: Fonds de Garantie des Victimes, “Personal Data Protection Policy” (September 2022) <[https://www.fondsdegarantie.fr/wp-content/uploads/2022/09/RGPD\\_Politique-160922-v-def.pdf](https://www.fondsdegarantie.fr/wp-content/uploads/2022/09/RGPD_Politique-160922-v-def.pdf)> accessed 23 March 2026, and in Northern Ireland: Compensation Services, “Compensation Services Privacy Notice” <<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/Compensation%20Services%20Privacy%20Notice.pdf>> accessed 23 March 2026.

<sup>150</sup> The Workplace Relations Commission and the Mental Health Commission each have a “Data Protection Statement”: Workplace Relations Commission, “Workplace Relations Commission (WRC) Data Protection Statement” (November 2021) <[https://www.workplacerelations.ie/en/data\\_protection/data-protection-statement/](https://www.workplacerelations.ie/en/data_protection/data-protection-statement/)> accessed 23 March 2026; Mental Health Commission, “Data Protection Statement” (February 2020) <<https://www.mhcirl.ie/data-protection-statement>> accessed 23 March 2026.

<sup>151</sup> Data Protection Commission, “Data Sharing in the Public Sector” (April 2019) <<https://www.dataprotection.ie/sites/default/files/uploads/2019-05/190418%20Guidance%20on%20Data%20Sharing%20in%20the%20Public%20Sector.pdf>> accessed 23 March 2026.

- give consent for the sharing of their personal information by the statutory body, where necessary for the processing of their application, or other lawful purpose, including for identifying potential double payments;
- inform the statutory body of the details of their legal representatives, should an applicant have taken, or intends to take, civil proceedings against the offender for the same crime of violence;
- give consent to contact from the statutory body to their legal representatives seeking any information on separate compensation payments intended to cover the same losses as applied for under the statutory scheme and, potentially, seeking an appropriate undertaking regarding repayment. This issue is discussed in the Chapter on Preventing Double Compensation.
- authorise external bodies to share information with the statutory body at its request where necessary for the processing of their application;
- certify that they understand that their personal data will be retained and will be subject to the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (as amended),
- acknowledge that they are aware that their application form and any other information or document related to their application may be subject to requests for discovery in civil proceedings or disclosure in criminal trials;
- acknowledge that they are aware that they be subject to examination or cross-examination on this material relating to their application when they are giving evidence in subsequent court proceedings.
- undertake to notify the statutory body of any change to their circumstances, including any payment they receive in the future covering the same losses they have been compensated for under the statutory scheme;
- certify that they understand that decisions of the statutory body may be made publicly available, once appropriately redacted, or may be delayed if the interests of justice so require.

[4.145] The Commission recommends that application forms should be accompanied by a guidance note which explains the entire application process, all documents required and who should or can obtain them, and in what circumstances, as well as all of the applicant's rights throughout the process. Staff at the assistive tier should be required to confirm with applicants that they understand everything in the application form and certificate of authority.

[4.146] In addition, the Commission recommends that the statutory body should publish its own data protection policy, disclosing when and how an applicant's data will be shared, in compliance with relevant data protection rules.

**R. 4.24 The Commission recommends** that application forms should contain a certificate of authority, which provides for the applicant to:

- (1) acknowledge that they understand the eligibility criteria and the exclusions outlined in the scheme, and that the presence of any exclusionary criteria may lead to a reduction or refusal of compensation;
- (2) inform the proposed statutory body in the certificate of authority of:
  - (a) past payments, including damages, settlements or other compensation covering any costs or losses associated with their injury;
  - (b) any alternative avenues they are considering for compensation, and
- (3) authorise the statutory body to seek documents on the applicant's behalf where:
  - (a) requested by the applicant, or
  - (b) where necessary to complete an application, or
  - (c) where necessary for a fair determination;
- (4) give consent for the sharing of their personal information by the statutory body, where necessary for the processing of their application, or other lawful purpose, including for identifying potential double payments;
- (5) inform the statutory body of the details of their legal representatives, should an applicant have taken or intend to take civil proceedings against the offender for the same crime of violence;
- (6) give consent to contact from the statutory body to their legal representatives seeking any information on separate compensation payments intended to cover the same losses as applied for under the statutory scheme and, potentially, seeking an appropriate undertaking regarding repayment (this issue is discussed in the Chapter on Preventing Double Compensation);
- (7) authorise external bodies to share information with the statutory body at its request where necessary for the processing of their application;
- (8) certify that they understand that their personal data will be retained and will be subject to the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (as amended);
- (9) acknowledge that they are aware that their application form and any other information or document related to their application may be subject to requests for discovery in civil proceedings or disclosure in criminal trials;



- (10) acknowledge that a decision not to consent to requests for disclosure or discovery will have no adverse consequences for their application for compensation;
- (11) acknowledge that they are aware that they may be subject to examination or cross-examination on this material relating to their application when they are giving evidence in subsequent court proceedings;
- (12) undertake to notify the statutory body of any change to their circumstances, including any payment they receive in the future covering the same losses they have been compensated for under the statutory scheme;
- (13) certify that they understand that decisions of the statutory body will be made publicly available, once appropriately redacted, or may be delayed if the interests of justice so require.

**R. 4.25 The Commission recommends** that application forms should be accompanied by a guidance note in plain language which explains the entire application process, all documents required and who should or can obtain them, and in what circumstances, as well as all of the applicant's rights throughout the process. Staff at the assistive tier should confirm with an applicant that they understand everything in the application form and certificate of authority.

**R. 4.26 The Commission recommends** that the statutory body should publish its own data protection policy, disclosing when and how an applicant's data will be shared, in compliance with relevant data protection rules.

[4.147] payment.<sup>152</sup> A person against whom an order was made may object to the order within 28 days.<sup>153</sup>

[4.148] Once the order has been confirmed, the Commissioner of Victims Rights may serve a debt notice on the person.<sup>154</sup> If the amount to be paid is not paid by the due date, the matter may be referred to the Fines Commissioner and enforcement action may be taken.<sup>155</sup>

<sup>152</sup> Section 70 of the Victims Rights and Support Act 2013 (New South Wales).

<sup>153</sup> Section 62 of the Victims Rights and Support Act 2013 (New South Wales).

<sup>154</sup> Section 70B of the Victims Rights and Support Act 2013 (New South Wales).

<sup>155</sup> Section 72 of the Victims Rights and Support Act 2013 (New South Wales).

# CHAPTER 5 ADMINISTRATION OF THE STATUTORY BODY AND STATUTORY SCHEME

## TABLE OF CONTENTS

|                  |                                                                     |            |
|------------------|---------------------------------------------------------------------|------------|
| <b>Chapter 5</b> | <b>Administration of the Statutory Body and Statutory Scheme</b>    | <b>118</b> |
| 1.               | <i>Introduction</i> .....                                           | 121        |
| 2.               | <i>EU standards: Reducing procedural barriers for victims</i> ..... | 121        |
| 3.               | <i>Composition of the statutory body</i> .....                      | 123        |
|                  | (a) Current scheme.....                                             | 123        |
|                  | (b) Comparative bodies.....                                         | 124        |
|                  | (c) Proposals for reform.....                                       | 128        |
| 4.               | <i>Appointment, tenure and removal</i> .....                        | 132        |
|                  | (a) Current scheme.....                                             | 132        |
|                  | (b) Comparative bodies.....                                         | 133        |
|                  | (c) Proposals for reform.....                                       | 137        |
| 5.               | <i>Qualifications</i> .....                                         | 138        |
|                  | (a) Current scheme.....                                             | 138        |
|                  | (b) Comparative bodies.....                                         | 139        |
|                  | (c) Proposals for reform.....                                       | 140        |
| 6.               | <i>Specialist training</i> .....                                    | 142        |
|                  | (a) Current scheme.....                                             | 142        |
|                  | (b) Relevant law.....                                               | 143        |
|                  | (c) Submissions .....                                               | 143        |
|                  | (d) Proposals for reform.....                                       | 144        |
| 7.               | <i>Powers of the statutory body</i> .....                           | 145        |
|                  | (a) Introduction .....                                              | 145        |
|                  | (b) Power to determine procedural rules.....                        | 146        |
|                  | (c) Power to hold a hearing.....                                    | 147        |
|                  | (d) Power to join applications .....                                | 152        |
|                  | (e) Evidence .....                                                  | 153        |
|                  | (f) Publication and redaction of decisions.....                     | 157        |
|                  | (g) Power to make a direct payment.....                             | 161        |
| 8.               | <i>Referring a question of law to the High Court</i> .....          | 162        |
|                  | (a) Overview .....                                                  | 162        |

|                               |     |
|-------------------------------|-----|
| (b) Proposals for reform..... | 163 |
|-------------------------------|-----|



## 1. Introduction

- [5.1] In the previous Chapter, the Commission outlined its recommendations for a three-tiered structure for the proposed statutory body; recommending an information and assistive tier, an assessment and adjudication tier, and an appeals tier. In this Chapter, the Commission makes recommendations for the administration of the proposed statutory body and statutory scheme, taking into account relevant law, how equivalent bodies are administered in Ireland, the approach of comparative jurisdictions, and the views of consultees.
- [5.2] The Chapter begins by examining the European Union (“EU”) imperative for reducing procedural barriers to compensation. It outlines the existing procedures under the Criminal Injuries Compensation Scheme<sup>1</sup> (“the current scheme”) and then addresses the Commission’s proposals for the administration of the new statutory body, including its composition, functions, procedures and powers.
- [5.3] The way the statutory scheme is administered can significantly influence how applicants experience the compensation process. Procedural justice, in other words the fairness, transparency, and inclusivity of the process itself, can play a crucial role in shaping how individuals perceive the legitimacy of decision-making. The Commission’s recommendations aim to provide for procedural justice and to ensure that the statutory body is equipped to meet the specific needs of victims of crimes of violence.

## 2. EU standards: Reducing procedural barriers for victims

- [5.4] As explored throughout the Report, under the EU Directive relating to compensation to crime victims (“Compensation Directive”), Member States must provide victims of violent intentional crime with fair and appropriate compensation.<sup>2</sup> The Compensation Directive does not provide detailed guidance on the procedural and practical aspects of how compensation schemes should be administered. As a result, Member States have considerable discretion in designing and implementing their compensation systems.
- [5.5] There is, however, one clear requirement under EU law – the requirement to protect victims from secondary victimisation. This duty is contained in the Directive establishing minimum standards on the rights, support and protection

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<sup>1</sup> The most recent version of the Criminal Injuries Compensation Scheme is effective from 31 January 2025. The terms and conditions of the scheme, last updated July 2025, are available here: <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/terms-and-conditions-of-the-criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

<sup>2</sup> Article 12(2) of the Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims [2004] OJ L 261/15 (“Compensation Directive”).

of victims of crime ("Victims' Rights Directive").<sup>3</sup> The EU Strategy on Victims' Rights (2020-2025) also emphasises its importance.<sup>4</sup> Secondary victimisation means victimisation which occurs not as a direct result of the criminal act, but through the response of institutions and individuals to the victim.<sup>5</sup> Secondary victimisation can occur through repeated questioning of the victim about the same facts, the use of inappropriate or insensitive language, or repeated exposure of the victim to the offender. The Commission considers that, in order to comply with EU standards, the administration and procedures of the proposed statutory body must be designed to protect victims from retraumatisation. The Commission also notes that studies have shown that victims are more likely to be satisfied with a result when they are treated with dignity and respect, and are included in the decision-making process, regardless of whether they obtain the outcome they hoped for or expected.<sup>6</sup>

- [5.6] The Compensation Directive requires Member States to "endeavour to keep to a minimum the administrative formalities required of an applicant for compensation".<sup>7</sup> This underscores the importance of providing for a relatively informal procedure and ensuring that the application process is accessible for victims, to reduce the risk of secondary victimisation caused by administrative obstacles.
- [5.7] The EU Strategy on Victims' Rights (2020-2025) emphasises the duty of Member States to eliminate existing procedural hurdles within national compensation systems.<sup>8</sup> Procedural hurdles can include "restrictive time limits" and

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<sup>3</sup> Recital 9 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA OJ L 315/57 ("Victims' Rights Directive"): "Victims of crime should be protected from secondary and repeat victimisation".

<sup>4</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Strategy on victims' rights (2020-2025) COM (2020) 258 ("EU Strategy on Victims' Rights (2020-2025)") at page 18: Key actions for Member States include to "[t]ake actions to ensure that victims are not exposed to secondary victimisation during the compensation procedure" and to "[e]nsure that the staff of national compensation authorities are aware of victims' rights and needs to avoid risks of secondary victimisation".

<sup>5</sup> See the definition in, for example, Article 1.4 of the Council of Europe, Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime (Adopted by the Committee of Ministers on 15 March 2023 at the 1460th meeting of the Ministers' Deputies). See also section 2 of the Criminal Justice (Victims of Crime) Act 2017, which defines secondary victimisation as "victimisation that occurs indirectly through the response of institutions and individuals to the victim".

<sup>6</sup> Wemmers, van der Leeden and Steensma, "What is Procedural Justice: Criteria used by Dutch Victims to Assess the Fairness of Criminal Justice Procedures" (1995) 8(4) Social Justice Research 329 at pages 347 – 348.

<sup>7</sup> Article 3(3) of the Compensation Directive (2004/80/EC).

<sup>8</sup> EU Strategy on Victims' Rights (2020-2025) at page 18.

“complicated rules” governing compensation schemes.<sup>9</sup> By minimising administrative formalities and procedural barriers, Member States can create a more supportive and responsive environment for victims. This approach not only helps reduce the burden on victims, but can also ensure that they can access compensation in a timely and efficient manner.

- [5.8] The Commission has taken into account the need to avoid secondary victimisation and reduce procedural hurdles in the development of its recommendations in relation to the administration of the statutory scheme, as outlined throughout this Chapter.

### 3. Composition of the statutory body

#### (a) Current scheme

- [5.10] The current scheme provides that the Criminal Injuries Compensation Tribunal (“the Tribunal”) is composed of a chairperson and 13 ordinary members.<sup>10</sup> All members must be either practising barristers or solicitors.<sup>11</sup> The chairperson and the members of the Tribunal are appointed by the Minister for Justice.<sup>12</sup>
- [5.11] The members of the Tribunal serve on a part-time basis and are required to remain practising barristers or solicitors throughout their tenure.<sup>13</sup> They are not full-time employees of the Tribunal or the Department of Justice. They receive payment based on fees per decision or hearing.<sup>14</sup> In the past, the limited number of members of the Tribunal was a contributing factor to ongoing delays in awards of compensation.<sup>15</sup> This has been remedied somewhat by an increase in the number of members sitting on the Tribunal. Previously, there were seven Tribunal members, including a chairperson. This was increased to 13 Tribunal members and a chairperson in 2021.<sup>16</sup> The Tribunal has a secretariat, consisting of seven full-time Tribunal staff. These are civil servants who have been assigned by the Department of Justice to the Tribunal secretariat.<sup>17</sup>

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<sup>9</sup> EU Strategy on Victims’ Rights (2020-2025) at page 16.

<sup>10</sup> Paragraph 16 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>11</sup> Paragraph 16 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>12</sup> Paragraph 16 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>13</sup> Criminal Injuries Compensation Tribunal, *Annual Report 2024* (2025) at page 6.

<sup>14</sup> Paragraph 16 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>15</sup> Grant, “The Criminal Injuries Compensation Scheme for Personal Injuries Criminally Inflicted: In Need of Reform” (2020) 30(4) *Irish Criminal Law Journal* 94 at page 96. See also *Byrne v Criminal Injuries Compensation Tribunal* [2017] IEHC 28.

<sup>16</sup> Paragraph 16 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>17</sup> Criminal Injuries Compensation Tribunal, *Oversight Agreement 2024-2025* (Department of Justice and the Criminal Injuries Compensation Tribunal 2024) at para

### (a) Comparative bodies

[5.12] The composition of other adjudicative bodies in Ireland varies. The Mental Health Commission ("MHC"), the International Protection Appeals Tribunal ("IPAT") and the Workplace Relations Commission ("WRC") are explored in each section below, as samples of the approach to legislating for equivalent bodies in Ireland.

#### (i) *Mental Health Commission*

[5.13] The principal functions of the MHC are to promote high standards in mental health services and to take all reasonable steps to protect the interests of people detained in centres under the Mental Health Act 2001.<sup>18</sup> To reflect a range of expertise, the MHC is composed of 13 members, who are appointed by the Minister for Health,<sup>19</sup> including at least four women and at least four men.<sup>20</sup> The Minister appoints a chairperson of the MHC from members of the MHC.<sup>21</sup> The MHC consists of thirteen members as follows:<sup>22</sup>

- one solicitor or barrister with ten years' experience,
- three registered medical practitioners (including two consultant psychiatrists) with a special interest in providing mental health services,
- two registered nurses,
- one representative of social workers with a special interest in providing mental health services,
- one representative of psychologists with a special interest or expertise in providing mental health services,
- one representative of the interests of the general public,
- three representatives of voluntary bodies that promote the interests of people suffering from mental illness (including at least two who have suffered or are suffering from mental illness), and

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1.6 <<https://assets.gov.ie/static/documents/oversight-agreement-between-the-department-of-justice-and-th...>> accessed 23 March 2025.

<sup>18</sup> Section 33(1) of the Mental Health Act 2001.

<sup>19</sup> Section 35(1) of the Mental Health Act 2001.

<sup>20</sup> Section 35(2)(i) of the Mental Health Act 2001.

<sup>21</sup> Section 37(1) of the Mental Health Act 2001.

<sup>22</sup> These members are nominated for appointment by organisations that the Minister for Health considers to be representative of each relevant profession or sector. See further section 35(3), (4), (5), (6) and (7) of the Mental Health Act 2001.



- one employee of the Health Service Executive ("HSE") nominated by the Executive.<sup>23</sup>

- [5.14] The MHC appoints its own staff. The number, remuneration and grades of the staff are determined with the consent of the Minister for Health and the Minister for Finance.<sup>24</sup>
- [5.15] The MHC also appoints a Chief Executive<sup>25</sup> who manages and controls the administration and business of the MHC.<sup>26</sup> The MHC's functions are performed by the Chief Executive in the name of the MHC.<sup>27</sup> The length of the Chief Executive's term in office and other conditions may be determined by the Minister for Health after consultation with the MHC.<sup>28</sup> The Chief Executive can be removed from office with the consent of the Minister.<sup>29</sup>
- [5.16] One of the MHC's functions is to appoint tribunals known as Mental Health Tribunals ("MHT").<sup>30</sup> MHTs are not permanent bodies. MHTs are established on a case-by-case basis to review decisions about a patient's care.<sup>31</sup> For example, they may determine whether a patient is suffering from a mental disorder, authorise the transfer of patients to the Central Mental Hospital, or authorise psychosurgery.<sup>32</sup> Each MHT consists of three members: a consultant psychologist, a practising barrister or solicitor with no less than seven years' experience who is the chairperson of the MHT, and another consultant psychologist or practising barrister or solicitor, or a registered medical practitioner or nurse.<sup>33</sup> This composition ensures that both legal and medical experts are included in the decision-making process.

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<sup>23</sup> Section 35(2) of the Mental Health Act 2001.

<sup>24</sup> Section 39 of the Mental Health Act 2001.

<sup>25</sup> Section 38(2) of the Mental Health Act 2001.

<sup>26</sup> Section 38(3) of the Mental Health Act 2001.

<sup>27</sup> Or another officer of the Commission authorised to do so by the Chief Executive – see section 38(5) of the Mental Health Act 2001.

<sup>28</sup> Section 38(4) of the Mental Health Act 2001.

<sup>29</sup> Section 38(2) of the Mental Health Act 2001.

<sup>30</sup> Section 48(1) of the Mental Health Act 2001.

<sup>31</sup> Section 17 of the Mental Health Act 2001.

<sup>32</sup> Mental Health Commission, "Mental Health Tribunal: Information and Guidance for Panel Members" (November 2023) at page 1.

<sup>33</sup> Section 48(3) of the Mental Health Act 2001. As provided in section 48(5) of the Mental Health Act 2001, members of the MHC are disqualified from being members of the MHTs

*(ii) International Protection Appeals Tribunal*

- [5.17] IPAT is a body that hears appeals from applicants for international protection regarding decisions of international protection officers.<sup>34</sup> IPAT is composed of:
- one full-time chairperson,
  - not more than two full-time deputy chairpersons, and
  - other members appointed in full-time or part-time capacity with the appropriate experience.<sup>35</sup>
- [5.18] The Minister for Justice decides the total number of members and their working terms and conditions<sup>36</sup> with the agreement of the Minister for Public Expenditure and Reform. This decision is based on how many members are considered necessary to ensure the Tribunal can carry out its functions efficiently.<sup>37</sup> According to IPAT's website, IPAT currently has six full-time members.<sup>38</sup> IPAT members are appointed by the Minister for Justice<sup>39</sup> following a Public Appointments Service ("PAS") competition.<sup>40</sup> The chairperson and deputy chairpersons must have at least five years' experience as practising solicitors or barristers. The other members must have at least two years' relevant legal experience.<sup>41</sup>
- [5.19] The IPAT chairperson ensures that the Tribunal operates efficiently, ensuring that the business assigned to each member is dealt with as quickly as possible while remaining consistent with fairness and natural justice, issuing guidelines, convening meetings, and making written reports.<sup>42</sup>
- [5.20] IPAT also has a Registrar who manages and controls its administration, assigns appeals to members, and carries out other functions given to them by the

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<sup>34</sup> International Protection Appeals Tribunal, "What We Do" (17 April 2025) <<https://www.protectionappeals.ie/about-the-tribunal/what-we-do/>> accessed 23 March 2026. IPAT was established in 2016 in accordance with section 61 of the International Protection Act 2015.

<sup>35</sup> Section 62(1) of the International Protection Act 2015. "Appropriate experience" is defined in section 62(2) of the International Protection Act 2015 and includes a range of specific legal qualifications.

<sup>36</sup> Section 62 of the International Protection Act 2015.

<sup>37</sup> Section 62(1) of the International Protection Act 2015.

<sup>38</sup> The International Protection Appeals Tribunal, "Who We Are" <<https://www.protectionappeals.ie/about-the-tribunal/who-we-are/>> accessed 23 March 2026.

<sup>39</sup> Section 62(3) of the International Protection Act 2015.

<sup>40</sup> Section 62(4) of the International Protection Act 2015.

<sup>41</sup> Section 62(2) of the International Protection Act 2015.

<sup>42</sup> Section 63 of the International Protection Act 2015.

chairperson.<sup>43</sup> The Registrar is appointed by the Minister for Justice<sup>44</sup> and is accountable to the chairperson.<sup>45</sup> Their remuneration and other terms and conditions are determined by the Minister, with the consent of the Minister for Public Expenditure and Reform.<sup>46</sup>

*(iii) Workplace Relations Commission*

[5.21] The WRC is an independent statutory body with a number of responsibilities, including the provision of information to the public in relation to employment, the inspection of employment rights compliance, and advising the Minister for Enterprise, Trade and Employment on relevant legislative enactments.<sup>47</sup> The board of the WRC is composed of a chairperson and eight ordinary members, all of whom are appointed by the Minister.<sup>48</sup> The Minister must ensure, in so far as practicable, that there is an equitable balance between men and women.<sup>49</sup> The eight ordinary members must include:

- two members who represent the interests of employees,
- two members who represent the interests of employers,
- one member who represents the interests of bodies who seek to promote equality in the workplace, and
- three members who have experience and expertise in relation to workplace relations, resolution of disputes in the workplace, employment law, or equality law.<sup>50</sup>

[5.22] The CEO of the WRC (“the Director General”)<sup>51</sup> is appointed by the Minister for Enterprise, Trade and Employment following a Public Appointments Service (“PAS”) competition.<sup>52</sup> The Director General manages and controls the

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<sup>43</sup> Section 67(1) and (2) of the International Protection Act 2015.

<sup>44</sup> Section 66(1) of the International Protection Act 2015.

<sup>45</sup> Section 66(3) of the International Protection Act 2015.

<sup>46</sup> Section 62(6) of the International Protection Act 2015.

<sup>47</sup> Section 11 of the Workplace Relations Act 2015; Workplace Relations Commission, “About the WRC” <<https://www.workplacerelations.ie/en/what-we-do/wrc/>> accessed 23 March 2026.

<sup>48</sup> Section 10, Schedule 3, section 2(1) of the Workplace Relations Act 2015.

<sup>49</sup> Section 10, Schedule 3, section 2(4) of the Workplace Relations Act 2015.

<sup>50</sup> Section 10, Schedule 3, section 2(3) of the Workplace Relations Act 2015.

<sup>51</sup> Section 12(1) of the Workplace Relations Act 2015.

<sup>52</sup> Section 12(2) of the Workplace Relations Act 2015.

administration and business of the Commission.<sup>53</sup> The Director General is accountable to the Minister for the efficient and effective management of the WRC and the performance of their functions.<sup>54</sup>

- [5.23] A practising barrister or solicitor is also appointed by the Minister to act as Registrar of the Commission following a PAS competition.<sup>55</sup>
- [5.24] The Minister for Enterprise, Trade and Employment appoints “such and so many of his or her officers as he or she may determine to be members of staff of the Commission.”<sup>56</sup> The terms and conditions of employment of members of staff are determined by the Minister with the consent of the Minister for Public Expenditure and Reform.<sup>57</sup> Members of staff perform their functions under the direction and control of the Director General.<sup>58</sup>
- [5.25] Adjudication officers adjudicate on complaints and disputes referred to them by the Director General of the WRC.<sup>59</sup> They are appointed by the Minister from staff of the WRC or other people who are suitable for the role.<sup>60</sup>

## **(b) Proposals for reform**

### *(i) Staff members and assessment and adjudication officers*

- [5.26] The Commission notes that as outlined above, the MHC, IPAT and the WRC all employ a wide variety of staff, to best meet the needs of each organisation. Both the number of staff, and the qualifications necessary for each decision-maker, vary depending on the role and functions of the body.
- [5.27] The Commission considers that each tier of the proposed statutory body must have an adequate number of staff to fulfil their functions appropriately and efficiently.<sup>61</sup> However, the Commission believes that it is not yet possible to determine an exact number of staff required by the statutory body because its future workload is unclear at this stage. The appropriate number of decision-

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<sup>53</sup> Section 14(1) of the Workplace Relations Act 2015.

<sup>54</sup> Section 14(2) of the Workplace Relations Act 2015.

<sup>55</sup> Section 25(1) of the Workplace Relations Act 2015.

<sup>56</sup> Section 24(1) of the Workplace Relations Act 2015.

<sup>57</sup> Section 24(2) of the Workplace Relations Act 2015.

<sup>58</sup> Section 24(4) of the Workplace Relations Act 2015.

<sup>59</sup> Section 41 of the Workplace Relations Act 2015.

<sup>60</sup> Section 40(1) and (1A) of the Workplace Relations Act 2015.

<sup>61</sup> The Commission is proposing in the previous Chapter that the proposed statutory body should have three tiers: the information and assistive tier; the assessment and adjudication tier; and the appeals tier. This is discussed in further detail in the Chapter on the Structure of the Statutory Body and the Application Process.

makers would vary depending on case load, and in the Commission's view, the statutory body should have the flexibility to recruit new staff and decision-makers, including temporary decision-makers, when necessary. The staff and decision-makers could be full or part-time.

- [5.28] The Commission recommends that staff of the information and assistive tier should be appointed by the statutory body itself for reasons of administrative efficiency. This should be done through the PAS system.
- [5.29] The Commission examines the appointment process for assessment and adjudication officers below.

- R. 5.1 The Commission recommends** that the statutory body should be adequately staffed at the information and assistive tier to ensure sufficient support is available for all applicants.
- R. 5.2 The Commission recommends** that staff of the information and assistive tier be appointed by the statutory body itself.
- R. 5.3 The Commission recommends that** the statutory body should have a sufficient number of assessment and adjudication officers at the assessment and adjudicative tier and for the appeal tier to meet the demands of its case load.

*(ii) Chairperson*

- [5.30] The current scheme does not specify the functions of the chairperson.<sup>62</sup> However, the 2024-2025 oversight agreement between the Department of Justice and the Tribunal states that the duties of the Tribunal Chair include all of the duties of an ordinary Member of the Tribunal and include additional duties such as to:

- agree to and sign on behalf of the Tribunal a multi-annual oversight agreement with the Department;
- organise meetings with the other Tribunal members, from time to time as required;
- liaise with the Department as necessary on any issues arising in the operation of the current scheme;
- meet with the Department at least twice a year and to liaise continually with Tribunal staff who provide the secretariat to the Tribunal, as required;
- liaise with other Tribunal members, in particular if any issues arise relating to the implementation of the oversight agreement;

<sup>62</sup> Paragraph 16 of the Criminal Injuries Compensation Scheme (31 January 2025).

- ensure that an annual report of the activities of the Tribunal is submitted to the Minister for Justice;
- sign-off on any procedures that the Tribunal decides to publish under paragraph 19 of the current scheme.<sup>63</sup>

[5.31] Other victim compensation schemes, including in Manitoba<sup>64</sup> and Victoria,<sup>65</sup> assign a broad range of functions to the chairperson (referred to as the scheme decision-maker in Victoria) beyond managing the workload of the scheme. These functions include promoting the interests of victims as they go through the process of applying for compensation and publicising the scheme. In Victoria, for example, the following functions are assigned to the scheme decision-maker:

- publishing guidance material and other resources for victims, victim support service providers and legal practitioners;
- conducting education and training and public awareness activities and research in relation to the scheme, including data collection on the operation of the scheme;
- establishing a complaints process in relation to the administration of the scheme, including the conduct of the scheme decision-maker and members of staff.<sup>66</sup>

[5.32] The Commission considers that the statutory body should have a chairperson who is tasked with exercising a range of particular functions and powers, which are provided for in the statutory scheme, to ensure clarity and consistency in the role. These functions may include administrative decisions, such as scheduling and assigning decision-makers to cases. They may also include decisions regarding whether to exercise certain statutory powers, as explored further in the section below on the powers of the statutory body. The chairperson would be considered an assessment and adjudication officer, fulfilling the ordinary duties of such an officer as well as the duties of a chairperson. The Commission considers the chairperson could also play a public-facing role for the statutory body.

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<sup>63</sup> Criminal Injuries Compensation Tribunal, *Oversight Agreement 2024-2025* (Department of Justice and the Criminal Injuries Compensation Tribunal 2024) at para 3.3 <<https://assets.gov.ie/static/documents/oversight-agreement-between-the-department-of-justice-and-th...>> accessed 23 March 2025.

<sup>64</sup> See for example the duties and functions of the 'director' in section 39(2) of the Victims' Bill of Rights (CCSM c V55) (Manitoba).

<sup>65</sup> Section 53 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>66</sup> Section 53 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

[5.33] The Commission recommends that the statutory functions of the chairperson could include:

- ensuring the efficient functioning of the statutory body;
- ensuring that the role assigned to each assessment and adjudication officer is carried out as expeditiously as may be consistent with fairness and justice.

[5.34] In addition, the statutory body should perform the following functions, which could be led by the chairperson:

- developing procedures for the statutory body;
- developing and publishing guidance material and other resources for victims, victim support service providers and legal practitioners;
- conducting education and training and public awareness activities and research in relation to the scheme, including data collection on the operation of the scheme;
- establishing a complaints process in relation to the administration of the scheme, including in relation to the conduct of the scheme decision-maker and members of staff.

**R. 5.4 The Commission recommends** that the statutory body should have a chairperson who is appointed by the Minister for Justice and who would oversee the management of the caseload of the statutory body and other functions as may be required. These functions may include the following:

- (1) ensuring the efficient functioning of the statutory body;
- (2) ensuring that the role assigned to each assessment and adjudication officer is carried out as expeditiously as may be consistent with fairness and justice;
- (3) developing procedures for the statutory body;
- (4) publishing guidance material and other resources for victims, victim support service providers, and legal practitioners;
- (5) conducting education and training, public awareness activities and research in relation to the statutory scheme, including data collection on the operation of the scheme;
- (6) establishing a complaints process in relation to the administration of the statutory scheme, including in relation to the conduct of the scheme decision-makers and members of staff.

*(iii) Chief Executive Officer*

- [5.35] The Commission considers that for the effective administration of the statutory body, a Chief Executive Officer ("CEO") should be appointed who is not a decision-maker in either tier of the statutory body. The CEO would be considered part of the governance structure of the statutory body. The Commission considers that in addition to the CEO, the Government may also consider appointing a board as part of this structure. However, this is a matter for Government, depending on the form that the statutory body takes. The Commission considers that the CEO could oversee the administration and business of the statutory body. This could include, for example, recruiting administrative staff and overseeing the finances of the statutory body.
- [5.36] The advantage of this approach is that it creates a clear distinction between the persons who are responsible for the statutory body's adjudicative functions and administrative functions. The Commission considers that this would assist with planning for and overseeing financial, business, and administrative issues. There is precedent for this approach in other Irish adjudicative bodies. For example, there is a Chief Executive at the MHC,<sup>67</sup> and a Registrar with similar functions at IPAT.<sup>68</sup>
- [5.37] The Commission considers the CEO could be appointed by the Minister for Justice following a recommendation made by the Public Appointments Service.

**R. 5.5 The Commission recommends** that the statutory body should have a Chief Executive Officer, appointed by the Minister for Justice, following a recommendation by the Public Appointments Service, who would oversee the administration and business of the body.

## 4. Appointment, tenure and removal

### (a) Current scheme

- [5.38] The current scheme does not outline a process for appointing and removing members of the Tribunal, and no indication is given of the length of Tribunal members' terms.
- [5.39] However, the Commission notes that a 2020 recruitment call for Tribunal members stated that Tribunal members are appointed by the Minister for Justice

<sup>67</sup> Section 38 of the Mental Health Act 2001. Section 38(3) provides that the Chief Executive "shall carry on and manage and control generally the administration and business of the Commission and shall perform such other (if any) functions as may be determined by the Commission".

<sup>68</sup> Section 66(3) of the International Protection Act 2015.



for a period of five years, with the possibility of re-appointment.<sup>69</sup> Tribunal members are eligible for only one re-appointment at the end of their term.<sup>70</sup> The Recruitment Booklet, published by the Department of Justice as part of that recruitment call, set out a removal procedure for staff members of the Tribunal. It stated that grounds for removal included gross misconduct, incompetence in the role, ceasing to practice as a solicitor or barrister or on conviction of a criminal offence.<sup>71</sup> In the most recent recruitment to the Tribunal, members were appointed for a renewable five-year period.

## **(b) Comparative bodies**

### *(ii) Mental Health Commission*

- [5.40] Members of the MHC are appointed for a term of up to five years and on any other terms determined by the Minister for Health.<sup>72</sup> Members of the MHC can be reappointed.<sup>73</sup> The statute does not limit how many times a member can be reappointed. The chairperson<sup>74</sup> and members of MHTs<sup>75</sup> can also be reappointed.
- [5.41] Members of the MHC can be removed by the Minister. Grounds for removal include that the member has become incapable of performing their functions, has committed stated misbehaviour, or their removal is necessary for the effective performance of the MHC's functions.<sup>76</sup> MHC members are disqualified if they are adjudged bankrupt, enter into an arrangement with creditors, or are sentenced to imprisonment.<sup>77</sup> The same criteria apply for the removal of members of MHTs.<sup>78</sup>

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<sup>69</sup> Department of Justice, "Minister McEntee announces recruitment process for Ordinary Members and Chair of the Criminal Injuries Compensation Tribunal" (14 August 2020) <<https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/press-releases/minister-mcentee-announces-recruitment-process-for-ordinary-members-and-chair-of-the-criminal-injuries-compensation-tribunal/?referrer=https://www.justice.ie/en/JELR/Pages/PR20000181>> accessed 23 March 2026.

<sup>70</sup> Department of Justice and Equality, "Booklet for Applicants – Expressions of Interest for the positions of member and/or chair of the Criminal Injuries Compensation Tribunal" (September 2020) at page 3.

<sup>71</sup> Department of Justice and Equality, "Booklet for Applicants – Expressions of Interest for the positions of member and/or chair of the Criminal Injuries Compensation Tribunal" (September 2020) at page 3.

<sup>72</sup> Section 36(1) of the Mental Health Act 2001.

<sup>73</sup> Section 36(7) of the Mental Health Act 2001.

<sup>74</sup> Section 37(4) of the Mental Health Act 2001.

<sup>75</sup> Section 48(11) of the Mental Health Act 2001.

<sup>76</sup> Section 36(4) of the Mental Health Act 2001.

<sup>77</sup> Section 36(6) of the Mental Health Act 2001.

<sup>78</sup> Section 48(9) and (10) of the Mental Health Act 2001.

- [5.42] If a member of the MHC dies, resigns, becomes disqualified or is removed from office, the Minister can fill that vacancy. That person is appointed in the same manner as the member of the MHC they are replacing.<sup>79</sup> This person then holds office for the remainder of the term of office of the member who left.<sup>80</sup>

*(ii) International Protection Appeals Tribunal*

- [5.43] The Minister for Justice can only appoint someone as an IPAT member after they have been selected through a public competition run by the PAS.<sup>81</sup> This does not apply when someone is being reappointed for a second term.<sup>82</sup> If the chairperson is temporarily unable to act or vacates the position, the Minister appoints a deputy chairperson to be the chairperson for the relevant duration, or until a PAS competition is held and an appointment is made.<sup>83</sup>
- [5.44] The IPAT chairperson, deputy chairperson, and members can serve for five years.<sup>84</sup> The chairperson, deputy chairperson, full-time, and part-time members can be reappointed once for a second term not exceeding five years.<sup>85</sup> After completing two terms, they can be reappointed again but only if they apply and are selected through a PAS competition.<sup>86</sup> IPAT members may be removed from office by the Minister for stated reasons.<sup>87</sup>
- [5.45] One issue that arises in IPAT, that the Commission considers may arise for the statutory body, is what happens when a member is unable to complete a case because of illness, resignation, removal, or for some other reason. At IPAT, the Registrar assigns appeals to each member and can reassign appeals where the original member is unable or unwilling to determine the appeal.<sup>88</sup> The chairperson can reassign business from one member to another, but only if the member is unable or unwilling to deal with a case, or if the case is an appeal and the Registrar and the original member have not been able to come to an agreement about reassigning it.<sup>89</sup>

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<sup>79</sup> Section 36(5)(a) of the Mental Health Act 2001.

<sup>80</sup> Section 36(5)(b) of the Mental Health Act 2001.

<sup>81</sup> Section 62(4) of the International Protection Act 2015.

<sup>82</sup> Section 62(5) of the International Protection Act 2015.

<sup>83</sup> Section 62(8) of the International Protection Act 2015.

<sup>84</sup> Section 62(7) of the International Protection Act 2015.

<sup>85</sup> Section 62(7) of the International Protection Act 2015.

<sup>86</sup> Section 62(7A) of the International Protection Act 2015 as inserted by section 72(b) of the Courts and Civil Law (Miscellaneous Provisions) Act 2023.

<sup>87</sup> Section 62(13) of the International Protection Act 2015.

<sup>88</sup> Section 67(2) and (3) of the International Protection Act 2015.

<sup>89</sup> Section 63(4) of the International Protection Act 2015.

- [5.46] When assigning or reassigning appeals, the Registrar must take account of the need to manage the work efficiently, ensure IPAT's functions are carried out expeditiously and in line with fairness and natural justice, and follow any guidelines issued by the chairperson.<sup>90</sup> When requested by the chairperson, the Registrar must assign appeals, or a particular appeal, to be determined by the chairperson.<sup>91</sup> The chairperson can also convene meetings with IPAT members to discuss various matters, which include "matters relating to the transaction of the business assigned to the member or members, including, in particular, such matters as the avoidance of undue divergences in the transaction of business by the members."<sup>92</sup>

*(iii) Workplace Relations Commission*

- [5.47] The chairperson and ordinary members of the WRC board are appointed by the Minister for Jobs, Enterprise and Innovation.<sup>93</sup> The Director General must be appointed by the Minister and selected from a panel recommended by PAS following a competition.<sup>94</sup> The same applies to the Registrar.<sup>95</sup> All current members of the WRC board, at time of writing, have been appointed by the Minister following a PAS competition.<sup>96</sup> Adjudication officers, who hear employment complaints and disputes, must also be appointed following a PAS competition.<sup>97</sup>
- [5.48] The term lengths for members of the WRC board are:
- five years for the chairperson;
  - two years for members of the board appointed to represent employees, employers, and bodies who seek to promote equality in the workplace;
  - three years for members appointed with experience and expertise in workplace relations, dispute resolution, employment law or equality law.<sup>98</sup>

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<sup>90</sup> Section 67(4) of the International Protection Act 2015.

<sup>91</sup> Section 67(6)(a) of the International Protection Act 2015.

<sup>92</sup> Section 63(6) of the International Protection Act 2015.

<sup>93</sup> Section 10 and schedule 3, section 2(2) of the Workplace Relations Act 2015.

<sup>94</sup> Section 12(2) of the Workplace Relations Act 2015.

<sup>95</sup> Section 25(1)(b) of the Workplace Relations Act 2015.

<sup>96</sup> Workplace Relations Commission, "New Members appointed to the Board of the Workplace Relations Commission (WRC)" (24 February 2022) <[https://www.workplacerelations.ie/en/news-media/workplace\\_relations\\_notices/new-members-appointed-to-the-board-of-the-workplace-relations-commission-wrc-.html](https://www.workplacerelations.ie/en/news-media/workplace_relations_notices/new-members-appointed-to-the-board-of-the-workplace-relations-commission-wrc-.html)> accessed 23 March 2026.

<sup>97</sup> Section 40(2) of the Workplace Relations Act 2015.

<sup>98</sup> Section 10, schedule 3, section 2(5) of the Workplace Relations Act 2015.

- [5.49] Members other than the chairperson can be reappointed to the board at the end of their term.<sup>99</sup> Those reappointed to the board cannot hold office for a period exceeding six years in total.<sup>100</sup>
- [5.50] The recently amended Workplace Relations Act 2015 contains a useful precedent for the fair removal of members of a decision-making body. These amendments were made in response to the 2022 decision of the Irish Supreme Court in *Zalewski v The Workplace Relations Commission*.<sup>101</sup> The amendments provide that the government may revoke the appointment of a WRC member if the member is unable to perform their statutory functions due to ill health, has engaged in serious misconduct, has failed to perform their functions under the statute for a period of three continuous months, or has contravened to a material extent the Ethics in Public Office Acts 1995 and 2001.<sup>102</sup>
- [5.51] When the government proposes to revoke a member's appointment on the above grounds, it must inform the affected member in writing.<sup>103</sup> This notice must include:
- a statement of reasons for the proposed revocation of the appointment, and
  - a statement informing the member that they have 30 days from the date of the notice to make representations to the government regarding the revocation, and
  - a statement noting that if the government receives no representations from the affected member, it will proceed with the revocation.<sup>104</sup>
- [5.52] In considering whether to revoke a member's appointment, the government must consider any representations made by the member in response to its notice.<sup>105</sup> If the government decides to revoke the member's appointment, it must inform the affected member of its decision and the reasons for that decision in writing.<sup>106</sup>

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<sup>99</sup> Section 10, schedule 3, section 2(6) of the Workplace Relations Act 2015.

<sup>100</sup> Section 10, schedule 3, section 2(7) of the Workplace Relations Act 2015.

<sup>101</sup> *Zalewski v The Workplace Relations Commission* [2021] IESC 24, [2022] 1 IR 421.

<sup>102</sup> Section 40(7)(b) of the Workplace Relations Act 2015. The Ethics in Public Office Acts 1995 and 2001 regulate issues such as the disclosure of interests and the acceptance of gifts.

<sup>103</sup> Section 40(7)(c) of the Workplace Relations Act 2015.

<sup>104</sup> Section 40(7)(d) of the Workplace Relations Act 2015.

<sup>105</sup> Section 40(7)(e) of the Workplace Relations Act 2015.

<sup>106</sup> Section 40(7)(f) of the Workplace Relations Act 2015.

### **(c) Proposals for reform**

- [5.53] The Commission considers that it is crucial to ensure the independence and impartiality of the proposed statutory body, as well as consistency in approach, the development of specialist expertise, and institutional memory. To assist with this, in the Commission's view, it is essential to provide clear procedures for the appointment process, length of term, and removal of decision-makers. A clear statement in law of these procedures would safeguard decision-makers of the statutory scheme from external pressures, such as potential external influence on decisions or their arbitrary removal. The Commission considers that clearly defined procedural safeguards would also reinforce public confidence in the impartiality and professionalism of the statutory body.
- [5.54] As outlined above, similar features are standard in the parent legislation of comparable bodies, such as the International Protection Act 2015, the Workplace Relations Act 2015, and the Mental Health Act 2001.
- [5.55] The Minister should be able to appoint a sufficient number of decision-makers, to be known as assessment and adjudication officers, to meet business needs, on the recommendation of the chairperson. The Commission considers that term limits for assessment and adjudication officers in the statutory body should provide a balance between a reasonably long tenure and the opportunity for new decision-makers to join periodically. A reasonably long term can secure a degree of institutional memory and development of expertise for the statutory body, and can also foster the development of consistent and predictable determinations. Term limits can ensure the opportunity for renewed commitment at periodic intervals. Similarly to the MHC, IPAT, and the chairperson of the WRC, the Commission considers that five years is an appropriate term, renewable once.
- [5.56] The Commission also recommends that the Minister should be able to appoint additional temporary assessment and adjudication officers for shorter terms. This may be done where the chairperson requests additional assessment and adjudication officers to meet particular needs and avoid undue delays in the processing of applications.
- [5.57] Ensuring that assessment and adjudication officers of the statutory body are independent also requires a fair removal process. The Commission considers that a clear statement requiring fair procedures for removals would ensure institutional integrity and protect decision-makers from unfair or arbitrary removal.
- [5.58] The Commission recommends that the Minister may revoke a decision-maker's appointment to the statutory body on the recommendation of the chairperson in specified circumstances, for cause, and only after appropriate and fair procedures have been followed. The Minister should be able to revoke a chairperson's or CEO's appointment to the statutory body in specified circumstances, for cause and only after appropriate and fair procedures have been followed. These

circumstances would be set out by the statutory body. In addition, a chairperson or a CEO may resign from office by giving notice to the Minister for Justice.

- R. 5.6 **The Commission recommends** that the assessment and adjudication officers for the assessment and adjudication tier and the appeal tier of the statutory body, be appointed by the Minister for Justice, on the recommendation of the chairperson.
- R. 5.7 **The Commission recommends** that the Minister should not appoint an assessment and adjudication officer unless they have been selected by the Public Appointments Service after a public competition.
- R. 5.8 **The Commission recommends** that the term of office of assessment and adjudication officers of the statutory body shall be five years, renewable once.
- R. 5.9 **The Commission recommends** that temporary assessment and adjudication officers may be appointed by the Minister where the chairperson so requests to meet business needs.
- R. 5.10 **The Commission recommends** that the Minister may revoke an assessment and adjudication officer's appointment to the statutory body on the recommendation of the chairperson in specified circumstances, for cause, and only after appropriate and fair procedures have been followed.
- R. 5.11 **The Commission recommends** that the Minister may revoke a chairperson or CEO's appointment to the statutory body in specified circumstances, for cause, and only after appropriate and fair procedures have been followed. These specified circumstances would be set out by the statutory body.
- R. 5.12 **The Commission recommends** that a chairperson or a CEO may resign from office by giving notice to the Minister for Justice.

## 5. Qualifications

### (a) Current scheme

- [5.59] Under the current scheme, to be a member of the Tribunal, a person must be a practising solicitor or barrister.<sup>107</sup> No particular experience or expertise in dealing with or addressing the needs of victims of crime is required for appointment.<sup>108</sup>

<sup>107</sup> Paragraph 16 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>108</sup> "Booklet for Applicants – Expressions of Interest for the positions of member and/or chair of the Criminal Injuries Compensation Tribunal" (Department of Justice and Equality, September 2020).

**(b) Comparative bodies**

- [5.60] The qualifications required for membership of comparative bodies vary significantly, reflecting differing expectations of expertise and functions across each body. It is common for persons with no legal qualifications to sit on adjudicative bodies. For example, adjudication officers for the WRC<sup>109</sup> and two of three members of an MHT<sup>110</sup> are not required to have legal qualifications to participate in decision-making.
- [5.61] On the other hand, a number of adjudicative bodies require their members to be legally qualified. For example, IPAT members must be qualified solicitors or barristers with at least two years' relevant legal experience.<sup>111</sup>
- [5.62] The Commission acknowledges that the expertise required of members largely depends on the subject matter they deal with. In the MHC, decisions are made by MHTs to determine the validity of admission orders to approved centres, which often involve medical, legal, and ethical considerations. This specialised subject matter is directly reflected in the composition of MHTs, which consist of one consultant psychiatrist, one practising barrister or solicitor with at least seven years' experience before appointment, and one lay member (an expert member of the public).<sup>112</sup>
- [5.63] The composition of MHTs reflects the intersection of subject matters that require expertise in differing areas. The presence of medical and legal specialists alongside a member of the public with knowledge of the subject matter reflects the reality that the body's decisions are influenced by a range of issues, including social, medical and legal factors.
- [5.64] On the other hand, the composition of IPAT reflects the need for legal expertise to decide appeals against decisions of the International Protection Office on international protection applications. Decision-makers determine appeals relating to refugee status, subsidiary protection, transfer orders and reception conditions, and must apply the law to make a determination.

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<sup>109</sup> Section 40 of the Workplace Relations Act 2015.

<sup>110</sup> Section 48(3) of the Mental Health Act 2001.

<sup>111</sup> Section 62(2)(b) of the International Protection Act 2015 as substituted by section 12(a) of the Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024.

<sup>112</sup> Section 48(3) of the Mental Health Act 2001. The lay member is described as a member of the public "with knowledge or experience of mental health services or mental health legislation": Mental Health Commission, "Tribunal Panel Members" <<https://www.mhcirl.ie/what-we-do/mental-health-tribunals/mental-health-tribunals/whotribunal#:~:text=The%20tribunal%20is%20made%20up,a%20lay%20member>> accessed 23 March 2026.

### (c) Proposals for reform

#### (i) *Ordinary decision-makers*

- [5.65] The Commission considers that the complexity of applications for victim compensation is likely to vary, depending on the crime of violence giving rise to the harm, the harm itself, and the particular circumstances of the applicant. The Commission expects that many applications will be straightforward and may be resolved without particular expertise in law. However, other applications may require knowledge of legal principles and jurisprudence, for example where an assessment and adjudication officer seeks to apply exclusions or exercise their discretion in relation to the eligibility criteria.<sup>113</sup> The Commission considers that experience as a practising barrister or solicitor may assist in those more complicated applications, in particular where procedural fairness may be at issue.
- [5.66] At the same time, assessing and adjudicating on applications for compensation may require consideration of other issues. For example, assessing the level of pain and suffering caused by the crime of violence will require an understanding of an individual applicant's personal experience of the impact of the crime, their connection to the victimising event, and their particular circumstances, including their mental health.<sup>114</sup> The Commission's view is that victim experts, such as academics specialising in victimology or professionals working with victims as counsellors or within victim support organisations, could add valuable insights to the statutory body's decision-making, particularly regarding the impact of the crime.
- [5.67] The Commission also considers that it is important for a non-legally trained decision-maker to have some experience in evaluating claims. This broader qualification requirement can ensure that decision-makers are well-equipped to make informed, empathetic decisions that reflect the multifaceted nature of victimisation and the needs of those seeking redress.
- [5.68] In light of this, the Commission recommends that assessment and adjudication officers who decide cases should be either:
- a barrister or solicitor with at least five years' post-qualification experience, or
  - a person with other relevant experience and qualifications, as determined from time to time by the chairperson of the statutory body.

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<sup>113</sup> The eligibility criteria for the proposed statutory scheme are outlined in the Chapter on Defining Eligible Applicants and Crimes of Violence and the Chapter on Other Eligibility Requirements.

<sup>114</sup> Compensation for pain and suffering is discussed in detail in the Chapter on Types of Compensation and the Chapter on Determining Fair and Appropriate Compensation.



- [5.69] The Commission considers that every appeal should be heard by a panel of three assessment and adjudication officers, including at least one solicitor or barrister, given that points of law may arise and the application of legal principles may be required. This is explored further below.

**R. 5.13 The Commission recommends** that assessment and adjudication officers who decide cases should be either:

- (1) a barrister or solicitor with at least five years' post-qualification experience, or
- (2) a person with other relevant experience and qualifications, as determined from time to time by the chairperson of the statutory body.

*(ii) Chairperson*

- [5.70] To maintain a high standard of decision-making, the Commission believes that it is important that the chairperson can assign the appropriate decision-makers to cases depending on the relevant subject matter. Some cases will involve complex questions of law, which would require adjudication by a legally qualified person. Other cases may require a greater understanding of victims' needs.
- [5.71] The Commission considers that, due to the proposed increased scope of responsibilities associated with the role of the chairperson, a higher level of expertise and experience is necessary. In other comparative bodies, the chairperson must have significant post-qualification experience. The chairperson of a MHT must be a practising barrister or solicitor with at least seven years' experience.<sup>115</sup> Similarly, IPAT's chairperson must have at least five years' experience as a practising barrister or solicitor.<sup>116</sup>
- [5.72] The Commission considers that the chairperson should be a qualified solicitor or barrister with a minimum of seven years' post-qualification experience. The Commission is of the view that this additional requirement reflects the significant leadership responsibilities that the chairperson may have, including overseeing proceedings, managing schedules, and assigning cases.

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<sup>115</sup> Section 48(3) of the Mental Health Act 2001.

<sup>116</sup> Section 62(2)(a) of the International Protection Act 2015 as substituted by section 12(a) the Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024.

**R. 5.14 The Commission recommends** that the chairperson of the statutory body should be a qualified solicitor or barrister.

**R. 5.15 The Commission recommends** that the chairperson should have a minimum of seven years' post-qualification experience.

### *(iii) Appeal panels*

[5.73] The Commission recommends in the Chapter on the Structure of the Statutory Body and the Application Process that appeals from the assessment and adjudication tier to the appeals tier should be heard by a panel of three decision-makers. This recommendation acknowledges the complexity and importance of decisions made at the appeals stage, where more comprehensive deliberation is often required.

[5.74] The Commission recognises that decisions on appeal may benefit from a diversity of perspectives. Drawing on varied expertise and backgrounds can enhance the decision-making process, ensuring that outcomes are informed by a comprehensive understanding of the issues at hand. Therefore, the Commission recommends that appeal panels should consist of three assessment and adjudication officers of the statutory body, with a minimum of one legally qualified panel member. This structure allows for balancing the need for legal training and experience with specialised knowledge of victim-related matters, where a non-lawyer is present on the appeal panel. This can contribute to fair and appropriately informed appeal decisions.

**R. 5.16 The Commission recommends** that appeal panels should consist of three assessment and adjudication officers of the statutory body, with a minimum of one legally qualified panel member.

## **6. Specialist training**

### **(a) Current scheme**

[5.75] Under the current scheme, persons are not required to have additional specialist training or expertise to sit on the Tribunal, beyond qualification as a solicitor or barrister. However, the Department of Justice has organised training events for the Tribunal since its membership was expanded in 2021. In 2024, for example, the Tribunal undertook training related to actuarial reports and assessments, to assist decision-makers in evaluating an applicant's losses.<sup>117</sup>

<sup>117</sup> Department of Justice, Home Affairs and Migration, *Annual Report 2024* (Criminal Injuries Compensation Tribunal, 26 September 2025) at page 22  
<https://www.gov.ie/en/department-of-justice-home-affairs-and->

- [5.76] The Commission considers that tailored training programmes for decision-makers and staff would strengthen their ability to handle cases effectively while fostering trust in the statutory body. Additional specialist training in areas such as claim assessment, decision making, anti-bias training, and trauma sensitivity could enhance the experience of victims in the compensation process.

### **(b) Relevant law**

- [5.77] Specialist training of staff is frequently required as a minimum standard for services that come into contact with victims. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power outlines the need for police, justice, health, social services and others involved with victims to receive “training to sensitize them to the needs of victims”.<sup>118</sup>
- [5.78] In addition, the Victims’ Rights Directive obliges Member States to ensure that officials who come into contact with victims receive “both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.”<sup>119</sup>
- [5.79] The Commission considers that appropriate training on the specific needs of victims can assist in avoiding secondary victimisation as far as possible. As noted above, the Victims’ Rights Directive<sup>120</sup> and the EU Strategy on Victims’ Rights (2020-2025) emphasise the importance of avoiding such harm.<sup>121</sup> Ensuring this principle is upheld requires that members receive training in trauma sensitivity. The Commission believes that by fostering a trauma-informed approach, the statutory body can build a system that is supportive and restorative for victims.

### **(c) Submissions**

- [5.80] Consultees expressed the view that administrative staff should be dedicated, well-trained, well-supported and have the knowledge and skills to deal with all aspects of the compensation process. One consultee suggested that staff members of the body should be legally qualified. Many consultees submitted that staff need to be

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[migration/publications/annual-report-of-the-criminal-injuries-compensation-tribunal-2024/>](#) accessed 23 March 2026.

<sup>118</sup> Principle 16 of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985.

<sup>119</sup> Article 25(1) of the Victims’ Rights Directive (2012/29/EU). Article 25(5) also provides: “In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.”

<sup>120</sup> Recital 9 of the Victims’ Rights Directive (2012/29/EU).

<sup>121</sup> EU Strategy on Victims’ Rights (2020-2025) at page 18.

specially trained to deal with victims so they can take a victim-centred and trauma-informed approach.

- [5.81] One consultee suggested that a new body should appoint a “victim advocate” to assist victims applying to the scheme. A victim advocate is an individual trained to support victims of crime, offering emotional support, victims’ rights information, assisting in finding resources or filling out related forms. The submission argued that the provision of a victim advocate would assist in supporting victims through the process, eliminate the need for legal professionals to become involved with the application process, and reduce the risk of secondary victimisation. The Commission considers that its proposals for an assistive tier would respond to these concerns.
- [5.82] The Commission agrees with consultees that staff and decision-makers of the statutory body should receive specialist training to equip them with the skills and knowledge to work with victims, to ensure they are not harmed throughout the compensation process.

#### **(d) Proposals for reform**

- [5.83] The Commission considers that it is important that all staff of the assistive tier and any other staff that may be employed for the statutory body, as well as all assessment and adjudication officers in the statutory body are equipped to deal with the specific and unique needs of victims. This is underpinned by the need to prevent secondary victimisation, as outlined throughout the Victims’ Rights Directive.<sup>122</sup> Specialist training in trauma sensitivity and anti-bias training would improve the statutory scheme’s compliance with the Victims’ Rights Directive. This training would also aim to improve the resilience of decision-makers in the assessment tier in dealing with their exposure to victims’ trauma. Therefore, the Commission recommends that all staff working within the statutory body should be required to receive training to ensure they can effectively respond to the needs of victims.

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<sup>122</sup> For example, see Recital 9 of the Victims’ Rights Directive (2012/29/EU): “Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.”

**R. 5.17 The Commission recommends** that all staff of the statutory body and all assessment and adjudication officers be provided with the training necessary to enable them to work with and respond to the needs of victims of crimes of violence.

## 7. Powers of the statutory body

### (a) Introduction

- [5.84] In this section, the Commission outlines the powers it proposes for the statutory body. It considers that these powers would attach to the statutory body as a whole, although their exercise may vary according to the operation of each tier of the statutory body.
- [5.85] The Commission is aware that certain requirements in the exercise of its functions and powers would attach to the statutory body if it is considered an “adjudicative body”.<sup>123</sup> Hogan, Morgan and Daly define a tribunal, also known as an adjudicative body as “a body, independent of the Government or any other entity but at the same time not a court, which takes decisions affecting individual rights, according to some fairly precise (and usually legal) guidelines and by following a regular and fairly formal procedure.”<sup>124</sup> Given that the statutory body would be an independent body and would apply established principles and rules to factual circumstances to determine legal rights and obligations, the Commission considers that it could be defined as an adjudicative body.
- [5.86] Adjudicative bodies are obliged to meet certain minimum standards in the course of their decision-making. When a body exercising public power acts in a way that creates a real risk of interfering with a person’s rights in the event of an adverse decision, it is obliged to act fairly.<sup>125</sup> Given that there is a right to fair and appropriate compensation and the statutory body would perform an adjudicative role in relation to applicant eligibility and amounts of compensation, it would be obliged to meet such standards of fairness.
- [5.87] As explained in the Chapter on the Structure of the Statutory Body and the Application Process, the Commission recommends that the statutory body be structured into three tiers, each with specific associated functions. These tiers are:

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<sup>123</sup> The Commission refers to tribunals and adjudicative bodies interchangeably. For further information on adjudicative bodies generally see Law Reform Commission, *Reform of Non-Court Adjudicative Bodies and Appeals to Courts* (LRC CP 70-2025).

<sup>124</sup> Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Roundhall 2019) at para 6-11.

<sup>125</sup> *Dellway Investments v NAMA* [2011] IESC 14 at para 99 (Fennelly J), [2011] 4 IR 1 at para 460 (Fennelly J), citing the High Court decision: *Dellway Investments v NAMA* [2010] IEHC 364 at para 7.14.

- (1) The information and assistive tier
- (2) The assessment and adjudication tier
- (3) The appeals tier

[5.88] The statutory body would need a comprehensive set of powers to carry out its functions effectively and each tier would involve the exercise of different powers tailored to the respective functions of that level. The Commission sets out the powers it considers necessary for the statutory body to fulfil its mandate below.

## **(b) Power to determine procedural rules**

### *(i) Current scheme*

[5.89] Paragraph 19 of the current scheme provides that the Tribunal can “draw up and publish any instructions it considers necessary regarding the procedure for administering the Scheme.”<sup>126</sup> The instructions must be consistent with the provisions of the current scheme, and be consistent with the “general intention” that the administration of the scheme, and proceedings before the Tribunal, should be informal.<sup>127</sup>

### *(ii) Comparative bodies*

[5.90] In other bodies, the power to publish guidelines has been expressly mentioned in the relevant statute. For example, the chairperson of IPAT can issue guidelines to staff on the application and operation of IPAT and on developments in the law relating to international protection.<sup>128</sup> The chairperson can also issue guidelines to the Registrar on the performance of their functions of assigning or reassigning appeals, if they consider it appropriate to do so “in the interest of the fair and efficient performance of the functions of the Tribunal”.<sup>129</sup>

[5.91] The WRC must publish an approved code of practice on its website, as provided for in the Workplace Relations Act 2015.<sup>130</sup> A draft of the code is prepared and sent to the Minister for Jobs, Enterprise and Innovation.<sup>131</sup> Before sending a draft to the Minister, the WRC must request any appropriate person, including trade unions and employer representative bodies, to make representations to it in

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<sup>126</sup> For further information on the powers of the Tribunal, see Criminal Injuries Compensation Scheme, “Terms and conditions of the scheme: Tribunal Instructions (Paragraph 19)” (8 May 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/terms-and-conditions-of-the-scheme/>> accessed 23 March 2026.

<sup>127</sup> Paragraph 19 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>128</sup> Section 63(2) of the International Protection Act 2015.

<sup>129</sup> Section 63(3)(a) of the International Protection Act 2015.

<sup>130</sup> Section 20(7) of the Workplace Relations Act 2015.

<sup>131</sup> Section 20(1)(a) of the Workplace Relations Act 2015.

relation to the draft code of practice, and the WRC must consider any representations that have been made.<sup>132</sup> The Minister can direct the WRC to amend the draft, and it must comply with the direction and resubmit the amended draft.<sup>133</sup> The Minister can also direct the WRC to prepare and submit a code of practice which the WRC must then do.<sup>134</sup> Codes of practice approved under the Workplace Relations Act 2015 are admissible as evidence in proceedings before a court, the Labour Court, or an Adjudication Officer.<sup>135</sup>

*(iii) Proposals for reform*

- [5.92] Taking into account the above, the Commission recommends that the statutory body should have the power to draft its own procedures for the processing and determination of applications and appeals, including for the conduct of oral hearings. This should include rules of procedure and practice directions.
- [5.93] The Commission does not consider that these rules should require the approval of the Minister for Justice. This is not required under the current scheme, and the Commission's view is that the chairperson of the statutory body would be best placed to determine the procedures necessary for the efficient management of its caseload.
- [5.94] The Commission considers that in the interests of transparency and accessibility, procedures of the statutory body should be published.

**R. 5.18 The Commission recommends** that the statutory body should have the power to draft its own procedures for the processing and determination of applications and appeals, including for the conduct of oral hearings. This should include the power to draft rules of procedure and practice directions.

**R. 5.19 The Commission recommends** that the procedures, rules of procedure and practice directions of the statutory body should be published.

**(c) Power to hold a hearing**

*(i) Current scheme*

- [5.95] Under the current scheme, the Tribunal has a "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

<sup>132</sup> Section 20(4) of the Workplace Relations Act 2015.

<sup>133</sup> Section 20(5) of the Workplace Relations Act 2015.

<sup>134</sup> Section 20(2) and (3) of the Workplace Relations Act 2015.

<sup>135</sup> Section 20(9) of the Workplace Relations Act 2015.

case may be, may also have his claim so heard.”<sup>136</sup> To minimise the formality of procedures, there is no obligation on the Tribunal to hold an in-person hearing in any circumstances.

- [5.96] The current scheme provides that at a Tribunal hearing, applicants will present their case and may call, examine, and cross-examine witnesses.<sup>137</sup> A member of the Tribunal’s staff may also make submissions and call, examine, and cross-examine witnesses.<sup>138</sup> The scheme also provides that “all information before the Tribunal will be available to the applicant.”<sup>139</sup> It appears that it is not the general practice of the Tribunal to separately call witnesses.<sup>140</sup>

*(ii) Comparative bodies*

- [5.97] A variety of approaches are taken by other comparative bodies in Ireland. Whether an oral hearing is necessary as a matter of procedural fairness is generally at the discretion of the particular body. For example, IPAT can hold oral hearings for an appeal against a recommendation, either at the request of the applicant or where IPAT considers it to be in the interests of justice to do so.<sup>141</sup>
- [5.98] In relation to the WRC, complaints and disputes are initially processed by the WRC offices and then sent forward to adjudication, mediation or inspection, as appropriate.<sup>142</sup> Where they are sent forward to adjudication, they are formally delegated by the Director General to an independent Adjudication Officer for hearing.<sup>143</sup> A published procedural note states that it is a matter for the Adjudication Officer to run a hearing or investigation as appropriate for the circumstances of the case and in accordance with fair procedures and the

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<sup>136</sup> Paragraph 24 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>137</sup> Paragraph 25 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>138</sup> Paragraph 25 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>139</sup> Paragraph 25 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>140</sup> In *Earls v Criminal Injuries Compensation Tribunal* [2022] IEHC 679, Ferriter J noted at para 10 that: “In practice, I was informed that the applicant calls their witnesses at the hearing and it is not the practice of the Tribunal to separately call witnesses.”

<sup>141</sup> Section 42(1) of the International Protection Act 2015.

<sup>142</sup> Workplace Relations Commission, “WRC Procedures in the Adjudication and Investigation of all Employment and Equality Complaints and Disputes” (30 October 2025) at page 3 <[https://www.workplacerelations.ie/en/publications\\_forms/procedures\\_employment\\_and\\_equality\\_complaints.pdf](https://www.workplacerelations.ie/en/publications_forms/procedures_employment_and_equality_complaints.pdf)> accessed 23 March 2026.

<sup>143</sup> Section 41(1) of the Workplace Relations Act 2015. See also Workplace Relations Commission, “WRC Procedures in the Adjudication and Investigation of all Employment and Equality Complaints and Disputes (30 October 2025)” at page 3 <[https://www.workplacerelations.ie/en/publications\\_forms/procedures\\_employment\\_and\\_equality\\_complaints.pdf](https://www.workplacerelations.ie/en/publications_forms/procedures_employment_and_equality_complaints.pdf)> accessed 23 March 2026.



interests of justice.<sup>144</sup> If both parties consent, a case can be decided on the basis of written submissions only without a hearing.<sup>145</sup>

- [5.99] Under the Mental Health Act 2001, every adult who is involuntarily detained has their detention order referred to a MHT for review.<sup>146</sup> This reflects the importance attached to the constitutional right to liberty.<sup>147</sup>

*(iii) Comparative jurisdictions*

- [5.100] The Commission observes that there are compensation schemes for victims of crimes of violence that do not hold oral hearings for their initial determination on compensation. For example, in Northern Ireland and California, hearings are usually held only to determine appeals.
- [5.101] In Northern Ireland, initial decisions on compensation are made by caseworkers of the Compensation Services.<sup>148</sup> First instance decisions may be appealed to the Criminal Injuries Compensation Appeals Panel ("CICAPNI").<sup>149</sup> The procedure of hearings before CICAPNI is informal.<sup>150</sup> All parties to the appeal, consisting of the Secretary of State (as the legal decision-maker of the first instance decision), the appellant and the members, may call and cross-examine witnesses.<sup>151</sup>
- [5.102] In California, applications for compensation are initially made to the California Victim Compensation Board ("CalVCB").<sup>152</sup> Decisions about compensation are made on the basis of a staff recommendation to the CalVCB, and an applicant

<sup>144</sup> Workplace Relations Commission, "WRC Procedures in the Adjudication and Investigation of all Employment and Equality Complaints and Disputes" (30 October 2025) at page 5 <[https://www.workplacerelations.ie/en/publications\\_forms/procedures\\_employment\\_and\\_equality\\_complaints.pdf](https://www.workplacerelations.ie/en/publications_forms/procedures_employment_and_equality_complaints.pdf)> accessed 23 March 2026.

<sup>145</sup> Workplace Relations Commission, "WRC Procedures in the Adjudication and Investigation of all Employment and Equality Complaints and Disputes" (30 October 2025) at page 3 <[https://www.workplacerelations.ie/en/publications\\_forms/procedures\\_employment\\_and\\_equality\\_complaints.pdf](https://www.workplacerelations.ie/en/publications_forms/procedures_employment_and_equality_complaints.pdf)> accessed 23 March 2026.

<sup>146</sup> See further section 18 of the Mental Health Act 2001.

<sup>147</sup> Article 40.4.1° of the Constitution of Ireland.

<sup>148</sup> Department of Justice, *A Guide to the Northern Ireland Criminal Injuries Compensation Scheme* (2009) at para 4.4 <<https://www.nidirect.gov.uk/sites/default/files/2025-01/guide-criminal-injuries-compensation-scheme-2009%20latest.pdf>> accessed 23 March 2026.

<sup>149</sup> Paragraph 3 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>150</sup> Paragraph 78 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>151</sup> Paragraph 78 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>152</sup> Section 13952 of the California Government Code. Section 13951(a) defines "board" as meaning the California Victim Compensation Board.

may appeal a recommendation to deny compensation.<sup>153</sup> CalVCB shall decide the appeal at a hearing. The hearing is designed to be informal, with the law of evidential admissibility not applying; the sole rule of admissibility is whether the evidence is relevant.<sup>154</sup>

[5.103] In the Victorian Financial Assistance Scheme, no hearings are held to initially consider or decide on applications.<sup>155</sup> Instead, all decisions are made by the scheme decision maker after they have considered whether the application should be refused on the basis of exclusionary factors<sup>156</sup> and whether the applicant should receive assistance.<sup>157</sup> The scheme decision maker must inform the applicant of the outcome of their decision in writing.<sup>158</sup>

[5.104] In-person or oral hearings may be held on appeal to the Victoria Civil and Administrative Tribunal ("VCAT").<sup>159</sup> When holding hearings, VCAT:

- is bound by the rules of natural justice,
- is not bound by rules of evidence or any practices or procedures applicable to courts,
- may inform itself of any matter as it sees fit, and
- must conduct each proceeding with as little formality and technicality as possible.<sup>160</sup>

[5.105] The Registrar of VCAT may summon a person to appear before VCAT, and must issue such a summons if directed by VCAT.<sup>161</sup> VCAT may administer oaths or affirmations to those who appear before it or give evidence.<sup>162</sup>

#### *(iv) Submissions and other views*

[5.106] Submissions to the Commission outlined some issues with the way oral hearings have been conducted under the current scheme. Consultees said that their hearings were subject to delays. Some consultees stated that they were

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<sup>153</sup> Section 13959(a) of the California Government Code.

<sup>154</sup> Section 13959(e)(1) of the California Government Code.

<sup>155</sup> Section 30 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>156</sup> These factors are listed in sections 31 and 33 of the Victims of Crime (Financial Assistance Scheme) Act 2022.

<sup>157</sup> Section 34(1) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>158</sup> Section 35 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>159</sup> Section 46 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>160</sup> Section 98(1) of the Victorian Civil and Administrative Tribunal Act 1998.

<sup>161</sup> Section 104 of the Victorian Civil and Administrative Tribunal Act 1998.

<sup>162</sup> Section 102(4) Victorian Civil and Administrative Tribunal Act 1998.

traumatised by, and felt that they had not been heard during, their hearing. Another consultee raised the issue of a perceived absence of impartiality during hearings. Others recommended that support workers should be present during hearings.

- [5.107] O'Driscoll found in his research that some victims felt that an oral hearing was important to them and gave them a useful opportunity to be heard in "an easy process".<sup>163</sup> Other victims found their oral hearing intimidating due to the amount of questions asked and the length of the hearing.<sup>164</sup>
- [5.108] Tribunal members shared their view with the Commission that, in their experience, for many victims, the opportunity to tell their story and be heard by a State representative is of significant value, and for some victims it can be more valuable than financial compensation.

*(v) Proposals for reform*

- [5.109] The Commission considers that assessment and adjudication officers may find that certain cases require further examination for a determination to be made. To do so, the statutory body would need a power to hold an oral hearing. Allowing for such a power, but not requiring an oral hearing in all cases, would permit flexibility and would ensure that cases requiring closer scrutiny are handled appropriately. The statutory body should therefore have a wide discretion to hold an oral hearing in any case before it, where it is appropriate.
- [5.110] The Commission recognises the importance of including applicants in the decision-making process regarding oral hearings to ensure that they feel heard and understood. Therefore, the Commission recommends that applicants should be permitted to request a hearing.
- [5.111] The Commission recognises that hearings should not be routinely convened where they are not appropriate. Oral hearings should not become the default approach, especially in cases where the facts are clear and straightforward, and where a hearing would add little value to the decision-making process. Convening unnecessary oral hearings could place a strain on resources, delay

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<sup>163</sup> O'Driscoll, "'Trundled Along, Almost Unheard Of, Almost Inaccessible': Understanding Access to State Compensation for Victims of Violent Crime in Ireland and the European Union" (PhD thesis, Dublin City University 2025) at page 144.

<sup>164</sup> O'Driscoll, "'Trundled Along, Almost Unheard Of, Almost Inaccessible': Understanding Access to State Compensation for Victims of Violent Crime in Ireland and the European Union" (PhD thesis, Dublin City University 2025) at pages 143 – 145. See also Workplace Relations Commission, "WRC Procedures in the Adjudication and Investigation of all Employment and Equality Complaints and Disputes" (30 October 2025) at section 5 [https://www.workplacerelations.ie/en/publications\\_forms/procedures\\_employment\\_and\\_equality\\_complaints.pdf](https://www.workplacerelations.ie/en/publications_forms/procedures_employment_and_equality_complaints.pdf) > accessed 23 March 2026.

resolutions, and reduce overall efficiency. Therefore, the Commission considers it essential to establish a threshold for exercising the power to hold such hearings.

- [5.112] The Commission proposes that the statutory body should have the power to hold a hearing on any case before it, where appropriate. In making that assessment, the statutory body should be required to have regard to any request made by the applicant for an oral hearing. In addition, the Commission considers it important that the statutory body should conduct oral hearings in a manner that ensures fairness and procedural justice.

**R. 5.20 The Commission recommends** that the statutory body may hold an oral hearing on any case before it, where appropriate. In making that assessment, the statutory body should be required to have regard to any request made by the applicant for an oral hearing.

**R. 5.21 The Commission recommends** that the proposed statutory body should conduct oral hearings in a manner that ensures fairness and procedural justice.

#### (d) Power to join applications

- [5.113] There may be situations where a court or other adjudicative body wish to hear applications together because they arise from the same facts or have similar legal questions. Currently, the Tribunal has no express power in the scheme to join applications arising out of the same crime of violence.

- [5.114] IPAT can hear two or more oral hearings together where it appears that each of the cases relates to a common matter, concerns members of the same family, or it is otherwise just and reasonable that the cases should be heard together.<sup>165</sup> The Chairperson's Guideline on Taking Evidence outlines that combined hearings should generally be used only where "the factual basis of each claim is so intertwined that it is only by considering them together that there can be a fair and proper evaluation of the evidence".<sup>166</sup> It sets out that this is only likely to happen in cases where multiple members of the same family rely on the same reasoning arising from a factual background occurring at the same time. In combined hearings, each appellant is afforded an opportunity to address the Tribunal in private and evidence is given separately. If appellants object to a

<sup>165</sup> Regulation 8 of the International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017 (SI No 116 of 2017).

<sup>166</sup> International Protection Appeals Tribunal, *Chairperson's Guideline No 2022/1 on Taking Evidence from Appellants and Other Witnesses* (2022) at para 6.2. As of the time of writing, this is the most recent IPAT guideline available on the Chairperson's taking of evidence.

combined hearing, the Tribunal may consider giving them the opportunity to have separate hearings.<sup>167</sup>

- [5.115] The Commission considers it appropriate that the statutory body be given a similar power to join applications arising out of the same factual background, which may include the same crime of violence. Combined hearings would increase the efficiency of the statutory body and would potentially save time and costs. This would also have benefits for applicants as it would likely lead to more timely resolutions and potentially reduce the risk of secondary victimisation. Combined hearings arising from the same factual background would also reduce the risk of inconsistent decisions.

**R. 5.22 The Commission recommends** that the statutory body should have the power to join applications arising from the same factual background, which may include the same crime of violence.

## (e) Evidence

### (i) *Current scheme and law*

- [5.116] Currently, the Tribunal receives evidence from the applicant with their application form, and the applicant may authorise the Tribunal to collect other evidence at source, such as medical or employer reports.<sup>168</sup> However, the Tribunal does not have any power to compel the attendance of witnesses or the production of documents.
- [5.117] Relevance is the main criterion for admission of evidence before an adjudicative body.<sup>169</sup> Documents such as a victim's account of the incident giving rise to a claim, Garda reports, and medical records detailing the nature and extent of the injuries inflicted typically contain information which may be relevant for determining an award of compensation.<sup>170</sup>

<sup>167</sup> International Protection Appeals Tribunal, *Chairperson's Guideline No 2022/1 on Taking Evidence from Appellants and Other Witnesses* (2022) at para 6.3.

<sup>168</sup> See paragraph 23 of the Criminal Injuries Compensation Scheme (31 January 2025) and Criminal Injuries Compensation Scheme, "Application Form (Non-Fatal Injury) Scheme of Compensation for Personal Injuries Criminally Inflicted" (updated 18 July 2025) at section 10(k) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-non-fatal-cases>> accessed 23 March 2026.

<sup>169</sup> *TN v Minister for Justice, Equality and Law Reform* [2007] IEHC 257, [2007] 4 IR 553.

<sup>170</sup> The application form for Non-Fatal Injuries for the current scheme states that it requires receipts and asks applicants to provide details of expenses incurred as a result of the incident, including travelling expenses; the reason for travelling; the name and address of the medical practitioner; mode of transport; number of journeys and distance travelled; any medical expenses; any medicines/prescription expenses, any optical expenses; any dental expenses; and other expenses incurred: Criminal Injuries Compensation Scheme,

[5.118] As discussed previously, the Commission is conscious that procedural obstacles should be as minimal as possible for applicants. The collection and submission of supporting documents can be a burden on applicants, especially where they are still recovering from a traumatic event. The fact that hundreds of cases have been rejected by the Tribunal over the past four years because of a lack of sufficient supporting documentation may demonstrate this.<sup>171</sup> Obtaining supporting evidence can also be time-consuming and may lead to delays in making payments of compensation. Therefore, the Commission has considered how the statutory body may assist in obtaining relevant documents for an applicant to ensure the timely resolution of their application.

*(ii) Comparative bodies*

[5.119] MHTs have the power to compel evidence.<sup>172</sup> They can direct consultant psychiatrists and anyone else whose evidence is required to attend the MHT.<sup>173</sup> The Inspector has the power to administer oaths.<sup>174</sup>

[5.120] IPAT may compel a witness to give oral testimony and order the production of documentary evidence. IPAT may issue a written direction requiring any person whose evidence is required to attend on a specified date, time and place to give evidence.<sup>175</sup> IPAT can also direct that person to produce any document or thing in their possession or control that is specified in the direction.<sup>176</sup> This does not apply to the Minister for Justice or officers of the Minister. In determining whether to direct the attendance of a witness on request of an appellant, IPAT must take account of the nature and purpose of the evidence the witness is proposed to give, as indicated in the notice of appeal.<sup>177</sup>

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"Application Form (Non-Fatal Injury) Scheme of Compensation for Personal Injuries Criminally Inflicted" (updated 18 July 2025) at section 8 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-non-fatal-cases>> accessed 23 March 2026.

<sup>171</sup> See Criminal Injuries Compensation Scheme, "Decisions by the Criminal Injuries Compensation Tribunal: Paragraph 10 (previously 11): Need to provide all reasonable assistance" (8 September 2025) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/collections/decisions-by-the-criminal-injuries-compensation-tribunal/#paragraph-10-previously-11-need-to-provide-all-reasonable-assistance>> accessed 23 March 2026.

<sup>172</sup> Section 49(1) and (2) of the Mental Health Act 2001.

<sup>173</sup> Section 49(2) of the Mental Health Act 2001.

<sup>174</sup> Section 51(2)(f) of the Mental Health Act 2001.

<sup>175</sup> Section 42(8)(a) of the International Protection Act 2015.

<sup>176</sup> Section 42(8)(b) of the International Protection Act 2015.

<sup>177</sup> Section 42(7)(b) of the International Protection Act 2015.

[5.121] IPAT can also administer oaths and affirmations.<sup>178</sup> The Chairperson's Guideline on Taking Evidence from February 2022 states that IPAT should take evidence on oath or affirmation unless it considers that this would not be in the interests of justice.<sup>179</sup> There is further guidance on the administering of oaths contained in the Guideline.<sup>180</sup>

[5.122] Adjudication officers at the WRC can compel evidence. They can request the production of any documents in a person's possession, custody or control that relate to the proceedings.<sup>181</sup> They can also compel witnesses<sup>182</sup> and administer oaths and affirmations.<sup>183</sup>

*(iii) Proposals for reform*

[5.123] In the Chapter on the Structure of the Statutory Body and the Application Process, the Commission recommends that the assistive tier should provide as much assistance as possible to applicants in completing their application. The Commission recommends in that Chapter that an applicant should be requested to consent to the statutory body seeking supporting documents at source, in the following circumstances:

- where requested by the applicant,
- where necessary to complete an application, or
- where necessary for a fair determination.

[5.124] Difficulties can arise about data protection when there is no explicit statutory basis for information sharing. Therefore, as also addressed in the Chapter on the Structure of the Statutory Body and the Application Process, the Commission recommends that the statutory body should have the power to conclude agreements such as operational protocols or memoranda of understanding with other State and non-State bodies that it considers relevant to its work, including

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<sup>178</sup> Section 42(8)(d) of the International Protection Act 2015.

<sup>179</sup> International Protection Appeals Tribunal, *Chairperson's Guideline No 2022/1 on Taking Evidence from Appellants and Other Witnesses* (2022) at para 11.2. As of the time of writing, this is the most recent IPAT guideline available on the Chairperson's taking of evidence.

<sup>180</sup> International Protection Appeals Tribunal, *Chairperson's Guideline No 2022/1 on Taking Evidence from Appellants and Other Witnesses* (2022) at section 11. Guidance includes explaining the significance of the oath, providing the appropriate holy book where needed, and procedures around the use of an interpreter.

<sup>181</sup> Section 41(10) of the Workplace Relations Act 2015.

<sup>182</sup> Section 41(10) of the Workplace Relations Act 2015.

<sup>183</sup> Section 41(12A) of the Workplace Relations Act 2015 as inserted by section 4(a) of the Workplace Relations (Miscellaneous Provisions) Act 2021.

An Garda Síochána. The Commission considers that this should make it easier for the statutory body to request documents directly from those bodies.

- [5.125] There may be instances, however, where the statutory body is not able to access important evidence through a request and the available documentation may be insufficient to allow the statutory body to reach a clear and informed determination. This may be the case where there is a significant issue, for example involving the application of exclusionary criteria, complex factual scenarios or conflicting information. In such cases, a power to compel evidence may significantly assist the decision-maker. In light of this, the Commission considers that it is necessary to give the statutory body the power to compel evidence. This would permit the statutory body to continue its proceedings and reach determinations where there are difficulties collecting evidence in the ordinary manner. As per the ordinary rules, however, no person can be compelled to give evidence that would lead to self-incrimination.
- [5.126] The Commission does not believe that it will be necessary to exercise the power to compel evidence in most applications. The majority of applications are expected to proceed informally and to be resolved based on the documentation submitted alongside the application form or obtained through a request from the statutory body.
- [5.127] While formal court rules can require a higher threshold for the admission of evidence, the Commission considers that the statutory body should be able to accept evidence even where it would not satisfy the formal requirements for admissibility in court proceedings, provided that the process complies with fair procedures. This means, for example, that documents would not have to be introduced by a person who authenticates them. The statutory body should be empowered to prepare guidance on the circumstances on which decision-makers can accept evidence which doesn't satisfy the formal requirements for admissibility in court proceedings.
- [5.128] The Commission recommends that for the purposes of an oral hearing, the chairperson of the statutory body may:
- direct in writing any person, whose evidence is required by the statutory body, to attend before the statutory body on a date and at a time and place specified in the direction and give evidence in that place and
  - direct any such person to produce any specified document or thing in his or her possession or control.
- [5.129] As it is envisaged that proceedings before hearings will be inquisitorial, the Commission recommends that the statutory body should have the power to call witnesses and the power to administer oaths or affirmations of truth, where it receives evidence at an oral hearing. The Commission considers that this would create confidence both for the statutory body in the accuracy of evidence



received and for victims, should any evidence provided contradict their version of events.

- R. 5.23 The Commission recommends** that the statutory body should have the power to conclude operational protocols or memoranda of understanding with other state and non-state bodies that it considers relevant to its work, including An Garda Síochána. (This recommendation is also in the Chapter on the Structure of the Statutory Body and the Application Process).
- R. 5.24 The Commission recommends** that for the purposes of an oral hearing, the chairperson of the statutory body may:
- (1) direct in writing any person whose evidence is required by the statutory body to attend before the statutory body on a date and at a time and place specified in the direction to give evidence and to produce any document or thing in his or her possession or control specified in the direction;
  - (2) direct any such person to produce any specified document or thing in his or her possession or control.
- R. 5.25 The Commission recommends** that the statutory body be able to accept evidence even where such evidence would not satisfy the formal rules required for admissibility of evidence in court proceedings, provided that the process complies with the requirements of fair procedures.
- R. 5.26 The Commission recommends** that the statutory body should have the power to administer oaths or affirmations of truth.

## (f) Publication and redaction of decisions

### (i) *Current scheme and law*

[5.130] Until 2021, the Tribunal did not publish its determinations on compensation applications. However, in *Kelly and Doyle v Criminal Injuries Tribunal*, Ní Raifeartaigh J held that the failure of the Tribunal to publish its previous decisions was “both a breach of constitutional fair procedures and a failure to protect, effectively, the exercise of an EU right”.<sup>184</sup> This reasoning echoes that of the Supreme Court in *PPA v Refugee Appeals Tribunal*, where it was held that:

“It is not that a member of a tribunal is actually bound by a previous decision, but consistency of decisions based on the same objective facts may, in appropriate circumstances, be a significant

<sup>184</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 162 (Ní Raifeartaigh J).

element in ensuring that a decision is objectively fair rather than arbitrary.”<sup>185</sup>

- [5.131] Since the decision in *Kelly and Doyle*, the Tribunal has published decisions on its webpage.<sup>186</sup> However, there is no obligation under the current scheme to require that decisions are published. Paragraph 29 of the current scheme provides that “[t]he decisions of the Tribunal, appropriately redacted to remove personal data, may be made publicly available.” The use of the word “may” permits the Tribunal to publish decisions but does not mandate the publication of all decisions or clarify in what circumstances it may be appropriate not to publish decisions.

(ii) *Comparative bodies*

- [5.132] The approach to the publication of decisions varies in other bodies in Ireland. Sittings of a MHT are held in private.<sup>187</sup> Its documents, the documents of its members and MHT reports are absolutely privileged.<sup>188</sup>
- [5.133] IPAT has an archive of decisions from 2020 to date.<sup>189</sup> New decisions are added on a monthly basis. Anyone can access the archive once they have registered as a user which can be done by contacting IPAT.<sup>190</sup> IPAT also has legislative provisions related to the protection of the identity of applicants. The Minister for Justice and IPAT staff must “take all practicable steps to ensure that the identity of applicants is kept confidential.”<sup>191</sup> IPAT can only publish information that could identify an applicant with their consent.<sup>192</sup>
- [5.134] WRC decisions are also published unless due to the existence of special circumstances, the adjudication officer determines that information that would

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<sup>185</sup> *PPA v Refugee Appeals Tribunal* [2006] IESC 53, [2007] 4 IR 94 at para 24 (Geoghegan J).

<sup>186</sup> For a full list of the Tribunal’s decisions, see “Decisions by the Criminal Injuries Compensation Tribunal” (Last updated on 8 September 2025) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/collections/decisions-by-the-criminal-injuries-compensation-tribunal/>> accessed 23 March 2026.

<sup>187</sup> Section 49(9) of the Mental Health Act 2001.

<sup>188</sup> Section 49(10) of the Mental Health Act 2001.

<sup>189</sup> The International Protection Appeals Tribunal, “Tribunal Decisions Archive” <<https://www.protectionappeals.ie/about-the-tribunal/tribunal-decisions-archive/>> accessed 23 March 2026.

<sup>190</sup> The International Protection Appeals Tribunal, “Tribunal Decisions Archive” <<https://www.protectionappeals.ie/about-the-tribunal/tribunal-decisions-archive/>> accessed 23 March 2026.

<sup>191</sup> Section 26(1) of the International Protection Act 2015.

<sup>192</sup> Section 26(2) of the International Protection Act 2015.

identify the parties in relation to whom the decision relates should not be published.<sup>193</sup>

- [5.135] Special circumstances may include where a party has a disability or medical condition which they do not wish to be revealed; cases involving issues of a sensitive nature such as sexual harassment; cases involving a protected disclosure; or cases which could result in a risk of harm to a party if the hearing is held in public, or if the parties are named in the decision.<sup>194</sup> It should be noted that the fact that the parties both consider that there are 'special circumstances' or that an individual's reputation might be impacted if an employment or equality complaint is published does not automatically constitute a reason for the hearing to be heard in private. Ultimately, it is a matter for the Adjudication Officer to decide based on the facts of the case in accordance with the law and fair procedure.<sup>195</sup>

*(iii) Proposals for reform*

- [5.136] The Commission is of the view that publishing decisions ensures predictability and consistency, and therefore increases fairness. Predictability is crucial for ensuring constitutional justice and meeting Ireland's obligations under EU law. The Commission considers that in the interests of predictability and consistency, and in line with the decision in *Kelly and Doyle*,<sup>196</sup> decisions of the statutory body should, as a general rule, be published. Similar to the approach under the current scheme, the Commission considers that decisions should be published without personal data that may identify a victim or defendant.
- [5.137] The Commission is aware that evidence before the statutory body may present potential issues relating both to the impact on the rights of the accused in criminal proceedings and the rights of victims to privacy and dignity. As discussed further in the Chapter on Interaction with Court Proceedings, the Commission is recommending that, in general, the statutory body should make expeditious decisions which are capable of meeting applicants' immediate needs and the statutory body should not, in general, postpone decisions until the

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<sup>193</sup> Section 41(14)(b) of the Workplace Relations Act 2015 as substituted by section 4(b) and (c) of the Workplace Relations (Miscellaneous Provisions) Act 2021.

<sup>194</sup> Workplace Relations Commission, *WRC Procedures in the Adjudication and Investigation of all Employment and Equality Complaints and Disputes* (30 October 2025) at page 7 <[https://www.workplacerelations.ie/en/publications\\_forms/procedures\\_employment\\_and\\_equality\\_complaints.pdf](https://www.workplacerelations.ie/en/publications_forms/procedures_employment_and_equality_complaints.pdf)> accessed 23 March 2026.

<sup>195</sup> Workplace Relations Commission, *WRC Procedures in the Adjudication and Investigation of all Employment and Equality Complaints and Disputes* (30 October 2025) at page 7 <[https://www.workplacerelations.ie/en/publications\\_forms/procedures\\_employment\\_and\\_equality\\_complaints.pdf](https://www.workplacerelations.ie/en/publications_forms/procedures_employment_and_equality_complaints.pdf)> accessed 23 March 2026.

<sup>196</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 162 (Ní Raifeartaigh J).

conclusion of related court proceedings. Therefore, decisions by the statutory body are likely to occur before or alongside ongoing criminal cases.

- [5.138] The Commission considers that beyond personal data, such as names, which would be redacted in all cases, decisions may include a unique set of facts leading to the harm suffered, and could identify a victim or a defendant through the summary of such facts. Identifying a defendant or victim in this way could inadvertently influence criminal proceedings, raising concerns about the risk of prejudicing the rights of a defendant. Equally, publishing such information could impact on a victim's rights to privacy and dignity. To mitigate against these risks, first, the statutory body should ensure that the language used in its decisions does not imply a decision in relation to the guilt or innocence of the alleged offender. Second, the statutory body should have the power to make further redactions, beyond personal data, to remove any information in a decision that may negatively impact on the interests of justice. This would include risking prejudice to the accused, risking a breach of the applicant's privacy, or posing a risk to the rights of third parties.
- [5.139] The Commission also recommends that, in exceptional cases, the statutory body should have the power to delay publication of its decisions in the interests of justice. This may be necessary where, for example, the identity of the defendant cannot be hidden due to the unique circumstances of the case, and there may be a real risk to the right to a fair trial if the decision is published in any form, or a real risk to the protection of the victim's rights to privacy and dignity.
- [5.140] In addition, the Commission recommends that the statutory body can delay the making of a decision on compensation, where necessary in the interests of justice. This may be appropriate where there are highly contested facts in the application form, or where the applicant themselves may also be a defendant in an ongoing trial or in civil proceedings. The statutory body may wish to wait for the outcome of those proceedings to see whether exclusionary criteria should apply to the applicant, for example.
- [5.141] The Commission considers that the statutory body should also have the power to make non-publication orders, where a decision on compensation has been made but it considers that publication of the decision should be redacted or delayed. This issue is explored further in the Chapter on Interaction with Court Proceedings.

**R. 5.27 The Commission recommends** that the statutory body should, as a general rule, publish its decisions, appropriately redacted to remove personal data.

**R. 5.28 The Commission recommends** that where the statutory body has concerns regarding the interests of justice, including where it considers there may be a risk to the right to a fair trial or the right to privacy:

- (1) a decision on compensation could be made and published and, in addition to the usual redactions to remove personal data, the decision could be further redacted to protect the anonymity of both the defendant and the victim, such as by redacting any unique set of facts or circumstances that could identify the defendant or the victim, and the statutory body could prohibit the publication or broadcast of the redacted part of the decision which would, or would be likely to, identify the victim or defendant, or
- (2) a decision on compensation could be made but the publication of the decision could be delayed until after the conclusion of court proceedings, and the statutory body could prohibit the publication or broadcast of the decision which would, or would be likely to, identify the victim or defendant, or
- (3) where it would not be in the interests of justice to make a decision regarding compensation before the conclusion of court proceedings, and neither anonymising nor delaying the publication of a decision would mitigate these concerns, the statutory body should postpone consideration of an application. (This recommendation is also in the Chapter on Interaction with Court Proceedings).

**R. 5.29 The Commission recommends** that where the statutory body believes a person may be about to breach or has breached a non-publication order made by the statutory body, the statutory body may apply to a court for such order as may be prescribed for the purposes of enforcing the non-publication order or determining the consequences of its breach. (This recommendation is also in the Chapter on Interaction with Court Proceedings).

**R. 5.30 The Commission recommends** that the certificate of authority contains an acknowledgment by the applicant that decisions of the statutory body will generally be published, with appropriate redactions. (This recommendation is also in the Chapter on the Structure of the Statutory Body and the Application Process).

### (g) Power to make a direct payment

[5.142] In the Chapter on Exclusionary Criteria, the Commission considers situations where the alleged offender may benefit from a compensation payment to the victim of crime. The Commission recommends in that Chapter that a compensation payment may be reduced or refused in such a situation (with

certain exceptions). However, the Commission has also considered the possibility that in such a situation, a victim may not be able to access urgent or necessary services without the benefit of a compensation payment. The Commission is therefore recommending that where the statutory body has reasonable concerns that a victim of a crime of violence will not receive the benefit of a compensation payment, the statutory body may direct that a payment of compensation be made directly to a person or body charging for verifiable expenses in order to ensure the victim receives the medical or other support they reasonably require.

**R. 5.31 The Commission recommends** that where the statutory body has reasonable concerns that the victim of crime will not receive the benefit of the compensation payment, the statutory body may direct that a payment of compensation be made directly to the person or body charging for the relevant verifiable expenses, arising from the crime of violence, in order to ensure the victim receives the medical or other support they reasonably require. (This recommendation is also in the Chapter on Exclusionary Criteria).

## 8. Referring a question of law to the High Court

### (a) Overview

[5.143] Where a specific legal question arises that an adjudicative body seeks clarification or interpretation on before a final decision can be made, it can use a procedure called ‘consultative case stated’ to refer the question to a higher court, usually the High Court.<sup>197</sup> Once the High Court provides its opinion, the adjudicative body must follow the court’s guidance in its decision-making. This procedure ensures that decision-makers can receive clear legal direction on complex or contentious issues before finalising their decisions. A number of adjudicative bodies have the power to initiate a consultative case stated procedure.<sup>198</sup>

[5.144] This process can ensure that adjudicative bodies make informed decisions that reflect current law, improving the fairness and integrity of the process. The Commission considers that decisions that are aligned with established legal principles are less likely to be challenged by an applicant. By resolving legal questions early, the consultative case stated procedure can reduce the number of appeals and reviews, leading to a more efficient process.

<sup>197</sup> Section 52 of the Courts (Supplemental Provisions) Act 1961.

<sup>198</sup> Including the Commission for Communications Regulation under section 111 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023; the Competition and Consumer Protection Authority under section 15AAA(1)(a) of the Competition Act 2002; the Aquaculture Licenses Appeals Board under section 58 of the Fisheries (Amendment) Act 1997.

### (b) Proposals for reform

[5.145] The Commission considers that the consultative case stated procedure would be a useful mechanism for the statutory body. This mechanism could enhance the legal soundness of the statutory body's decisions, particularly given ongoing legal developments in victims' rights, including the right to compensation.

[5.146] The decision of whether to exercise this power should lie with the relevant assessment and adjudication officer, who should be well-equipped to assess the importance of the legal question. However, the Commission considers that applicants should be permitted to request that the relevant assessment and adjudication officer consider initiating a consultative case stated. The decision to initiate, however, should be made by the relevant assessment and adjudication officer.

**R. 5.32 The Commission recommends** that the statutory body should have the power to initiate a consultative case stated to the High Court.

**R. 5.33 The Commission recommends** that applicants for compensation should be permitted to request that the statutory body initiate a consultative case stated.

**R. 5.34 The Commission recommends** that the decision to initiate a consultative case stated should be made by the relevant assessment and adjudication officer.

# CHAPTER 6

## DEFINING ELIGIBLE APPLICANTS AND CRIMES OF VIOLENCE

### Table of Contents

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|       |                                                                  |     |
|-------|------------------------------------------------------------------|-----|
| 1.    | <i>Introduction</i> .....                                        | 167 |
| 2.    | <i>Defining a victim</i> .....                                   | 168 |
|       | (a) Introduction.....                                            | 168 |
|       | (b) Victims of a crime of violence.....                          | 169 |
| (i)   | <i>Current scheme and law</i> .....                              | 169 |
| (ii)  | <i>Comparative jurisdictions</i> .....                           | 171 |
| (iii) | <i>Submissions</i> .....                                         | 174 |
| (iv)  | <i>Proposals for reform</i> .....                                | 174 |
| 3.    | <i>Other eligible applicants</i> .....                           | 177 |
|       | (a) Persons responsible for the maintenance of the victim.....   | 177 |
|       | (b) Family members: Bereavement payments.....                    | 177 |
| (i)   | <i>Introduction</i> .....                                        | 177 |
| (ii)  | <i>Current scheme and law</i> .....                              | 178 |
| (iii) | <i>Comparative jurisdictions</i> .....                           | 183 |
| (iv)  | <i>Proposals for reform</i> .....                                | 186 |
|       | (c) Family members: Bystanders to a crime of violence.....       | 192 |
| (i)   | <i>Introduction</i> .....                                        | 192 |
| (ii)  | <i>Comparative jurisdictions</i> .....                           | 192 |
| (iii) | <i>Proposals for reform</i> .....                                | 194 |
|       | (d) Persons dependent on the victim.....                         | 195 |
| (i)   | <i>Dependency under the current scheme</i> .....                 | 195 |
| (ii)  | <i>Dependency in Irish civil law</i> .....                       | 196 |
| (iii) | <i>Comparative jurisdictions</i> .....                           | 197 |
| (iv)  | <i>Proposals for reform</i> .....                                | 199 |
|       | (e) Other persons who have incurred expenses in fatal cases..... | 203 |
| 4.    | <i>Defining a crime of violence</i> .....                        | 204 |
|       | (a) Introduction.....                                            | 204 |
|       | (b) Relevance of criminal proceedings.....                       | 204 |
|       | (c) Standard of proof.....                                       | 206 |
|       | (d) Types of crime.....                                          | 206 |
| 1.    | <i>Defining violence</i> .....                                   | 206 |



|       |                                                         |     |
|-------|---------------------------------------------------------|-----|
| 2.    | <i>Domestic, sexual and gender-based violence</i> ..... | 207 |
| 3.    | <i>Human trafficking</i> .....                          | 212 |
| 4.    | <i>Terrorist offences</i> .....                         | 213 |
| 5.    | <i>Road traffic offences</i> .....                      | 215 |
| (e)   | Comparative jurisdictions .....                         | 216 |
| (i)   | <i>EU Member States</i> .....                           | 216 |
| (ii)  | <i>Australia</i> .....                                  | 219 |
| (iii) | <i>North America</i> .....                              | 221 |
| (f)   | Proposals for reform.....                               | 221 |



## 1. Introduction

- [6.1] This Chapter addresses the issue of how to define a 'victim' and a 'crime of violence' in the proposed statutory scheme. These definitions are interrelated because the Commission is recommending that to be eligible for compensation a victim must have suffered harm as a result of a crime of violence.
- [6.2] It is critical that the provisions of the statutory scheme clearly establish precisely who is entitled to claim compensation, and under what circumstances. The proposed statutory scheme should clearly define what is required for a victim to be eligible for compensation under the scheme, explain what constitutes a crime of violence, and meet the minimum requirements set by the Directive relating to compensation to crime victims ("Compensation Directive").<sup>1</sup>
- [6.3] In the first part of this Chapter, the Commission proposes a definition for victims of crimes of violence. It considers what threshold of harm should be required to entitle an applicant to apply for compensation under the scheme. It also recommends that other categories of persons who have suffered a loss as a result of the crime of violence should be entitled to apply for compensation under the statutory scheme. These categories include family members in fatal cases, individuals responsible for the maintenance of the victim, individuals who incur expenses as the result of the death of a victim, family members who witness a crime of violence, and dependants of the victim.
- [6.4] In the second part of this Chapter, the Commission proposes a definition for 'a crime of violence'. In considering what crimes should be considered 'crimes of violence' for the purposes of the statutory scheme, it examines recent developments in law and policy in Ireland and at EU level, in particular in relation to domestic, sexual and gender-based violence. It proposes that certain offences which may not ordinarily be understood to be crimes of violence, because they may lack the element of physical harm, should be expressly included in the scheme. The Commission proposes that the statutory scheme should contain a broad definition of a crime of violence and that it should contain a schedule of all crimes that are to be considered crimes of violence for the purposes of the scheme.

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<sup>1</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims [2004] OJ L 261/15 ("Compensation Directive").

## 2. Defining a victim

### (a) Introduction

- [6.5] The Criminal Injuries Compensation Scheme (“the current scheme”) applies “in respect of personal injury where the injury is directly attributable to a crime of violence”.<sup>2</sup> It also applies where a person has been injured in circumstances arising from the actions of an individual in assisting or attempting to assist the prevention of crime or saving of human life.<sup>3</sup> The Commission addresses those circumstances in the Chapter on Well-Meaning Intervenors. The current scheme does not define a victim or a crime of violence.
- [6.6] Under the current scheme, persons eligible to claim compensation in the context of a crime of violence include:
- (a) the person who sustained the injury (the victim);
  - (b) a person responsible for the maintenance of the victim who has suffered financial loss or incurred expenses as a result of the victim’s injury;
  - (c) a dependant of the victim where the victim died as a result of their injuries;
  - (d) where the victim has died and they have no dependants, any person who has incurred expenses as a result of the death; or
  - (e) any dependant of the victim where the victim has died otherwise than as a result of the injuries caused by the criminal offence.<sup>4</sup>
- [6.7] In the Consultation Paper, the Commission asked consultees whether the categories of victim under the current scheme are sufficient, and whether they should be further classified, or classified differently.<sup>5</sup> Many consultees indicated a desire for reform of the categories currently in the scheme. Submissions varied in their suggestions for reform. One submission indicated that anyone who is impacted by a crime should be treated as a victim for the purposes of the scheme. Other submissions proposed alignment with the definition of the victim contained in the Criminal Justice (Victims of Crime) Act 2017 (“Victims’ Rights Act”) but with retention of the categories of dependants and those who have suffered financial loss. Submissions also stated that the impact of the injury on dependants of victims of non-fatal violent crimes, including the parents and

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<sup>2</sup> Paragraph 1 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>3</sup> Paragraph 1 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>4</sup> Paragraph 3 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>5</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 169, question 5.1.

children of victims, should be considered when deciding on compensation payments.

- [6.8] The following sections consider the various categories of applicants who may be eligible for compensation under the current scheme and makes proposals for categories in the statutory scheme.

## **(b) Victims of a crime of violence**

### *(i) Current scheme and law*

- [6.9] Paragraph 3(a) of the current scheme provides that the Criminal Injuries Compensation Tribunal ("the Tribunal") will consider claims for compensation made by or on behalf of "the person who sustained the injury (the victim)". 'Injury' is not explicitly defined by the scheme, other than the provision in paragraph 1 that the word injury, as used in the scheme, includes a fatal injury.
- [6.10] 'Personal injury' is defined in section 2(1) of the Civil Liability Act 1961 ("CLA 1961") as including "any impairment of a person's physical or mental condition". The current scheme awards compensation on the same basis as damages under the CLA 1961. Therefore, it would appear that references to injury and personal injury are to be defined in accordance with the definition in the CLA 1961.<sup>6</sup>
- [6.11] Under the CLA 1961, to claim damages for an "impairment of a mental condition", the Supreme Court has found that it is necessary to show that it was a "recognisable psychiatric injury".<sup>7</sup> The Tribunal has clearly endorsed this approach. A 2023 Tribunal decision states:

"Where shock causes a recognisable psychiatric illness it may be the basis for a claim of compensation. However, certain elements ... must be proven to establish a compensatable injury from nervous shock. These include that a recognised psychiatric injury has resulted and in this regard general upset, stress and anxiety do not suffice."<sup>8</sup>

- [6.12] The Commission has examined this threshold and believes that it may not be the appropriate threshold for the statutory body. The Commission considers that harm inflicted by violent crime is different in nature to the type of injury usually

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<sup>6</sup> Paragraph 6 of the Criminal Injuries Compensation Scheme (31 January 2025) provides: "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", with some exceptions.

<sup>7</sup> *Kelly v Hennessy* [1995] IESC 8, [1995] 3 IR 253.

<sup>8</sup> See Criminal Injuries Compensation Scheme, Case Reference 51653 (20 March 2023) at para 14 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/51653-20-march-2023/>> accessed 23 March 2026.

considered in tort cases (as defined under the CLA 1961). As well as potentially inflicting physical or recognisable psychiatric injury, a violent crime represents a violation of the victim's personal integrity and autonomy. The Commission considers that a broader definition of harm may be required to encompass the particular mental impact and violation of dignity inherent in crimes of violence.

- [6.13] The Commission also considers that a more expansive definition of harm may be required following recent developments in EU case law. In the case of *Burdene*,<sup>9</sup> the Court of Justice of the European Union ("CJEU") stated that the scope of the concept of 'victim' as contained in Article 12(2) of the Compensation Directive is clarified by the definition of victim set out in Article 2(1)(a) of the EU Directive establishing minimum standards on the rights, support and protection of victims of crime ("Victims' Rights Directive").<sup>10</sup> The court held that the concept of 'victim', which was undefined in the Compensation Directive, must be interpreted in a uniform manner in the territory of the European Union.<sup>11</sup> The Victims' Rights Directive provided a "horizontal framework for addressing the needs of all victims of crime".<sup>12</sup> To that end, any national schemes on compensation for victims of intentional crime must apply the definition of the concept of 'victim' as provided in the Victims' Rights Directive.
- [6.14] In the Commission's view, the definition of victim under the proposed statutory scheme must therefore closely align with the definition in the Victims' Rights Directive, which is: "a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence".<sup>13</sup> The Victims' Rights Act uses a very similar definition of victim.<sup>14</sup>
- [6.15] The recent decision of the CJEU in *LD v Criminal Injuries Compensation Tribunal* has provided further clarification as to the kind of harms which must be covered by the scheme in line with the Compensation Directive. The Court held that EU law requires that state schemes providing compensation to victims of violent

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<sup>9</sup> Case C-126/23 *Burdene* EU:C:2024:937.

<sup>10</sup> Case C-126/23 *Burdene* EU:C:2024:937 at para 48, citing Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L 315/57 ("Victims' Rights Directive").

The CJEU further stated "since both Directive 2004/80 and Directive 2012/29 concern the protection of victims of crime, they thus have overlapping fields of application".

<sup>11</sup> Case C-126/23 *Burdene* EU:C:2024:937 at para 36.

<sup>12</sup> Case C-126/23 *Burdene* EU:C:2024:937 at para 48.

<sup>13</sup> Article 2(1)(a) of the Victims' Rights Directive (2012/29/EU).

<sup>14</sup> Section 2(1) of the Criminal Justice (Victims of Crime) Act 2017 defines a victim as "a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by an offence".

crimes must be capable of providing compensation for pain and suffering endured by victims.<sup>15</sup> In reaching this conclusion, it stated that it is clear from the definition of victim in the Victims' Rights Directive that the harm suffered by victims also covers pain and suffering, particularly as it refers to "mental or emotional harm".<sup>16</sup> The CJEU stated that compensation schemes must respect the rights in the Charter of Fundamental Rights of the European Union ("the Charter"), including the right to the integrity of the person, which "must be understood as being both physical and mental".<sup>17</sup> The Commission therefore recommends that the statutory scheme should cover mental harm beyond recognisable psychiatric injury and that it should encompass harm to a victim's physical and mental integrity.

## *(ii) Comparative jurisdictions*

- [6.16] Criminal injury compensation schemes in other jurisdictions have taken varied approaches to the kind of injuries that attract compensation. With regard to mental harm, some schemes require the victim to demonstrate that they have a recognised mental illness or disorder to be eligible for assistance. Other schemes take a more expansive approach and allow victims to access compensation for psychological harm and trauma that falls short of a recognisable psychiatric illness. A number of schemes are explored below to demonstrate the varying approaches.

### *Northern Ireland*

- [6.17] The Northern Ireland Criminal Injuries Compensation Scheme provides that compensation may be paid to an applicant who has sustained a criminal injury.<sup>18</sup> A 'criminal injury' is defined as one or more personal injuries sustained in and directly attributable to a crime of violence, an offence of trespass on a railway, intervening in a crime or assisting law enforcement.<sup>19</sup> Paragraph 10 defines a 'personal injury' as including physical injury, fatal injury, disease and mental injury. However, the circumstances in which a victim may be compensated for mental injury are limited. First, the mental injury must be a disabling mental

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<sup>15</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 39: "Article 12(2) of Directive 2004/80 must be interpreted as precluding a national scheme on compensation to victims of violent intentional crimes which, as a matter of principle, excludes, as regards non-material harm, any compensation for pain and suffering endured by such victims."

<sup>16</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 30.

<sup>17</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 35, citing Article 3(1) of the Charter of Fundamental Rights of the European Union.

<sup>18</sup> Paragraph 6(a) of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme 2009.

<sup>19</sup> Paragraph 8 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme 2009.

illness confirmed by psychiatric diagnosis.<sup>20</sup> Second, compensation will not be payable to applicants for mental injury or disease without physical injury unless the applicant was put in reasonable fear of immediate physical harm to his or her own person<sup>21</sup> or was the victim of a sexual offence.<sup>22</sup>

*England, Scotland and Wales*

- [6.18] In England, Scotland and Wales, compensation under the Criminal Injuries Compensation Scheme 2012 is awarded to victims who have sustained a 'criminal injury'.<sup>23</sup> A criminal injury is defined as an injury which appears in the tariff attached to the scheme.<sup>24</sup> Mental injuries are recoverable where they are permanent or disabling for at least six weeks.<sup>25</sup> A mental injury is deemed to be 'disabling' if it has a substantial adverse effect on a person's abilities to carry out normal day-to-day activities for the time specified.<sup>26</sup> It does not include temporary mental conditions, but rather must be an ongoing, debilitating mental injury.<sup>27</sup> Victims may also apply for compensation where they suffered sexual assault or other sexual offences.<sup>28</sup>

*Australia*

- [6.19] A number of victim compensation schemes in Australia take a more expansive approach to defining 'injury' for the purposes of eligibility criteria. In New South Wales, the Victims Rights and Support Act 2013 uses a broader definition of

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<sup>20</sup> Paragraph 10 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme 2009.

<sup>21</sup> Paragraph 10(a) of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme 2009.

<sup>22</sup> Paragraph 10(c) of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme 2009.

<sup>23</sup> Paragraph 4 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>24</sup> Annex A of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales). A tariff system is where fixed amounts of compensation are attached to a list of injuries provided under the terms of the scheme. Tariff schemes are discussed in further detail in the Chapter on Determining Fair and Appropriate Compensation.

<sup>25</sup> Annex E of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales) at page 47.

<sup>26</sup> For example, "impaired work or school performance or effects on social relationships or sexual dysfunction". See Annex E of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales) at page 48.

<sup>27</sup> Annex E of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales) at page 48.

<sup>28</sup> Annex E of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales) at pages 69 – 71.



mental injury, which is “psychological or psychiatric harm”.<sup>29</sup> This definition recognises psychological or psychiatric harm that may not be considered ‘disabling’ or which falls short of a recognised psychiatric condition.

[6.20] Victoria has adopted a similar approach. The Victims of Crime (Financial Assistance Scheme) Act 2022 provides that ‘injury’, in relation to an act of violence, means the following:

- (a) actual physical harm;
- (b) psychological or psychiatric harm;
- (c) exacerbation of a pre-existing injury caused by actual physical harm or psychological or psychiatric harm;
- (d) any combination of matters referred to in paragraphs (a), (b) and (c) arising from the act of violence;
- (e) any trauma that is—
  - (i) associated with the act of violence; and
  - (ii) determined by the scheme decision maker to be an injury for the purposes of that Act.<sup>30</sup>

[6.21] The Guidelines to the scheme further explain that physical harm includes injuries that affect the physiological body and tissue, and could include unconsciousness, disfigurement, substantial pain, infection with a disease, impairment of bodily function, an unwanted pregnancy or loss of a pregnancy, or another physical injury.<sup>31</sup> Like the scheme in New South Wales, the Victorian scheme encompasses victims who have suffered mental injury but cannot establish that they have a mental illness or disorder. The Victorian Law Reform Commission has commented that a higher threshold can disadvantage certain victims, including victims of family violence and sexual abuse, who may suffer a range of other emotional, psychological and behavioural harms as a result of the crime.<sup>32</sup>

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<sup>29</sup> Section 18 of the Victims Rights and Support Act 2013 (New South Wales).

<sup>30</sup> Section 3(1) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria). The section also specifies that this definition of injury “does not include any of the matters referred to in paragraphs (a) to (e) to the extent that they arise from loss of or damage to property”.

<sup>31</sup> Victoria State Government, “Financial Assistance Scheme Guidelines” (30 June 2025) at page 40 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 23 March 2026.

<sup>32</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at page 268.

*(iii) Submissions*

- [6.22] In its Consultation Paper, the Commission asked consultees whether psychological injury that is not accompanied by physical injury should be expressly included within the scope of a crime of violence.<sup>33</sup> Responses were overwhelmingly in favour of this proposal, and submissions consistently emphasised that psychological suffering should be reflected in the terms of the scheme. Many submissions highlighted that for survivors of domestic violence, including coercive control, physical injuries are only one aspect of the harm inflicted on them. Such harm includes recognised disorders, such as post-traumatic stress disorder, anxiety, depression, self-harm, panic attacks, and sleep disorders, but can also manifest into an array of other negative behaviours. A number of consultees stressed that these serious consequences negatively impact health, families, relationships, social well-being, education, and work.
- [6.23] Consultees also consistently stated that provision should be made for the granting of compensation for pain and suffering in all claims.<sup>34</sup> Some submissions highlighted that damages for pain and suffering could reflect breaches of the right to bodily integrity suffered by victims of sexual offences, and would support a proper rights-based approach to compensation for victims of crime. The Commission notes that the Consultation Paper did not explicitly ask whether psychological injuries not meeting the threshold of a recognisable psychiatric injury should be compensated. However, it appears from the submissions that there is strong support for reflecting the emotional impact and the impact on people's dignity of crimes of violence in the terms of the statutory scheme.
- [6.24] Payments for pain and suffering are addressed by the Commission in the Chapter on Types of Compensation and the Chapter on Determining Fair and Appropriate Compensation.

*(iv) Proposals for reform*

- [6.25] In formulating its proposals for reform, the Commission has considered the distinction that can be drawn between the impact of a crime of violence and injuries sustained through a breach of tort law. It has taken into account developments at European level in the cases of *Burdene* and *LD*, as highlighted above, and it has considered consultee submissions.

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<sup>33</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 169, question 5.2.

<sup>34</sup> In response to a separate question posed by the Commission: "Should provision be made for the awarding of damages for pain and suffering (or, in the language of the *BV* case, damages for "non-material loss") in all claims (not limited to fatal claims)?" See Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 136, question 4.1.

- [6.26] The Commission has concluded that victims should not be required to prove that they have suffered a recognisable physical or psychiatric injury to apply for compensation under the statutory scheme. In particular, the Commission notes that the CJEU made clear in *Burdene* that the term ‘victim’ in the Compensation Directive must be interpreted in light of the definition of ‘victim’ in the Victims’ Rights Directive. Any national compensation scheme is under a resulting obligation to recognise and implement this definition. The Commission therefore recommends that the proposed statutory scheme should adopt a definition of victim that is closely aligned with the definition in the Victims’ Rights Directive and the Victims’ Rights Act.<sup>35</sup> However, in order to ensure that the definition of victim for the statutory scheme is relevant to its central objective of compensating victims of violent crime, the Commission considers that two key alterations to the definition of harm, which is part of the definition of victim in the Directive, should be made.
- [6.27] First, the Commission considers that it is important to recognise that part of the pain and suffering inflicted by violent crime on victims is the violation of their dignity and personal integrity. As noted above, the CJEU in *LD* stated that compensation schemes must protect the right to integrity of the person set out in the Charter, which “must be understood as being both physical and mental”.<sup>36</sup> While not all offences may result in tangible physical injury or mental harm, such as some sexual offences or forms of domestic violence, they can represent a very serious violation of the victim’s dignity and integrity. The Commission considers that adding an additional element of ‘distress’ to the definition of harm would capture the emotional harm caused by such violations of a person’s dignity and integrity.
- [6.28] Second, the Commission considers that ‘economic loss’ should be removed from the definition of harm in this context. The Victims’ Rights Directive is aimed at all victims of crime, including victims of fraud or theft, so this element of the definition does not apply to the scope of the proposed statutory scheme, which is restricted to victims of crimes of violence. The Commission believes that the statutory scheme should only cover financial losses that are incurred as a consequence of the harm caused by the crime of violence, such as the cost of medical treatment or loss of earnings,<sup>37</sup> as distinct from compensation for stolen

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<sup>35</sup> This definition in the Victims’ Rights Directive has also been adopted in Ireland in Section 2(1) of the Criminal Justice (Victims of Crime) Act 2017, which gives effect to the Victims’ Rights Directive.

<sup>36</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 35, citing article 3(1) of the Charter of Fundamental Rights of the European Union.

<sup>37</sup> Criminal Injuries Compensation Tribunal, Case Reference 53727 (10 May 2023) at para 7 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/53727-10-may-2023/>> accessed 23 March 2026.

or damaged property.<sup>38</sup> In the Chapter on Types of Compensation, the Commission recommends that, in most cases, property lost or destroyed in the course of the crime should not be compensated, with the exception of physical aids, such as spectacles, and in some exceptional cases where there has been damage to clothing.

[6.29] In the Chapter on Types of Compensation the Commission explains what categories of compensation a victim of a crime of violence should be able to apply for under the scheme. These categories include verifiable expenses, loss of earnings and general compensation payments for pain and suffering.

[6.30] The Commission therefore recommends that:

- (1) A person is eligible for compensation if the person is a victim of a crime of violence;
- (2) A person is a victim of a crime of violence if they have suffered harm as a result of that crime; and
- (3) Harm includes physical, mental or emotional harm or distress which was directly caused by a criminal offence.
- (4) Compensation may include general compensation payments, reasonable and verifiable expenses and loss of earnings. These categories of payments are defined in the Chapter on Types of Compensation.

#### **R. 6.1 The Commission recommends:**

- (1) A person is eligible for compensation if the person is a victim of a crime of violence;
- (2) A person is a victim of a crime of violence if they have suffered harm as a result of that crime;
- (3) Harm includes physical, mental or emotional harm or distress which was directly caused by a criminal offence.
- (4) Compensation for a victim of a crime of violence may include general compensation payments, reasonable and verifiable expenses and loss of earnings. (These categories of payments are defined in the Chapter on Types of Compensation).

<sup>38</sup> Criminal Injuries Compensation Scheme, "Your questions answered: Making a claim for stolen or damaged property" (8 September 2025) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/criminal-injuries-compensation-scheme-your-questions-answered/#who-is-eligible-to-make-an-application-to-the-criminal-injuries-compensation-tribunal>> accessed 23 March 2026.

### 3. Other eligible applicants

#### (a) Persons responsible for the maintenance of the victim

- [6.31] Paragraph 3(b) of the current scheme provides that a person responsible for the maintenance of the victim who has suffered financial loss or incurred expenses as a result of the victim's injury is eligible to claim compensation.<sup>39</sup> This includes, for example, parents or guardians of children who suffered a violent crime. The parents or guardians are entitled to claim compensation for financial loss or expenses they have incurred as a result of the child's injury.
- [6.32] The Commission considers that this ground of eligibility should be provided for in the statutory scheme where such expenses can be directly linked to the crime of violence and are both reasonable and verifiable.
- [6.33] The Commission therefore recommends that a person should be eligible for compensation if the person is responsible for the maintenance of a victim of a crime of violence and has incurred reasonable, verifiable expenses as a result of the harm to the victim.
- [6.34] The Commission therefore recommends that a person should be eligible for compensation if the person is responsible for the maintenance of a victim of a crime of violence and has incurred reasonable, verifiable expenses as a result of the harm to the victim.

**R. 6.2 The Commission recommends** that a person should be eligible for compensation for reasonable, verifiable expenses if the person is responsible for the maintenance of a victim of a crime of violence and has incurred reasonable, verifiable expenses as a result of the harm to the victim caused by the crime of violence.

#### (b) Family members: Bereavement payments

##### (i) Introduction

- [6.35] Paragraph 3(c) of the current scheme states that where a victim has died from the injury sustained as a result of the crime of violence, any dependant of the victim may claim compensation. In this section, the Commission considers first whether this ground of eligibility should be provided for in the statutory scheme and, if so, who precisely should be entitled to claim compensation in respect of the victim's death. The entitlement of family members to compensation in fatal cases is enshrined in various sources of European law, and the CJEU has recently examined the scope of this obligation.

<sup>39</sup> Paragraph 3(b) of the Criminal Injuries Compensation Scheme (31 January 2025).

*(ii) Current scheme and law*

- [6.36] The current scheme provides that the Tribunal will consider claims for compensation made by or on behalf of any dependant of the victim, but only where the victim has died as a result of injury caused by the crime of violence.<sup>40</sup> The scheme states that compensation “to be awarded by the Tribunal will be on the basis of damages awarded under the Civil Liabilities Acts”.<sup>41</sup> The Civil Liability Act 1961 provides for damages to be awarded where the death of a person is caused by the wrongful act of another.<sup>42</sup>
- [6.37] Dependants of the deceased who suffer mental distress resulting from the death are entitled to damages, commonly known as the ‘solatium’.<sup>43</sup> The current maximum solatium is €35,000, which is divided among dependants.<sup>44</sup> A ‘dependant’ under the Civil Liability Act 1961 is not limited to a person under the care of the deceased, but includes other family members who have suffered injury or mental distress as a result of the death. Section 47(1) provides that:

“‘dependant’ means, in respect of a deceased person whose death is caused by a wrongful act —

(a) a spouse, civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, 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 1996 or under the law of a country or jurisdiction other than the State and is recognised in the State,

(ba) a person whose civil partnership with the deceased has been dissolved by a decree of dissolution that was

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<sup>40</sup> Paragraph 3(c) of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>41</sup> Paragraph 6 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>42</sup> Section 2(1) of the Civil Liability Act 1961 defines a wrong as “a tort, breach of contract or breach of trust, whether the act is committed by the person to whom the wrong is attributed or by one for whose acts he is responsible, and whether or not the act is also a crime, and whether or not the wrong is intentional”. Section 47(1) of the same Act adds that a “wrongful act” may also be a crime.

<sup>43</sup> Sections 48 and 49(1)(a)(ii) of the Civil Liability Act 1961.

<sup>44</sup> The upper limit of €35,000 is currently in force pursuant to the Civil Liability Act 1961 (Section 49) Order 2014 (SI No 6 of 2014), made under section 49(1A) of the Civil Liability Act 1961.

granted under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 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 or a civil partner of the deceased but who, until the date of the deceased's death, had been living with the deceased as the deceased's cohabitant within the meaning of section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 for a continuous period of not less than three years,

who has suffered injury or mental distress as a result of the death."<sup>45</sup>

- [6.38] Section 47(2) provides that those who are adopted or 'illegitimate' or *in loco parentis* shall be considered family members for the purposes of interpreting section 47(1).<sup>46</sup>
- [6.39] The individual damages awarded must be proportionate to the harm suffered by the particular dependant from the deceased's death.<sup>47</sup> No dependant has an automatic right to a share of the solatium; rather, the division is a matter for the trial judge.<sup>48</sup> The individual must have suffered injury or mental distress in order to be considered a dependant for the purpose of claiming damages under the Civil Liability Act.<sup>49</sup>
- [6.40] Various European legal instruments have defined who should be considered a 'victim' in law. For the purposes of state compensation, the term 'victim' generally includes both the person who suffered the crime of violence and, where a person dies from their injuries, their dependants and close family members who have consequently suffered harm.
- [6.41] The 1983 Council of Europe Convention on the Compensation of Victims of Violent Crimes provides that where compensation is not fully available from other sources, the state shall contribute not only to those who have sustained serious bodily injury or impairment directly attributable to an intentional crime of

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<sup>45</sup> Section 47(1) of the Civil Liability Act 1961.

<sup>46</sup> Section 47(2) of the Civil Liability Act 1961.

<sup>47</sup> *Lyndsey Cooney (on Behalf of the Statutory Dependents of Dúalagh Donnelly) v Health Service Executive* [2021] IEHC 754 at para 33 (Simons J).

<sup>48</sup> *Lyndsey Cooney (on Behalf of the Statutory Dependents of Dúalagh Donnelly) v Health Service Executive* [2021] IEHC 754 at para 53 (Simons J).

<sup>49</sup> Section 47(1) of the Civil Liability Act 1961.

violence, but also to the dependants of victims who have died as a result of such crime.<sup>50</sup>

- [6.42] The 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power also provides that states should endeavour to provide financial compensation to victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes, and to the family or dependants of persons who have died or become physically or mentally incapacitated as a result of such crimes.<sup>51</sup>
  
- [6.43] In 2006, the Council of Europe Committee of Ministers released Recommendation (2006)8 on Assistance to Crime Victims. This instrument was intended to supplement previous Council of Europe instruments, including the 1983 Convention. Article 8 of the 2006 Recommendation provides that Member States should provide compensation to victims of serious, intentional, violent crimes, including sexual violence, and to the immediate family and dependants of victims who have died as a result of such crimes.<sup>52</sup>
  
- [6.44] The Compensation Directive obliges Member States to establish compensation schemes for victims of violent intentional crimes.<sup>53</sup> The objective of the Compensation Directive is to ensure that all EU citizens and residents have access to adequate compensation for losses they have suffered resulting from crimes committed in the EU. The Compensation Directive does not define the term 'victim'.
  
- [6.45] However, the CJEU has provided some clarification as to who is to be considered a victim under the Compensation Directive where there has been a fatal injury. As noted above, the CJEU stated in *Burdene* that the definition of the concept of 'victims' in the Victims' Rights Directive should inform the scope of the concept of 'victims' in the Compensation Directive.<sup>54</sup> Recital 19 of the Victims' Rights Directive recognises that it is possible that family members of victims are also harmed as a result of the crime. In particular, family members of a person whose

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<sup>50</sup> Article 2 of the Council of Europe, European Convention on the Compensation of Victims of Violent Crimes 1983 (ETS No 116). Ireland is not a signatory to this Convention, but it significantly influenced the 2004 Compensation Directive.

<sup>51</sup> Principle 12 of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).

<sup>52</sup> Article 8.1 of Recommendation Rec (2006)8 of the Committee of Ministers to member states on assistance to crime victims (Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies).

<sup>53</sup> Article 12(2) of the Compensation Directive (2004/80/EC).

<sup>54</sup> Case C-126/23 *Burdene* EU:C:2024:937 at para 48. The Court held that "Directive 2012/29 is intended to set out the 'horizontal framework for addressing the needs of all victims of crime'. Since both Directive 2004/80 and Directive 2012/29 concern the protection of victims of crime, they thus have overlapping fields of application, as is apparent from recital 5 of Directive 2004/80."



death has been directly caused by a criminal offence could be harmed as a result of the crime. It states that, “[s]uch family members, who are also indirect victims of the crime, should therefore also benefit from protection under this Directive.” Accordingly, Article 2(1) of the Victims’ Rights Directive provides the following definition of ‘victim’:

- (a) “‘victim’ means:
  - (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
  - (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;
- (b) ‘family members’ means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim.”<sup>55</sup>

[6.46] Article 2(2) states:

“Member States may establish procedures:

- (a) to limit the number of family members who may benefit from the rights set out in this Directive taking into account the individual circumstances of each case; and
- (b) in relation to paragraph (1)(a)(ii), to determine which family members have priority in relation to the exercise of the rights set out in this Directive.”<sup>56</sup>

[6.47] The CJEU ruled in *Burdene* that close family members should be considered as indirect victims in accordance with the ordinary meaning of victim and in accordance with the Victims’ Rights Directive.<sup>57</sup> In *Burdene*, proceedings were brought by the parents, sister, and children of a victim of homicide. The CJEU emphasised the importance of taking into account the fact that close family members also suffer harm when a person dies as the result of a criminal injury.<sup>58</sup> The Commission therefore considers that the proposed statutory scheme must be

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<sup>55</sup> Article 2(1) of the Victims’ Rights Directive (2012/29/EU).

<sup>56</sup> Article 2(2) of the Victims’ Rights Directive (2012/29/EU).

<sup>57</sup> Case C-126/23 *Burdene* EU:C:2024:937 at para 37.

<sup>58</sup> Case C-126/23 *Burdene* EU:C:2024:937 at para 47.

capable of compensating family members in the event of a death caused by a crime of violence.

[6.48] In *Burdene*, the CJEU held that a compensation authority should have the flexibility to assess the degree of suffering of close family members in each individual case in order to award fair and appropriate compensation.<sup>59</sup> In that case, Italian law granted compensation to the victim's parents only in the absence of a surviving spouse and children, while siblings were only entitled to compensation in the absence of all of those persons.<sup>60</sup> The CJEU held that a national scheme which automatically excludes certain family members from a compensation claim as a result of a homicide due to the presence of other family members, without taking into account the circumstances of the individual case, cannot guarantee "fair and appropriate compensation" within the meaning of the Compensation Directive.<sup>61</sup>

[6.49] The Victims' Rights Act was enacted in 2017 in order to implement the Victims' Rights Directive into Irish law.<sup>62</sup> It introduced a new legal definition of 'family member' specifically in the Irish victims' rights context. As noted above, the definition of 'victim' in the Act mirrors the Directive.<sup>63</sup> The Act also states that any "reference to a victim in this Act shall, where the death of a victim is caused directly by an offence, be construed as a reference to a family member".<sup>64</sup> However, the definition of family member in the Victims' Rights Act 2017 differs to that provided by the Directive. 'Family member' is defined in the Act as:

- (a) a spouse, civil partner or cohabitant of the victim,
- (b) a child or step-child of the victim;
- (c) a parent or grandparent of the victim;
- (d) a brother, sister, half brother or half sister of the victim;
- (e) a grandchild of the victim;

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<sup>59</sup> Case C-126/23 *Burdene* EU:C:2024:937 at paras 60 – 65.

<sup>60</sup> Article 11(2-*bis*) of Law No 122/2016 laying down provisions to comply with the obligations arising from Italy's membership of the European Union – European Law 2015-2016 (Italy).

<sup>61</sup> Case C-126/23 *Burdene* EU:C:2024:937 at para 67.

<sup>62</sup> Criminal Justice (Victims of Crime) Act 2017.

<sup>63</sup> Section 2(1) of the Criminal Justice (Victims of Crime) Act 2017 defines a victim as "a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by an offence."

<sup>64</sup> Section 2(2) of the Criminal Justice (Victims of Crime) Act 2017. This clause contains the caveat "provided that the family member concerned has not been charged with, or is not under investigation for, an offence in connection with the death of the victim."

- (f) an aunt, uncle, nephew or niece of the victim, and
- (g) any other person—
  - (i) who is or, where the victim is deceased, was dependant on the victim, or
  - (ii) who a court, a member of the Garda Síochána [or another particular named State body]<sup>65</sup> considers has or, where the victim is deceased, had a sufficiently close connection with the victim as to warrant his or her being treated as a family member.<sup>66</sup>

[6.50] The Victims' Rights Act also provides for the situation where more than one family member seeks to avail of rights contained in that Act.<sup>67</sup> Certain bodies, including An Garda Síochána and the Director of Public Prosecutions may request that the family members concerned nominate a family member to avail of the right. In circumstances where the family members are unable to reach agreement in respect of a nomination, the same body may nominate one or more family members, having regard to the degree of relationship between the family members and the victim.<sup>68</sup>

### *(iii) Comparative jurisdictions*

[6.51] State-funded victim compensation schemes in other jurisdictions generally provide that people who had a close relationship to the primary victim should be classified as victims themselves. A comparative analysis of similar schemes shows that eligibility is often extended to family members and dependants. This is generally, but not always, restricted to fatal cases.

### *Australia*

[6.52] All states in Australia categorise victims. In Victoria, the Victims of Crime (Financial Assistance Scheme) Act 2022 provides that there are three categories of victims who are eligible to apply to the Financial Assistance Scheme ("FAS"): primary, secondary, and related victims.<sup>69</sup> A "primary victim" is the person directly injured by a violent crime and is entitled to the highest compensation awards.<sup>70</sup> A

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<sup>65</sup> Including "an officer of the Police Ombudsman, the Director of Public Prosecutions, the Irish Prison Service, a director of a children detention school or a clinical director of a designated centre, as the case may be". Section 2(1)(g)(ii) of the Criminal Justice (Victims of Crime) Act 2017.

<sup>66</sup> Section 2(1)(a) – (g) of the Criminal Justice (Victims of Crime) Act 2017.

<sup>67</sup> Section 3 of the Criminal Justice (Victims of Crime) Act 2017.

<sup>68</sup> Section 3 of the Criminal Justice (Victims of Crime) Act 2017.

<sup>69</sup> Section 3(1) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>70</sup> Sections 9 – 12 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

“secondary victim” is a person present at the scene of an act of violence and who is injured as a result of witnessing that act.<sup>71</sup> A “related victim” is a close family member, dependant of the victim, or an individual who had an intimate personal relationship with the primary victim who has died as a direct result of a crime of violence.<sup>72</sup> These categories set the maximum awards that each category of victim can be awarded – creating transparency and consistency in the application of the scheme.

#### *EU Member States*

- [6.53] Compensation systems in Member States of the European Union, which like Ireland are bound by the Compensation Directive, are consistent on this issue.
- [6.54] In Germany, social compensation under the German Social Code supports people who have suffered damage to their health as a result of violent crimes.<sup>73</sup> The ‘surviving dependants’ of a victim are entitled to receive compensation payments where the victim died as a result of the violent crime. Surviving dependants means the widows, widowers, cohabiting partners, parents and orphans of the victim, and persons entitled to child maintenance.<sup>74</sup> Surviving dependants are entitled to monthly payments.<sup>75</sup> Widows or widowers may apply for lump sum payments instead of a monthly payment.<sup>76</sup>
- [6.55] ‘Family members’<sup>77</sup> and ‘close persons’<sup>78</sup> are entitled to a range of other supports under the Social Code such as case management services, counselling and special psychotherapeutic services.<sup>79</sup>

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<sup>71</sup> Sections 13 and 14 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>72</sup> Sections 15 and 16 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>73</sup> Section 1 of the Social Code Book XIV – Social Compensation (Germany). Social compensation “supports people who have suffered damage to their health as a result of an event causing damage for which the state community bears particular responsibility when it comes to dealing with the consequences thereof”. Social compensation is also available in respect of the effects of both world wars, incidents in connection with the performance of civilian service, and vaccinations or other specific prophylactic measures which have caused damage to health.

<sup>74</sup> Section 2(4) of the Social Code Book XIV (Social Compensation) (Germany).

<sup>75</sup> Sections 85, 87 and 88 of the Social Code Book XIV (Social Compensation) (Germany).

<sup>76</sup> Section 86 of the Social Code Book XIV (Social Compensation) (Germany).

<sup>77</sup> ‘Family members’ means spouses, parents and children (including stepchildren and foster children) of the victim: section 2(3) of the Social Code Book XIV (Social Compensation) (Germany).

<sup>78</sup> ‘Close persons’ means siblings and persons cohabiting in a situation similar to marriage with the victim: section 2(5) of the Social Code Book XIV (Social Compensation) (Germany).

<sup>79</sup> Section 6(1) of the Social Code Book XIV (Social Compensation) (Germany).

[6.56] The French scheme takes a more expansive approach regarding the eligibility of applicants. The scheme, titled ‘The Compensation Fund for Victims of Acts of Terrorism and Other Offences’, compensates the spouse, children, parents, grandparents, grandchildren, brothers, sisters, or other entitled persons of deceased victims for:

- Support costs for moral support of the loved ones up to the victim’s death (during a traumatic illness);
- Care for loved ones following the victim’s death;
- The “anguish of imminent death” of the deceased and, under certain conditions, the “waiting and worrying of loved ones”.<sup>80</sup>

[6.57] In the Netherlands, surviving relatives and close relatives of a victim who died or suffered serious injuries due to the violent crime or sexual crime are entitled to compensation under the Compensation Fund for Violent Crimes Act.<sup>81</sup> The following are considered as surviving relatives and close relatives:

- (a) the spouse, not legally separated, and the registered partner of the victim;
- (b) other relatives of the victim by blood or marriage, provided that, at the time of the event on which the liability is based, the victim already provided for all or part of their maintenance or was obliged to do so by a court decision;
- (c) those who already lived together with the victim in a family unit before the crime, and for whose maintenance the victim fully or largely provided, in so far as it is plausible that all this would have continued without the event on which the liability is based;
- (d) those who lived together with the victim in a family unit and to whose maintenance the victim contributed by running a joint household;
- (e) blood relatives of the victim in the first degree and in the second degree in the collateral line such as parents, children, (half) brothers and (half) sisters. The term ‘children’ also includes a child who was conceived but not yet born at the time of the crime and has since been born.<sup>82</sup>

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<sup>80</sup> French Government, “Compensation: Main Prejudices Compensated” (7 April 2024) <<https://www.info.gouv.fr/guide-victimes-en/compensation-loss-of-loved-ones>> accessed 23 March 2026. (Note this language comes from the official English translation on the website). The scheme also compensates applicants for funeral costs, loss of loved one’s income, and other costs borne by loved ones, such as miscellaneous fees incurred by the loved ones upon the victim’s death, primarily transportation, housing and food costs.

<sup>81</sup> Article 3(1) of the Violent Crimes Compensation Fund Act (Wet schadefonds geweldsmisdrijven) (the Netherlands).

<sup>82</sup> Article 3(2) of the Violent Crimes Compensation Fund Act (Wet schadefonds geweldsmisdrijven) (the Netherlands); Schadefonds Geweldsmisdrijven, *Policy Manual* (1 January 2026) at paras 2.1 and 4.2 <<https://schadefonds.nl/wp->

- [6.58] In Croatia, persons eligible to apply to the victim compensation scheme are classified as ‘direct victims’ and ‘indirect victims’. A direct victim is a person who has suffered serious bodily injury or serious damage to health as a result of a criminal offence of violence,<sup>83</sup> and indirect victims are defined as a range of family members who are only eligible in fatal cases.<sup>84</sup>
- [6.59] In Bulgaria, both victims and their family members are eligible for compensation, but, like in the Netherlands, the Bulgarian scheme does not limit family members to instances of fatal injuries.<sup>85</sup>

*(iv) Proposals for reform*

- [6.60] The Commission recommends that, in line with the definition of victim in the Victims’ Rights Directive and the Victims’ Rights Act, the position under the current scheme and the approach taken in comparative jurisdictions, the proposed statutory scheme should provide compensation for pain and suffering to family members in the event of a death caused by a crime of violence. The Commission considers that this would be called a “bereavement payment”. A bereavement payment would be one lump sum payment which is divided among family members on the basis of the closeness of their relationship to the victim and the harm they have suffered. This is different to a general compensation payment which a victim of a crime of violence would be eligible for under the proposed statutory scheme. Categories of payments are discussed in further detail in the Chapter on Types of Compensation and the Chapter on Determining Fair and Appropriate Compensation.
- [6.61] The Commission has examined in some depth the question of how to define an eligible family member. In considering its proposals for reform, the Commission has analysed the eligibility criteria in the current scheme, the definitions of family member and dependant in Irish and EU law, in particular the recent CJEU case of *Burdene*, as well as comparative jurisdictions. It also notes that two submissions to its consultation process specifically recommended that the definition of

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<content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>83</sup> Article 5(2) of the Act on Financial Compensation to Victims of Crime (Official Gazette of the Republic of Croatia Nos 80/08 and 27/11).

<sup>84</sup> Article 5(5) – (7) of the Act on Financial Compensation to Victims of Crime (Official Gazette of the Republic of Croatia Nos 80/08 and 27/11). Under Article 5(6), an indirect victim is: “a spouse, common-law partner, child, parent, adoptee, adoptive parent, stepmother, stepfather, stepchild of the direct victim and a person with whom the direct victim lived in a same-sex union.” Article 5(7) provides that “[a]n indirect victim is also a grandfather, grandmother and grandchild, if one of them is a direct victim, in the case when there was a more permanent community of life between them, and the grandparents replaced the parents.”

<sup>85</sup> Article 3(1) of the Law on Assistance and Financial Compensation of Victims of Crime 2006 (Bulgaria).

“dependant” in the current scheme should be replaced with “family member” under the Victims’ Rights Act 2017.

[6.62] As outlined in detail above in section 3(b)(ii), the Commission has identified three definitions which could potentially be adopted in the statutory scheme:

- (1) the definition of ‘dependant’ in the Civil Liability Act 1961,<sup>86</sup>
- (2) the definition of ‘family member’ in the Victims’ Rights Directive,<sup>87</sup> or
- (3) the definition of ‘family member’ in the Victims’ Rights Act 2017.<sup>88</sup>

[6.63] The Commission considers that using the Civil Liability Act definition of dependant in the proposed statutory scheme would have the advantage of simplicity, given that it is the definition used by the current scheme. However, this definition was not drafted with victims of crime specifically in mind. Rather, it was drafted in a civil law context.

[6.64] In contrast, both the definition in the Victims’ Rights Directive and the definition in the Victims’ Rights Act were specifically drafted in the context of crimes of violence. The Commission considers that the definition of family member contained in the Victims’ Rights Directive, however, may not be appropriate in the Irish context for a number of reasons. First, this definition is narrower than the definition of dependant in the Civil Liability Act (“CLA 1961”), excluding half-siblings, step-children and separated partners. If this were adopted, it would make the statutory scheme more restrictive than the current scheme, which the Commission considers is not necessary.

[6.65] Second, the word ‘dependant’ is a constituent part of the definition of family member in the Directive, and this may cause confusion in the Irish context. Should the proposed statutory body turn to the CLA 1961 to define dependant, this could lead to a repetitive and circular definition because certain classes of family members would be included both in the general interpretation of ‘family member’ contained in the Directive and in the interpretation of ‘dependant’ in the CLA 1961.

[6.66] As noted above, the Victims’ Rights Act 2017, which was designed to implement the Directive, defines family member differently than the Directive. If the statutory scheme uses the definition in the Directive, this would lead to two different definitions of family member in Irish law, with the same goal of implementing, or at least aligning with, the Directive.

[6.67] Turning to the Victims’ Rights Act 2017, the main difference between the definition of ‘family member’ in the Victims’ Rights Act and ‘dependant’ in the

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<sup>86</sup> Section 47(1) of the Civil Liability Act 1961.

<sup>87</sup> Article 2(1)(b) of the Victims’ Rights Directive (2012/29/EU).

<sup>88</sup> Section 2(1)(a) – (g) of the Criminal Justice (Victims of Crime) Act 2017.

CLA 1961 is that aunts, uncles, nieces, nephews and persons with “a sufficiently close connection” to the victim are not included in the definition of dependant in the CLA 1961. The Victims’ Rights Act definition of family member is therefore more expansive than the CLA definition.

- [6.68] The Commission notes that the rights protected under the Victims’ Rights Act do not generally have significant financial implications. Rather, they include rights such as the right to information, protection and support.<sup>89</sup> The Commission was initially concerned that using the Victims’ Rights Act definition could add to the financial burden on the State by widening the scope of family members who could apply to the scheme. However, on reflection, the Commission considered that financial implications would not be an obstacle to the expanded definition because it is recommending that the amount of compensation would be a single sum, which would be divided between all eligible family members (known as a bereavement payment). This is the same approach to compensation for family members in the case of fatalities under the CLA 1961 (known as the solatium payment). A higher number of eligible family members would not increase the total amount of the bereavement payment. Instead, the statutory body will decide how to divide this payment between eligible individuals on the basis of their level of connection to the deceased and the level of harm they suffered as a result of the death.
- [6.69] The Commission examined how the High Court has allocated awards of solatium payment under the CLA 1961 between dependants of a deceased. The statutory right of action is given to dependants as individuals, so that each of them is entitled to be compensated for the loss resulting to them personally.<sup>90</sup> In the event that a claim for a wrongful death is litigated before the court, it must assess the individual damages to be awarded to each of the statutory dependants. The individual damages must be proportionate to the injury resulting to the particular dependant from the deceased's death.<sup>91</sup> This will depend on the dependant’s connection with the deceased.<sup>92</sup> The courts will consider how close a relationship

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<sup>89</sup> See Parts 2 and 3 of the Criminal Justice (Victims of Crime) Act 2017.

<sup>90</sup> *Margaret McLaughlin (on Behalf of the Statutory Dependants of John McLaughlin) v Aaron McColgan* [2021] IEHC 452 at para 14 (Simons J).

<sup>91</sup> *Margaret McLaughlin (on Behalf of the Statutory Dependants of John McLaughlin) v Aaron McColgan* [2021] IEHC 452 at para 15 (Simons J).

<sup>92</sup> *Margaret McLaughlin (on Behalf of the Statutory Dependants of John McLaughlin) v Aaron McColgan* [2021] IEHC 452 at para 16 (Simons J).



the dependant had with the deceased,<sup>93</sup> for example, children and spouses will generally be entitled to a larger share of the award,<sup>94</sup> as will parents.

- [6.70] This approach is in line with the position adopted by the CJEU in *Burdene*, where it held that a compensation authority should assess the degree of suffering of close family members in each individual case in order to award fair and appropriate compensation.<sup>95</sup> The Commission recommends, therefore, that the statutory body should have a discretion to decide on the division of the bereavement payment between family members, taking into account the particular facts of each case. This is discussed further in the Chapter on Determining Fair and Appropriate Compensation.
- [6.71] There are a number of advantages in adopting the definition of family member in the Victims' Rights Act 2017. First, it would add clarity and consistency with legislation aimed at implementing the Victims' Rights Directive in Ireland and the broader context of victims' rights. It represents the most recent definition of 'family member' by the Irish legislature and was drafted specifically in the context of victims' rights.
- [6.72] Another advantage is that the Victims' Rights Act represents an inclusive approach and reflects the wide spectrum of relationships that are represented in modern Irish society. There may be relationships which are not captured by the CLA 1961 definition of dependant. For example, should the CLA definition be adopted in the statutory scheme, the scheme would not recognise that a single person with no siblings, who has lost their parents, has any person in their life who should be compensated for their loss. Under the narrower CLA 1961 definition, the death of such a person would not be recognised by the statutory scheme as having such an impact on any person that would attract a right to compensation for pain and suffering.
- [6.73] In reality, it is possible that they had close friends, a non-cohabiting partner, or others with whom they had a sufficiently close relationship to warrant treatment as family members for the purposes of compensation. By contrast, the definition of family member in the Victims' Rights Act recognises persons who have a "sufficiently close connection with the victim as to warrant his or her being treated as a family member". Such a definition would provide the statutory body with the discretion to decide who, in factual terms, may be eligible for compensation on the basis of their close relationship with the victim.

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<sup>93</sup> See *Thawley v Gavin* [2018] IEHC 57 at para 28, where Barr J awarded the deceased's mother and father €1,000 each in circumstances where they did not have meaningful engagement with the deceased's upbringing.

<sup>94</sup> See *Margaret McLaughlin (on Behalf of the Statutory Dependents of John McLaughlin) v Aaron McColgan* [2021] IEHC 452; *Wolohan v McDonnell* [2020] IEHC 149.

<sup>95</sup> Case C-126/23 *Burdene* EU:C:2024:937 at paras 60 – 65.

- [6.74] The Commission therefore recommends that the proposed statutory scheme adopt the definition of ‘family member’ contained in the Victims’ Rights Act for the purposes of the bereavement payment, with some appropriate modifications. Persons who have a “sufficiently close connection with the victim as to warrant his or her being treated as a family member” would be identified by the statutory body, rather than by a court, member of An Garda Síochána, or other authorities named in section 2 of the Victims’ Rights Act.
- [6.75] The Commission recommends that family members must have suffered harm as a result of the death of the victim in order to apply for a bereavement payment. This reflects the position under civil law, where a dependant must have suffered injury or mental distress as a result of the death in order to be compensated.<sup>96</sup> For internal consistency in the statutory scheme, the Commission recommends that ‘harm’ should be defined in accordance with its proposed definition for harm in the context of defining a victim, as proposed in this Chapter, with appropriate modifications.<sup>97</sup> In particular, unlike the definition of victim, the definition will not require the harm to have been caused “directly by a criminal offence”.
- [6.76] The Commission addresses how the bereavement payment can be divided among family members under the statutory scheme in the Chapter on Determining Fair and Appropriate Compensation.
- [6.77] In conclusion, the Commission recommends that a person should be eligible for a bereavement payment if:

- (1) the person is a family member of the victim of a crime of violence, and
- (2) the victim has died as a result of the crime of violence, and
- (3) the person has suffered harm as a result of the death.

Harm includes physical, mental or emotional harm or distress.

- [6.78] The Commission recommends that a person is a family member of the victim if the person:
- (1) is a spouse, civil partner or cohabitant of the victim,
  - (2) is a child or step-child of the victim,
  - (3) is a parent or grandparent of the victim,

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<sup>96</sup> Section 47(1) of the Civil Liability Act 1961.

<sup>97</sup> Recommendation 6.1 “Harm includes physical, mental or emotional harm or distress which was directly caused by a criminal offence.”

- (4) is a brother, sister, half brother, half sister, step-brother or step-sister of the victim,
- (5) is a grandchild of the victim,
- (6) is an aunt, uncle, nephew or niece of the victim, and
- (7) is any other person—
  - (a) who was dependent on the victim, or
  - (b) who the statutory body considers had a sufficiently close connection with the victim as to warrant his or her being treated as a family member.

[6.79] The Commission also notes the provision in the Victims' Rights Act that provides for the situation where certain bodies, such as An Garda Síochána and the Director of Public Prosecutions, may request that the family members concerned nominate a particular family member to avail of certain rights. The same body may nominate one or more family members, having regard to the degree of relationship between the family members and the victim, where they have not reached agreement as to a representative.<sup>98</sup> The Commission considers that the statutory body should have an equivalent power where more than one family member wishes to apply for a bereavement payment. The statutory body could request that the family nominate a representative, and where no agreement is reached, the statutory body may nominate a representative on the basis of the degree of relationship between the family members and the victim.

**R. 6.3 The Commission recommends** that a person should be eligible for a bereavement payment if:

- (1) the person is a family member of the victim of a crime of violence, and
- (2) the victim has died as a result of the crime of violence, and
- (3) the person has suffered harm as a result of the death.

Harm includes physical, mental or emotional harm or distress.

**R. 6.4 The Commission recommends** that a person is a family member of the victim if the person:

- (1) is a spouse, civil partner or cohabitant of the victim,
- (2) is a child or step-child of the victim,
- (3) is a parent or grandparent of the victim,

<sup>98</sup> Section 3 of the Criminal Justice (Victims of Crime) Act 2017.

- (4) is a brother, sister, half brother or half sister, step-brother or step-sister, of the victim,
- (5) is a grandchild of the victim,
- (6) is an aunt, uncle, nephew or niece of the victim, and
- (7) is any other person—
  - (a) who was dependent on the victim, or
  - (b) who the statutory body considers had a sufficiently close connection with the victim as to warrant his or her being treated as a family member.

**R. 6.5 The Commission recommends** that the statutory body may request that the family nominate a representative to make an application on behalf of all eligible family members, where more than one family member wishes to apply for a bereavement payment. Where no agreement is reached, the statutory body may nominate a representative of the family to make an application on behalf of all eligible family members, on the basis of the degree of relationship between the family members and the victim.

### (c) Family members: Bystanders to a crime of violence

#### (i) *Introduction*

- [6.80] A number of victim compensation schemes in other jurisdictions allow applications for compensation by people who have witnessed a violent crime and have suffered harm as a result. The key element of this ground of eligibility is that there generally has to be a close relationship between the bystander and the victim.
- [6.81] Under Irish tort law, a person may claim damages for nervous shock where they witnessed or came upon the immediate aftermath of an accident involving someone with whom they had a close relationship.<sup>99</sup>
- [6.82] There is no specific provision allowing family members who suffer harm as a result of witnessing a crime of violence against a loved one or coming across its aftermath to claim compensation in the current scheme. In this section, the Commission considers whether such a ground of eligibility should be included in the proposed statutory scheme.

#### (ii) *Comparative jurisdictions*

##### *United Kingdom*

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<sup>99</sup> *Kelly v Hennessy* [1995] IESC 8, [1995] 3 IR 253.

[6.83] The Northern Ireland Criminal Injuries (Amendment 2020) Scheme 2009 provides that an applicant will be eligible for compensation where they:

- (b) had a close relationship of love and affection with another person at the time when that person sustained physical and/or mental injury (including fatal injury) directly attributable to conduct within paragraph 8(a), (b) or (c), and
  - (i) that relationship still subsists (unless the victim has since died), and
  - (ii) the applicant either witnessed and was present on the occasion when the other person sustained the injury, or was closely involved in its immediate aftermath.<sup>100</sup>

[6.84] A similar provision can be found under the Criminal Injuries Compensation Scheme 2012 in England, Scotland and Wales. Section 6 provides that a person may be eligible for an award if they sustain a criminal injury which is directly attributable to being present at and witnessing an incident, or the immediate aftermath of an incident, as a result of which a loved one sustained a criminal injury. A 'loved one' is defined as a person with whom the applicant:

- (i) at the time of the incident had a close relationship of love and affection; and
- (ii) if the loved one is alive at the date of the application, continues to have such a relationship.<sup>101</sup>

#### *Germany*

[6.85] In Germany, persons suffering damage to their health as a consequence of witnessing a violent crime, or discovering a victim, are equal in status to the victims of violent crimes. Persons suffering damage to their health on account of delivering the news of the victim's death or serious injury are also equal in status to the victims of violent crimes if there is a close emotional relationship between these persons and the victims. The law states that such a relationship generally exists with family members and 'close persons',<sup>102</sup> which means siblings and persons cohabiting "in a situation similar to marriage" with the victim.<sup>103</sup>

#### *Australia*

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<sup>100</sup> Paragraph 10(b) of the Northern Ireland Criminal Injuries (Amendment 2020) Scheme 2009.

<sup>101</sup> Paragraph 6 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>102</sup> Section 14(2) of the Social Code Book XIV (Social Compensation) (Germany).

<sup>103</sup> Section 2(5) of the Social Code Book XIV (Social Compensation) (Germany).

- [6.86] In the Australian state of Victoria, the Victims of Crime (Financial Assistance Scheme) Act 2022 also provides for compensation to those who witness an act of violence. The Act draws a distinction between adults and children in this regard. Section 6 provides that a child under the age of 18 will be eligible to apply for compensation as a 'primary victim' of an act of violence if they are injured as a direct result of hearing or witnessing, or otherwise being exposed to the effects of, the act of violence.<sup>104</sup>
- [6.87] Adults on the other hand shall be eligible to apply for compensation as 'secondary victims' if they are present at the scene of an act of violence and are injured as a direct result of witnessing that act.<sup>105</sup> A parent or guardian is also a secondary victim of an act of violence if they are injured as a direct result of subsequently "becoming aware" of an act of violence committed against their child who is under the age of 18.<sup>106</sup>
- [6.88] In New South Wales, the Victims Rights and Support Act 2013 also provides that people may apply for compensation as secondary victims where they were injured as "as a direct result of witnessing the act of violence that resulted in the injury to, or death of, the primary victim of that act."<sup>107</sup> A secondary victim includes a person who is injured as a direct result of subsequently becoming aware of the act of violence that resulted in the injury to, or death of, the primary victim of that act. However, similar to the Victorian scheme, this applies only if the person is the parent or guardian of the primary victim, the primary victim was under the age of 18 at the time, and the person did not commit that act.<sup>108</sup>

*(iii) Proposals for reform*

- [6.89] The Commission has examined the approach taken in other jurisdictions and considers that they provide some useful models. It notes that a submission to its consultation process specifically recommended that witnesses to a crime of violence should be eligible for compensation. It has considered the serious psychological and emotional impact that witnessing a crime of violence can have on family members of victims.
- [6.90] The Commission further notes, in particular, the observations by the Victorian Law Reform Commission, where it highlighted that being exposed to violence can have a significantly detrimental effect on children. Such exposure can have a far-

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<sup>104</sup> Section 9(3) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>105</sup> Section 13(1) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>106</sup> Section 13(2) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria). Subsection (3) clarifies that a person is not a secondary victim if they committed and are criminally responsible for the act of violence in question.

<sup>107</sup> Section 21(1) of the Victims Rights and Support Act 2013 (New South Wales).

<sup>108</sup> Section 21(2) of the Victims Rights and Support Act 2013 (New South Wales).

reaching developmental and psychological impact on them, particularly in the context of family violence.<sup>109</sup>

- [6.91] In light of the above, the Commission recommends that a family member of a victim of violent crime should be eligible for a general compensation payment for pain and suffering where they witnessed the crime of violence, and suffered harm as a result. The Commission considers that, to ensure internal consistency in the scheme, 'harm' should be defined in accordance with the definition proposed earlier in this Chapter,<sup>110</sup> and 'family member' should be defined in accordance with the definition proposed for the statutory scheme, as outlined above in the context of bereavement payments for family members.

**R. 6.6 The Commission recommends** that a person is eligible for a general compensation payment if the person:

- (1) is a family member of the victim of the crime of violence, as defined by the scheme,
- (2) witnessed the crime of violence, and
- (3) suffered harm as a result.

Harm includes physical, mental or emotional harm or distress.

#### (d) Persons dependent on the victim

##### (i) *Dependency under the current scheme*

- [6.92] Paragraph 3(c) of the current scheme provides that where the victim has died as a result of the injury caused by a crime of violence, the Tribunal will consider claims for compensation made by any dependant of the victim. This paragraph also provides that if the victim has no dependant, the Tribunal may consider claims by any person who has incurred expenses as a result of the victim's death. This category of person is considered by the Commission below.<sup>111</sup>
- [6.93] Paragraph 3(d) of the current scheme provides that where the victim has died otherwise than as a result of the injury, any dependant of the victim may make a

<sup>109</sup> Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (2018) at para 12.99, citing: Richards, "Children's Exposure to Domestic Violence in Australia" *Trends and Issues in Crime and Criminal Justice*, No 419 (Australian Institute of Criminology 2011) at pages 1 – 3; Campo, "Children's Exposure to Domestic and Family Violence: Key Issues and Responses" CFCA Paper No 36 (Australian Institute of Family Studies 2015) pages 6 – 8; Victoria, Royal Commission into Family Violence, *Report and Recommendations: Volume II* (2016) at pages 106 – 112.

<sup>110</sup> Recommendation 6.1 "Harm includes physical, mental or emotional harm or distress which was directly caused by a criminal offence."

<sup>111</sup> Paragraph 3(c) of the Criminal Injuries Compensation Scheme (31 January 2025).

claim for compensation.<sup>112</sup> This is subject to paragraph 7 of the current scheme, which states that in cases 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 dependant who would, in the opinion of the Tribunal, otherwise suffer hardship.

- [6.94] The Tribunal has previously made three categories of payments to dependants: solatium payments, loss of earnings, and verifiable expenses arising from the death of a victim. Solatium payments are made in recognition of the mental distress suffered as a result of the death. For example, in a Tribunal decision made on 9 September 2022,<sup>113</sup> the applicant's partner had died as a result of a crime of violence, and she made a claim on behalf of their children and his other dependants. On foot of the P60 submitted showing the deceased's earnings for the last year of his life, the Tribunal awarded one year's net earnings to the applicant.<sup>114</sup> The sum was reduced by the single parent family payment that was paid to the applicant. The applicant was also awarded verifiable expenses in respect of the funeral costs and a portion of the solatium.

*(ii) Dependency in Irish civil law*

- [6.95] In Irish civil law, where the death of a person is caused by the wrongful act of another, the dependants of the deceased will be entitled to claim damages from the wrongdoer in respect of loss of dependency as a result of the death. Under section 49(1)(a)(i) of the Civil Liability Act 1961, dependants may be awarded damages for the loss of pecuniary (financial) benefits which could have reasonably been expected but for the wrongful act of the defendant.<sup>115</sup>
- [6.96] Where the deceased made direct financial contributions to a dependant, and these were likely to have continued if the deceased were still alive, the dependant may claim damages for the loss of those contributions. This may include loss of earnings. Dependants may also claim damages for the loss of services or other acts performed by the deceased.<sup>116</sup> In *Cooney v Health Service Executive*,<sup>117</sup> the High Court noted that a deceased parent might not only have been providing

<sup>112</sup> Paragraph 3(d) of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>113</sup> Criminal Injuries Compensation Tribunal, Case Reference F54397 (9 September 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/f54397-9-september-2022/>> accessed 23 March 2026.

<sup>114</sup> The Tribunal held that, as the applicant only submitted one P60, there was insufficient information to conclude that the deceased had been working earning €25,417 net per annum for a number of years prior to his death.

<sup>115</sup> *Davoren v Health Service Executive* [2016] IECA 39 at para 22 (Finlay Geoghegan J). See McMahon and Binchy, *Law of Torts* 4th ed (Bloomsbury Professional 2013) at para 42.33.

<sup>116</sup> McMahon and Binchy, *Law of Torts* 4th ed (Bloomsbury Professional 2013) at para 42.34.

<sup>117</sup> *Lyndsey Cooney (on Behalf of the Statutory Dependents of Daultagh Donnelly) v Health Service Executive* [2021] IEHC 754.



financial support, such as paying for accommodation, food, education and necessities, but may also have been providing care and support, such as minding a pre-school child at home.<sup>118</sup> To calculate the value of the dependency, there is an actuarial valuation which divides the net income of the deceased between dependants.<sup>119</sup>

- [6.97] The CLA 1961 also provides that it must be the personal representative of the deceased who takes the case against the wrongdoer. Or, if six months passes without such a case, all or any of the dependants can take the action.<sup>120</sup> The action, however, must be taken for the benefit of all dependants, with each dependant named in the action, as well as the nature of the claim.<sup>121</sup> Only one action for damages may be brought against the same person in respect of the death.<sup>122</sup>

### *(iii) Comparative jurisdictions*

#### *England, Scotland and Wales*

- [6.98] Close relatives of a person who dies as a result of a crime of violence may be eligible for a payment under the Criminal Injuries Compensation Scheme 2012. To be eligible for bereavement and dependency payments, the person must be a 'qualifying relative'.<sup>123</sup> A qualifying relative is a person who, at the time of the deceased's death, was:

- the spouse or civil partner of the deceased;
- the partner of the deceased who was living with them in the same household for at least two years immediately before the death;
- a person who would satisfy the above but who did not live with the deceased because of either person's ill-health or infirmity;
- the spouse or civil partner, or a former spouse or civil partner, of the deceased who was financially dependent on them;
- a parent of the deceased, or;
- a child of the deceased.<sup>124</sup>

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<sup>118</sup> *Lyndsey Cooney (on Behalf of the Statutory Dependents of Dualtagh Donnelly) v Health Service Executive* [2021] IEHC 754 at para 34 (Simons J).

<sup>119</sup> McMahon and Binchy, *Law of Torts* 4th ed (Bloomsbury Professional 2013) at para 42.33.

<sup>120</sup> Section 48(3) of the Civil Liability Act 1961.

<sup>121</sup> Section 48(4) and (5) of the Civil Liability Act 1961.

<sup>122</sup> Section 48(2) of the Civil Liability Act 1961.

<sup>123</sup> Paragraph 57 of the Criminal Injuries Compensation Scheme 2012 (as amended) (England, Scotland and Wales).

<sup>124</sup> Paragraph 59 of the Criminal Injuries Compensation Scheme 2012 (as amended) (England, Scotland and Wales).

- [6.99] The definition of ‘child’ is not limited to a person below the age of 18. According to the guidance for the scheme, a child “includes adult children and a child of the deceased born after the incident”.<sup>125</sup> However, a child may only claim for a ‘child’s payment’ if they were under 18 at the time of death and dependent on the deceased for “parental services”.<sup>126</sup> This is an amount of money to provide some small recognition of what a child loses as a result of the death of a parent, such as love and affection and care and supervision.<sup>127</sup>
- [6.100] A qualifying relative may claim for a ‘dependency payment’ if they were financially or physically dependent on the deceased.<sup>128</sup> A qualifying relative may also apply for a ‘bereavement payment’ as long as they were not divorced or estranged from the deceased at the time of death.<sup>129</sup>

### *Northern Ireland*

- [6.101] The terms of the Northern Irish scheme broadly mirror the provisions in the scheme in England, Scotland and Wales, as outlined above. Paragraph 39 provides that, in fatal cases, compensation may be payable to a ‘qualifying claimant’. This includes the spouse, civil partner, partner living with the deceased for at least two years, former spouse or civil partner who was financially supported by the deceased immediately before the date of the death, the parent, or the child of the deceased.<sup>130</sup>
- [6.102] Qualifying claimants may apply for a bereavement award,<sup>131</sup> compensation in respect of financial or physical dependency,<sup>132</sup> or, where the qualifying claimant

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<sup>125</sup> Criminal Injuries Compensation Authority and UK Ministry for Justice, “Criminal injuries compensation: a guide” (1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#what-payments-are-available-from-the-scheme>> accessed 23 March 2026. The term “adult children” is not defined in either this guide or in the Criminal Injuries Compensation Scheme 2012 (as amended) (England, Scotland and Wales).

<sup>126</sup> Paragraph 63 of the Criminal Injuries Compensation Scheme 2012 (as amended) (England, Scotland and Wales).

<sup>127</sup> Criminal Injuries Compensation Authority and UK Ministry for Justice, “Criminal injuries compensation: a guide” (1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#what-payments-are-available-from-the-scheme>> accessed 23 March 2026.

<sup>128</sup> Paragraph 67 of the Criminal Injuries Compensation Scheme 2012 (as amended) (England, Scotland and Wales).

<sup>129</sup> Paragraph 61 of the Criminal Injuries Compensation Scheme 2012 (as amended) (England, Scotland and Wales).

<sup>130</sup> Paragraph 39 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme 2009.

<sup>131</sup> Paragraph 40 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme 2009.

<sup>132</sup> Paragraph 41 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme 2009.

was under 18 years of age and dependent on the deceased for parental services, compensation for the loss of their parent.<sup>133</sup>

#### *Germany*

- [6.103] In Germany, the Social Code provides that the surviving dependants of deceased victims may receive benefits and services “to secure their livelihood” for up to five years following the death of the victim.<sup>134</sup>

#### *Victoria*

- [6.104] In the Australian state of Victoria, a person is eligible for compensation as a ‘related victim’ if they were a ‘dependant’ of a person who died as a result of a crime of violence.<sup>135</sup> A dependant is defined as someone who was wholly or substantially dependent on the ‘primary victim’s’ income at the time of the victim’s death, or would have been so dependent if not for the primary victim’s incapacity due to the injury from which they passed away, or a child of the victim, born after the victim’s death, who would have been a dependant if born before the victim’s death.<sup>136</sup>
- [6.105] Dependants may receive compensation for, among other things, loss of money that, but for the death of the primary victim, they would have been reasonably likely to receive from the primary victim during a period of up to two years after that death.<sup>137</sup>

#### *(iv) Proposals for reform*

- [6.106] The Commission considers that dependants of a victim who has died as a result of a crime of violence should be eligible to apply for compensation under the statutory scheme for ‘loss of dependency’. ‘Loss of dependency’ should include payments for loss of financial benefit, such as loss of earnings and ‘loss of service’. Loss of service must be capable of financial calculation, such as childcare. These categories mirror the types of payments that can be made to dependants in civil proceedings. The Commission recommends that for the purposes of these applications, ‘dependant’ should be defined in accordance with the definition of dependant in section 47 of the CLA 1961.<sup>138</sup>

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<sup>133</sup> Paragraph 43 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme 2009.

<sup>134</sup> Section 93 of the Social Code Book XIV (Social Compensation) (Germany).

<sup>135</sup> Paragraph 15 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>136</sup> Paragraph 3(1) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>137</sup> Paragraph 16(2)(d) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>138</sup> Dependants include a spouse, civil partner, parent, grandparent, step-parent, child, grandchild, step-child, brother, sister, half-brother or half-sister of the deceased, and co-

- [6.107] In addition to compensation for 'loss of dependency', dependants should be eligible for a portion of the bereavement payment for their pain and suffering, as all dependants will fall within the broader category of 'family member' outlined above. The Commission recognises that there will be significant overlap in people who can qualify for a bereavement payment as a family member and people who qualify as dependants. However, it considers that a narrower definition for applications for 'loss of dependency' is appropriate because of the significant potential financial implications for the statutory scheme of making compensation payments to dependants for 'loss of dependency', which may include a portion of a victim's loss of earnings.
- [6.108] The Commission notes that dependants may not be entitled to the full amount of loss of earnings that the victim would have received if they had not died. The Commission, however, considers that it is reasonable that where a victim suffers injuries as a result of a crime of violence and then subsequently dies, their dependants should have some access to the payments that they otherwise would have received had the victim not died. The Commission recommends that the statutory body will assess what is fair having regard to all the circumstances, bearing in mind that compensating dependants for the victim's future loss of earnings would not necessarily be fair and appropriate in all cases and may have significant financial implications for the scheme. The Commission considers that, as in civil cases, there should be an actuarial valuation, which should propose an appropriate amount of the victim's lost income between dependants. The statutory body should only make such payments where they consider that it is fair and appropriate in the circumstances of each case.
- [6.109] The Commission notes that there are proposals in civil law for structured payments (also known as periodic payments) in circumstances where there are potentially very large payments to cover loss of earnings. These proposals are discussed in the Chapter on Types of Compensation. The Commission considers that the scheme should be amended to align with these proposals when they are in place.
- [6.110] The Commission also recommends that, in line with the current scheme, where a victim has died otherwise than as a result of the harm caused by the crime of violence, the statutory body may make a compensation payment to dependants for losses arising directly from the crime of violence. Such losses could include reasonable, verifiable expenses and loss of earnings, but only those incurred before the death of the applicant. Given that these payments could have significant financial implications for the statutory body, such payments should only be made to a dependant who would, in the opinion of the statutory body,

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habitant at time of death, who have suffered injury or mental distress as a result of the death. See 47(1) of the Civil Liability Act 1961 for the full definition.

otherwise suffer hardship, and the statutory body considers this payment to be fair and appropriate. The requirement that in such circumstances a dependant must otherwise suffer hardship is also in the current scheme.<sup>139</sup>

- [6.111] The Commission notes the provision in the CLA 1961 that provides that there may be only one action on behalf of dependants,<sup>140</sup> taken for the benefit of all dependants, with each dependant named in the action.<sup>141</sup> The Commission considers there should be a similar rule for the claims from dependants under the statutory scheme. The Commission recommends that, where possible, there should be one application to the statutory scheme for the benefit of all dependants with each dependant named in the application.
- [6.112] The Commission recommends that in the event that the victim has made an application to the statutory body before their death, and an application is subsequently made by one or more dependants, the statutory body can have regard to any amount of compensation the statutory body had decided upon for the victim before they died in determining a fair and appropriate payment for a dependant.
- [6.113] The category of reasonable, verifiable expenses, such as funeral expenses arising as a result of the death of a victim from a crime of violence, is addressed below.
- [6.114] The Commission has also considered the situation where a victim has made an application for compensation and the statutory body has decided to make a payment, but the payment has not been made before the victim dies. In these circumstances, the Commission considers that the compensation payment that otherwise would have been made to the victim should be made to the victim's estate. The death of a victim in these circumstances may occur either as a result of harm connected to the crime of violence or as a result of other causes.
- [6.115] Where the compensation payment is made to the victim's estate in these circumstances and a dependant, who is not part of the estate, makes an application to the statutory body, the statutory body can have regard to the payment already made to the estate in determining an appropriate payment for the dependant.

**R. 6.7 The Commission recommends** that a person should be eligible for compensation for 'loss of dependency' if:

- (1) the person is a dependant of a victim of a crime of violence,
- (2) the victim has died as a result of the crime of violence,

<sup>139</sup> Paragraph 7 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>140</sup> Section 48(2) of the Civil Liability Act 1961.

<sup>141</sup> Section 48(4) and (5) of the Civil Liability Act 1961.

- (3) the person has suffered a loss of a financial benefit or loss of service which could have reasonably been expected but for the crime of violence, and
- (4) the statutory body considers it is fair and appropriate, having regard to all the circumstances.

**R. 6.8    The Commission recommends** that dependants may make an application for a portion of the bereavement payment in addition to a payment for loss of dependency.

**R. 6.9    The Commission recommends** that where a victim has died otherwise than as a result of the crime of violence, the statutory body may pay compensation to a dependant in respect of:

- (1) loss of earnings, and
- (2) reasonable, verifiable expenses.

**R. 6.10    The Commission recommends** that where a victim has died otherwise than as a result of the crime of violence, no compensation may be paid to a dependant unless the losses or expenses have:

- (1) arisen directly from the harm caused by the crime of violence, and
- (2) been incurred before the death of the victim, and
- (3) the dependant would, in the opinion of the statutory body, otherwise suffer hardship and
- (4) the statutory body considers this payment to be appropriate.

- R. 6.11 **The Commission recommends** that 'dependant' for the purposes of these payments only should be defined in the statutory scheme in accordance with section 47 of the Civil Liability Act 1961.
- R. 6.12 **The Commission recommends** that, where possible, there should be one application to the statutory scheme for the benefit of all dependants, with each dependant named in the application.
- R. 6.13 **The Commission recommends** that in the event that the victim has made an application to the statutory body before their death, and an application is subsequently made by one or more dependants, the statutory body can have regard to any amount of compensation the statutory body had decided upon for the victim before they died in determining a fair and appropriate payment for a dependant.
- R. 6.14 **The Commission recommends** that where a victim has made an application to the statutory body and the statutory body decides to award a payment, but the victim dies before the payment has been made, this payment can be made to a victim's estate.
- R. 6.15 **The Commission recommends** that where the compensation payment is made to a victim's estate and a dependant, who is not part of the victim's estate, makes an application to the statutory body, the statutory body can have regard to the payment already made to the estate in determining a fair and appropriate payment to the dependant.

### (e) Other persons who have incurred expenses in fatal cases

[6.116] Paragraph 3(c) of the current scheme states that where the victim has died as a result of the injury, the Tribunal will consider claims made by "any dependent of the victim or, if he has no dependent, any person who incurred expenses as a result of his death."<sup>142</sup> This is intended to include the situation where a person who wasn't a dependant incurred expenses, such as funeral expenses, as a result of the victim's death. However, under the current scheme that person would not be eligible for compensation if a dependant makes a separate application.

[6.117] The Commission considers that it is appropriate that a person who incurs expenses as a result of a fatal crime of violence should be compensated. The categories outlined above envisage a bereavement payment for family members, and loss of dependency payments for dependants. These categories do not explicitly include the reasonable, verifiable expenses that may be incurred by a person as a result of the death of a victim. Therefore, the Commission considers it is appropriate to include a category in the statutory scheme to explicitly include all individuals who may incur reasonable and verifiable expenses as a direct result

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<sup>142</sup> Paragraph 3(c) of the Criminal Injuries Compensation Scheme (31 January 2025).

of the death of the victim. The Commission envisages that this category will primarily cover expenses such as funeral expenses.

**R. 6.16 The Commission recommends** that where the victim has died as a result of the crime of violence, any person who incurred reasonable, verifiable expenses as a result of the death, such as funeral expenses, should be eligible for compensation for those expenses.

## 4. Defining a crime of violence

### (a) Introduction

[6.118] Most of the jurisdictions examined by the Commission limit their state compensation schemes to crimes of violence. This is true for the current scheme in Ireland. It provides that compensation may be paid where the injury is directly attributable to a “crime of violence”.<sup>143</sup> In addition, article 12(2) of the Compensation Directive requires Member States to compensate victims of “violent intentional crimes”. However, neither the current scheme nor the Directive define these terms.

[6.119] This section will begin by examining what is required for there to be an eligible victim of a crime of violence, and in particular whether state compensation will only be available in cases where criminal proceedings are brought .

[6.120] The Commission then examines how a ‘crime of violence’ might be defined. It considers that this is necessary to ensure that clear and appropriate eligibility criteria are provided in the statutory scheme. The Commission considers that defining a ‘crime of violence’ will also permit the scheme to reflect recent developments in law and policy. These developments recognise that certain offences that may not ordinarily be understood to be crimes of violence because they may lack the element of physical harm can be included in the statutory scheme. This includes crimes of a sexual nature and various forms of domestic violence, such as coercive control.

[6.121] The section then examines the approach to defining a ‘crime of violence’ in other jurisdictions, and concludes with the Commission’s proposals for reform.

### (b) Relevance of criminal proceedings

[6.122] Under the current scheme, the offender does not have to be identified or prosecuted for the victim to claim compensation.<sup>144</sup> The fact that an offender

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<sup>143</sup> Paragraph 1 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>144</sup> The terms of the Criminal Injuries Compensation Scheme do not state that the offender must be identified or prosecuted in order to receive compensation – if criminal proceedings are ongoing, the Tribunal requires details of these proceedings.



may have legal immunity from prosecution also does not preclude a claim for compensation. Paragraph 1 of the current scheme states:

“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.”

[6.123] The Victims’ Rights Directive states that an offender does not need to be known or prosecuted for a person to be classified as a victim of crime. Recital 19 affirms that a person “should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted”.<sup>145</sup>

[6.124] The rationale behind this approach is that the lack of prosecution does not diminish the harm experienced by the victim. Taking a victim-centred approach means the situation of victims’ needs to be considered separately to the criminal proceedings involving the offender.

[6.125] The High Court endorsed this approach in the case of *Earls v Criminal Injuries Compensation Tribunal*.<sup>146</sup> In this case, the applicant for compensation was injured by a “screamer” firework thrown by an 11-year-old boy. The High Court applied paragraph 1 of the scheme and found that the fact that the perpetrator was below the age of criminal responsibility, and could not be prosecuted, had no bearing on whether a crime of violence had been committed.<sup>147</sup>

[6.126] The Commission considers that the statutory scheme should similarly provide that an offender does not need to be identified, charged, prosecuted or convicted for a person to be considered a victim of a violent crime. The Commission recommends that for the purposes of deciding on a payment of compensation, it is irrelevant whether or not a person responsible for the crime:

- has been identified or located,
- has a legal defence to the crime,
- lacks the capacity to be convicted of the crime due to their young age, their psychological condition, or another circumstance, or
- has been charged with or convicted of the crime.

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<sup>145</sup> Recital 19 of the Victims’ Rights Directive (2012/29/EU).

<sup>146</sup> *Earls v Criminal Injuries Compensation Tribunal* [2022] IEHC 679.

<sup>147</sup> *Earls v Criminal Injuries Compensation Tribunal* [2022] IEHC 679.

### (c) Standard of proof

- [6.127] Currently, the scheme provides that the standard of proof that the Tribunal will apply to a determination is the balance of probabilities.<sup>148</sup> This means that the Tribunal must decide that it is more likely than not that the victim was injured as a result of a crime of violence. This is the same standard of proof as civil proceedings.
- [6.128] This can be contrasted with the standard of proof in a criminal trial which is 'beyond reasonable doubt'. This means that a court, or jury, cannot convict a person of a crime unless it is sure that the offender committed the crime of violence. This higher standard can be understood as being required in criminal trials because of the significant consequences a person can face following a criminal conviction, namely the deprivation of their liberty. The difference in standard of proof is part of the reason a criminal conviction is not required for a victim to be eligible for a state-funded compensation payment.
- [6.129] In line with the current scheme, and the standard of proof in civil proceedings, the Commission recommends that the standard of proof for determining whether an individual is a victim of a crime of violence for the purposes of being eligible for a compensation payment by the statutory body should be 'the balance of probabilities'.

### (d) Types of crime

#### (i) *Defining violence*

- [6.130] In the past, violence has typically been defined in narrow terms, focusing on physical harm or threats.<sup>149</sup> For example, a study by the National Research Council in 1993 defined violence as "behaviours by individuals that intentionally threaten, attempt, or inflict physical harm on others".<sup>150</sup> However, that definition does not fully encapsulate violence in all its forms, as it focuses solely on the physical element of violence. This narrow conception of violence fails to recognise that some crimes result primarily in harm by way of traumatising impact rather than physical harm. These include some assaults of a sexual nature (those previously categorised as indecent assaults in Irish law, for example), harassment and non-physical forms of domestic abuse.

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<sup>148</sup> Paragraph 30 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>149</sup> Rosenfeld, "Violent Crime": Oxford Bibliographies Online Research Guide (14 December 2009) <<https://www.oxfordbibliographies.com/display/document/obo-9780195396607/obo-9780195396607-0001.xml?result=311&q=behaviours+by+individuals#firstMatch>> accessed 23 March 2026.

<sup>150</sup> Reiss and Roth (eds), National Research Council, *Understanding and Preventing Violence: Volume 1* (National Academies Press 1993) at page 2.

- [6.131] The legislative and policy landscape in this area has shifted in the last few decades, with a growing recognition of the serious impact of domestic, sexual and gender-based violence ("DSGBV"). This can be seen through the enactment of a range of Irish and European legislative measures, which have reformed the law on DSGBV, strengthened the position of victims in the criminal justice system, and established enhanced support systems.
- [6.132] In this section of the Report, the Commission considers these developments and discusses how they should be reflected in an appropriate definition of a crime of violence.

*(ii) Domestic, sexual and gender-based violence*

*Developments in the European Union: DSGBV as a priority*

- [6.133] Since the introduction of the Compensation Directive in 2004, a number of developments in EU law have highlighted the importance of recognising the harmful effects of domestic, sexual and gender-based violence. In 2012, the Victims' Rights Directive recognised that where violence is committed in a close relationship, it is not always of a physical nature: "[s]uch violence could cover physical, sexual, psychological or economic violence."<sup>151</sup> It emphasises that violence in close relationships is a serious and often hidden social problem. As the offender is a person whom the victim should be able to trust, such violence can cause systematic psychological and physical trauma with severe consequences. Victims of violence in close relationships may therefore need special protection measures.<sup>152</sup> The Directive also acknowledges the harm caused by gender-based violence,<sup>153</sup> and that victims and their children "often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence."<sup>154</sup>
- [6.134] On 1 October 2023, the European Union became a party to the Council of Europe Convention on preventing and combating violence against women and domestic violence – also known as the Istanbul Convention. This requires the EU to take

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<sup>151</sup> Recital 18 of the Victims' Rights Directive (2012/29/EU).

<sup>152</sup> Recital 18 of the Victims' Rights Directive (2012/29/EU).

<sup>153</sup> Gender-based violence is defined in Recital 17 of the Victims' Rights Directive (2012/29/EU) as: "Violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately". It "includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called 'honour crimes'."

<sup>154</sup> Recital 17 of the Victims' Rights Directive (2012/29/EU).

action to prevent and combat violence against women, including funding, policy and legislative measures.<sup>155</sup>

[6.135] Less than a year later, in May 2024, the EU Directive on Combating Violence Against Women and Domestic Violence was adopted.<sup>156</sup> The aim of this Directive is to provide an EU-wide basis for mandating actions to prevent violence against women and domestic violence and to ensure a minimum level of protection and redress across the EU. It defines “violence against women” as:

“all acts of gender-based violence directed against a woman or a girl because she is a woman or a girl or that affect women or girls disproportionately, that result in or are likely to result in physical, sexual, psychological or economic harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”<sup>157</sup>

[6.136] The Directive defines domestic violence as including:

“all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit, irrespective of biological or legal family ties, or between former or current spouses or partners, whether or not the offender shares or has shared a residence with the victim”.<sup>158</sup>

[6.137] This Directive criminalises not just physical violence, but also psychological, economic and sexual violence against women, both offline and online.<sup>159</sup> Forced marriage<sup>160</sup> is identified as a form of violence that entails serious violations of fundamental rights and, in particular, the rights of women and girls to physical integrity, freedom and autonomy, among others.<sup>161</sup> The Directive also

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<sup>155</sup> Hipper and Ferroli, “Commission welcomes political agreement on new rules to combat violence against women and domestic violence” (European Commission, 6 February 2023) <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_649](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_649)> accessed 23 March 2026.

<sup>156</sup> Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence (“Directive on Combating Violence Against Women”).

<sup>157</sup> Article 2(a) of the Directive on Combating Violence Against Women ((EU) 2024/1385).

<sup>158</sup> Article 2(b) of the Directive on Combating Violence Against Women ((EU) 2024/1385).

<sup>159</sup> Hipper and Ferroli, “Commission welcomes political agreement on new rules to combat violence against women and domestic violence” (European Commission, 6 February 2023) <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_649](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_649)> accessed 23 March 2026.

<sup>160</sup> Article 4 of the Directive on Combating Violence Against Women ((EU) 2024/1385).

<sup>161</sup> Recital 16 of the Directive on Combating Violence Against Women ((EU) 2024/1385).  
“Forced marriage is a form of violence that entails serious violations of fundamental rights

criminalises various forms of cyber violence, including intimate image abuse,<sup>162</sup> cyber-stalking,<sup>163</sup> cyber-harassment, and cyber-flashing.<sup>164</sup>

- [6.138] In her report to the EU Commission President, Special Advisor Milquet highlighted that it is particularly important for victims of domestic, sexual and gender-based violence to receive a clear message that what happened to them is not their fault, and is the sole responsibility of the perpetrator. She stated that “[c]ompensation can serve as a societal recognition that the violence was wrong and the victim should not be blamed.”<sup>165</sup>

*Developments in Irish law and policy: Beyond physical violence*

- [6.139] In recent years, the Government has prioritised combating domestic, sexual and gender-based violence.<sup>166</sup> It has passed new laws, created new policy and established a new statutory agency dedicated to tackling and reducing DSGBV in 2024. This agency is called Cuan and is dedicated to supporting victims and survivors through delivery of services, research and policy implementation.<sup>167</sup>
- [6.140] It is also clear that, as the National Women’s Council has observed, our understanding of what constitutes violence has evolved. It is not limited to physical violence, but in fact goes “far beyond broken bones and bruises.”<sup>168</sup> The Department of Justice has unequivocally stated that,

“[t]he term ‘domestic violence’ goes beyond actual physical violence. It can also involve the destruction of property; isolation from friends, family and other potential sources of support; threats

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and, in particular, the rights of women and girls to physical integrity, freedom, autonomy, physical and mental health, sexual and reproductive health, education and a private life.”

<sup>162</sup> Article 5 of the Directive on Combating Violence Against Women ((EU) 2024/1385).

<sup>163</sup> Article 6 of the Directive on Combating Violence Against Women ((EU) 2024/1385).

<sup>164</sup> Article 7 of the Directive on Combating Violence Against Women ((EU) 2024/1385).

<sup>165</sup> Milquet, *Strengthening Victims’ Rights: From Compensation To Reparation for a new EU Victims’ Rights Strategy 2020-2025* (European Commission 2019) at page 31.

<sup>166</sup> Government of Ireland, *Zero Tolerance: Third National Strategy on Domestic, Sexual and Gender Based Violence 2024 Implementation Plan* (Department of Justice, April 2024). As part of this Strategy, the Government has committed itself to promoting changes to the Criminal Injuries Compensation Scheme: see page 15, output 2.1.4 <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/289239/8397af6a-eb2e-48d7-a0df-cf72c91d103b.pdf#page=null>> accessed 23 March 2026.

<sup>167</sup> Department of Justice, Home Affairs and Migration, “Cuan” <<https://www.gov.ie/en/campaigns/09288-cuan/>> accessed 23 March 2025.

<sup>168</sup> O’Connor, “We must recognise harassment for what it is – it is gender-based violence” (National Women’s Council, 10 December 2020) <<https://www.nwci.ie/learn/blog-article/we-must-recognise-harassment-for-what-it-is>> accessed 23 March 2026.

to others including children; stalking; and control over money, personal items, food, transportation and the telephone.”<sup>169</sup>

- [6.141] The Department describes domestic violence as “the use of physical or emotional force or the threat of physical force, including sexual violence in close adult relationships.”<sup>170</sup> The Domestic Violence Act 2018 was commenced on 1 January 2019. It amended and consolidated the law on domestic violence, strengthened victims’ rights, and introduced a number of new criminal offences, including the offences of forced marriage and coercive control.
- [6.142] The offence of forced marriage is committed where a person uses violence, threats, undue influence or any form of coercion or duress for the purpose of causing another to enter into a marriage.<sup>171</sup>
- [6.143] Coercive control is defined as knowingly and persistently engaging in behaviour that is controlling or coercive, that has a serious effect on a spouse or a person in an intimate relationship with the alleged offender, and that a reasonable person would consider likely to have a serious effect.<sup>172</sup> Coercive control is a distinctive manifestation of domestic violence and abuse, which includes tactics deployed by abusers relating to coercion, (physical and sexual violence; intimidation, threats and degradation) and those relating to control, (isolation; exploitation and deprivation; micro-regulation of everyday behaviour).<sup>173</sup> Leahy has commented that the criminalisation of coercive control was “an important recognition of the harm caused by controlling and coercive behaviour.”<sup>174</sup>
- [6.144] The effects of non-physical violence can be similar to those resulting from physical violence. This challenges the traditional perception of a hierarchical distinction between real physical violence and ‘mere’ emotional abuse.<sup>175</sup> Non-physical violence can have direct physical consequences in the same way that

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<sup>169</sup> Department of Justice, Home Affairs and Migration, “Domestic Violence” <<https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/policy-information/domestic-violence/>> accessed 23 March 2026.

<sup>170</sup> Department of Justice, Home Affairs and Migration, “Domestic Violence” <<https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/policy-information/domestic-violence/>> accessed 23 March 2026.

<sup>171</sup> Section 38 of the Domestic Violence Act 2018.

<sup>172</sup> Section 39 of the Domestic Violence Act 2018.

<sup>173</sup> Devaney, Bradbury-Jones, Macy, Øverlien and Holt (eds), *The Routledge International Handbook of Domestic Violence and Abuse* (Routledge 2022) at page 398.

<sup>174</sup> Leahy, “Still a private matter? Evaluating the Irish State’s response to domestic abuse” (2023) 37 *International Journal of Law, Policy, and the Family* 1 at page 13.

<sup>175</sup> Penttinen, “Understanding the experience of emotional abuse: the importance of naming and identifying nonphysical violence from the target’s perspective” (2023) 8(1) *Journal of Gender Based Violence* 69 at page 70.

physical violence carries psychological effects.<sup>176</sup> It is therefore problematic to restrict the concept of violence to a definition connected solely to physical acts.<sup>177</sup> For example, while coercive control and forced marriage do not necessarily involve physical violence, they have a serious psychological impact on the victim and represent a violation of the victim's human dignity and personal integrity. As discussed in section 2 of this Chapter, the Commission recommends that such harm should be compensated by the statutory scheme.

- [6.145] Intimate image abuse is also non-physical violence which violates the dignity and personal integrity of the victim. The Harassment, Harmful Communications and Related Offences Act 2020 came into force in 2021 and criminalised the non-consensual recording, distribution or publishing of intimate images through the establishment of new criminal offences intended to tackle abusive behaviour such as 'revenge porn' and 'sextortion'.<sup>178</sup> Intimate image abuse can result in considerable psychological and emotional harm to victims.<sup>179</sup> While not directly physical, these offences can indirectly "lead to physical outcomes for the victim-survivor from physical harm from others, self-harm, and even suicide"<sup>180</sup> and have been "linked with risks of post-traumatic stress disorder, anxiety, depression, attempted and actual suicide, and psychological distress".<sup>181</sup>
- [6.146] Harassment is another example of non-physical behaviour which violates the dignity of the victim. The offence of harassment occurs where a person persistently and seriously interferes with another's peace and privacy, or causes alarm, distress or harm to them.<sup>182</sup> In 2023, the Government passed amendments

<sup>176</sup> Penttinen, "Understanding the experience of emotional abuse: the importance of naming and identifying nonphysical violence from the target's perspective" (2023) 8(1) *Journal of Gender Based Violence* 69 at page 76.

<sup>177</sup> Hearn and Hall, "From physical violence to online violation: Forms, structures and effects. A comparison of the cases of 'domestic violence' and 'revenge pornography'" (2022) 67(3) *Aggression and Violent Behaviour* at pages 18 and 19.

<sup>178</sup> See sections 2, 3, and 4 of the Harassment, Harmful Communications and Related Offences Act 2020.

<sup>179</sup> Hearn and Hall, "From physical violence to online violation: Forms, structures and effects. A comparison of the cases of 'domestic violence' and 'revenge pornography'" (2022) 67 *Aggression and Violent Behaviour* at page 13.

<sup>180</sup> Hearn and Hall, "From physical violence to online violation: Forms, structures and effects. A comparison of the cases of 'domestic violence' and 'revenge pornography'" (2022) 67 *Aggression and Violent Behaviour* at page 17.

<sup>181</sup> Hearn and Hall, "From physical violence to online violation: Forms, structures and effects. A comparison of the cases of 'domestic violence' and 'revenge pornography'" (2022) 67 *Aggression and Violent Behaviour* at page 18.

<sup>182</sup> Section 10(1) of the Non-Fatal Offences against the Person Act 1997.

to the law to widen the scope of the offence so that it now contains a more expansive, non-exhaustive list of acts that constitute harassment.<sup>183</sup>

- [6.147] Stalking is an aggravated form of harassment which can also have significant effects upon victims. Stalking was introduced as a standalone offence by the Criminal Justice (Miscellaneous Provisions) Act 2023, and is defined in terms of causing either a fear of violence or serious alarm and distress that has a substantial impact on a person's day to day activities.<sup>184</sup> The Minister for Justice noted that victims of both harassment and stalking, prior to the introduction of the 2023 Act, had been unable to access the necessary protections.<sup>185</sup>
- [6.148] The Government has specifically linked this policy priority with reform of the Tribunal. The Third National Strategy on Domestic, Sexual and Gender-Based Violence 2024 Implementation Plan specifically references the promotion of "changes to the Criminal Injuries Compensation Scheme",<sup>186</sup> while its earlier version specifies the implementation of recommendations from the LRC project on Criminal Injuries Compensation.<sup>187</sup>
- [6.149] It is clear that the legislative and policy landscape in Ireland has shifted, with a very strong emphasis on recognising the seriousness of the impact of domestic, sexual and gender-based violence. This is in line with the developments at EU level, including the accession to the Istanbul Convention and the introduction of the Directive on Violence Against Women. In light of these Irish and EU developments, the Commission recommends that offences of domestic, sexual and gender-based violence should be expressly included within the definition of a "crime of violence" in the statutory scheme.

### *(iii) Human trafficking*

- [6.150] Victims of human trafficking are recognised in EU law as a category of victim with specific needs. The 2011 Anti-Trafficking Directive introduced common provisions to strengthen the prevention of human trafficking and for the protection of

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<sup>183</sup> Section 23 of the Criminal Justice (Miscellaneous Provisions) Act 2023.

<sup>184</sup> Section 23 of the Criminal Justice (Miscellaneous Provisions) Act 2023.

<sup>185</sup> Law Society Gazette, "Bill targeting violence, harassment is passed" (13 July 2023) <<https://www.lawsociety.ie/gazette/top-stories/2023/july/bill-targeting-violence-harassment-is-passed/>> accessed 23 March 2026.

<sup>186</sup> Government of Ireland, *Zero Tolerance: Third National Strategy on Domestic, Sexual and Gender Based Violence 2024 Implementation Plan* (Department of Justice 2024) at page 15, output 2.1.4 <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/289239/8397af6a-eb2e-48d7-a0df-cf72c91d103b.pdf#page=null>> accessed 23 March 2026.

<sup>187</sup> Government of Ireland, *Third National Strategy on Domestic, Sexual & Gender-Based Violence Implementation Plan* (Department of Justice 2023) at page 41, row 3.6.8 <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/228481/69e48889-49ea-49d6-8143-982f6cc28bac.pdf#page=null>> accessed 23 March 2026.



human trafficking victims.<sup>188</sup> Article 17 of the Directive requires that “Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.”<sup>189</sup>

- [6.151] Member States must also ensure that victims of trafficking have access to legal advice without delay, including for the purpose of claiming compensation.<sup>190</sup>
- [6.152] The 2011 Anti-Trafficking Directive is transposed into Irish law by the Criminal Law (Human Trafficking) Act 2008.<sup>191</sup> This Act makes it an offence to traffic<sup>192</sup> in adults or children for the purpose of their sexual or labour exploitation, forced criminality, forced begging or the removal of their organs. In the case of children, no force is required – the very act of transporting a child into exploitative conditions constitutes trafficking.<sup>193</sup>
- [6.153] The Commission considers that, in line with the Anti-Trafficking Directive, victims of human trafficking should be entitled to apply for compensation under the proposed statutory scheme. It therefore recommends that offences under the Human Trafficking Act 2008 and the Child Trafficking and Pornography Act 1998 should be captured within the proposed definition of “crime of violence”.

#### *(iv) Terrorist offences*

- [6.154] Victims of terrorist offences are also recognised in EU law as a category of victim with specific needs. In her report to the EU Commission President, Special Advisor Milquet commented that, “[u]nlike in most other violent acts, the victim of terrorism was not personally attacked but [was attacked] as a symbol of the state and society.”<sup>194</sup> She emphasised that a lack of recognition of the harm caused by

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<sup>188</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA [2011] OJ L 101/1 (“Anti-Trafficking Directive”). This Directive is implemented in Ireland through the Criminal Law (Sexual Offences and Human Trafficking) Act 2024, the Child Trafficking and Pornography Act 1998 and the Criminal Law (Human Trafficking) Act 2008.

<sup>189</sup> Article 17 of the Anti-Trafficking Directive (2011/36/EU).

<sup>190</sup> Articles 12(2) and 15(2) of the Anti-Trafficking Directive (2011/36/EU).

<sup>191</sup> As amended by the Criminal Law (Human Trafficking) (Amendment) Act 2013.

<sup>192</sup> ‘Trafficking’ is defined in section 1 of the Criminal Law (Human Trafficking) Act 2008 as: (a) procuring, recruiting, transporting, or harbouring a person or transferring a person to another; (b) causing a person to enter, leave, or travel within the State; (c) taking custody of a person or taking a person into one’s care, charge, or under one’s control; or (d) providing the person with accommodation or employment.

<sup>193</sup> See section 2 of the Criminal Law (Human Trafficking) Act 2008 and section 3 of the Child Trafficking and Pornography Act 1998.

<sup>194</sup> Milquet, *Strengthening Victims’ Rights: From Compensation To Reparation for a new EU Victims’ Rights Strategy 2020-2025* (European Commission 2019) at page 28.

terrorism from the state and from society has a negative impact on the healing process of victims.

- [6.155] The 2017 Counter-Terrorism Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of terrorist offences.<sup>195</sup> It provides that Member States should adopt measures of protection, support and assistance responding to the specific needs of victims of terrorism, in accordance with the Victims' Rights Directive.<sup>196</sup> This should include assistance with claims regarding compensation for victims of terrorism under the national laws of the Member State concerned.<sup>197</sup> Member States shall also ensure that victims of terrorism who are residents of a Member State other than that where the terrorist offence was committed have access to information regarding compensation schemes in the Member State where the terrorist offence was committed.<sup>198</sup>
- [6.156] The Counter-Terrorism Directive does not expressly confer an entitlement to state compensation on all victims of terrorism. The Commission considers that only violent terrorist offences should fall within the definition of "crime of violence" in the proposed statutory scheme. The Commission considers that non-violent terrorist acts, such as cyberterrorism, should not attract compensation under the statutory scheme.
- [6.157] The offence of terrorism contained in section 6 of the Criminal Justice (Terrorist Offences) Act 2005 provides that a person is guilty of an offence if they engage in, or attempt to or threaten to engage in, a "terrorist activity" or "terrorist-linked activity".<sup>199</sup> What constitutes a terrorist activity or terrorist-linked activity is defined by reference to lists of offences contained in Schedule 2 of that Act.<sup>200</sup> The offences listed do not only refer to offences against the person, but also include offences relating to criminal damage, explosives, firearms, dangerous substances, and blackmail.<sup>201</sup> As the Commission considers that only violent terrorist acts should attract compensation, it considers that terrorism under

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<sup>195</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA [2017] OJ L 88/6 ("Counter-Terrorism Directive").

<sup>196</sup> Recital 27 of the Counter-Terrorism Directive ((EU) 2017/541).

<sup>197</sup> Articles 24(3)(c) of the Counter-Terrorism Directive ((EU) 2017/541).

<sup>198</sup> Article 26(1) of the Counter-Terrorism Directive ((EU) 2017/541).

<sup>199</sup> Section 6(1)(a) of the Criminal Justice (Terrorist Offences) Act 2005.

<sup>200</sup> Section 4(1) of the Criminal Justice (Terrorist Offences) Act 2005. For example, "terrorist activity" is defined as an act that "(a) if committed in the State, would constitute an offence specified in Part 1 of Schedule 2, and (b) is committed with the intention of (i) seriously intimidating a population, (ii) unduly compelling a government or an international organisation to perform or abstain from performing an act, or (iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a state or an international organisation".

<sup>201</sup> Schedule 2 paragraphs 5 – 10 and 13 of the Criminal Justice (Terrorist Offences) Act 2005.

section 6 should be included only insofar as it relates to homicide, non-fatal offences against the person, torture, and sexual offences.<sup>202</sup> The Commission also considers that the offences of hostage-taking and terrorist bombing under sections 9 and 10 of the Terrorist Offences Act 2005 should be included within the definition of crime of violence.

*(v) Road traffic offences*

- [6.158] Road traffic offences are excluded under the current scheme.<sup>203</sup> Paragraph 11 of the current scheme states that “no compensation will be payable in respect of injuries inflicted in a traffic offence”. Injuries caused by road traffic offences are typically compensated by insurance, in respect of which third party accident cover is mandatory, or where the driver is uninsured, by the Motor Insurers' Bureau of Ireland (“the MIBI”).<sup>204</sup> The majority of compensation systems in EU Member States also have this limitation on eligibility in respect of road traffic accidents.
- [6.159] However, the current scheme provides that compensation will be payable for injuries sustained by deliberate acts to “run down the victim”.<sup>205</sup> The Commission notes that one consultee’s submission suggested that the compensation scheme should explicitly cover injuries to victims of terrorist attacks caused by motor vehicles. The Commission considers that the definition of crime of violence for the scheme will cover all intentional acts of harm caused by use of motor vehicles, including violent terrorist attacks. The Commission considers that traffic offences should be excluded from the statutory compensation scheme, with the exception of the deliberate use of a mechanically propelled vehicle with intent to cause injury or death.
- [6.160] The Commission has considered the situation of personal electric vehicles, which may cause significant harm to an individual in an accident, without the benefit of motor insurance. The Commission, however, considers that only injuries sustained by an intentional act of harm by use of a personal electric vehicle should be included in the statutory scheme.

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<sup>202</sup> Schedule 2 paragraphs 1 – 4 of the Criminal Justice (Terrorist Offences) Act 2005.

<sup>203</sup> Paragraph 11 of the Criminal Injuries Compensation Scheme provides: “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 rundown the victim.”

<sup>204</sup> This is a non-profit organisation set up by the Government and motor insurance companies in 1955. In general terms, the MIBI is responsible for compensating innocent victims who are injured by uninsured or unidentified motorists. The fund required to pay compensation to these victims is financed by an annual levy placed on all companies underwriting motor insurance in Ireland. See Motor Insurers' Bureau of Ireland, “About us” <<https://www.mibi.ie/about-us/>> accessed 23 March 2026.

<sup>205</sup> Paragraph 11 of the Criminal Injuries Compensation Scheme (31 January 2025).

### (e) Comparative jurisdictions

[6.161] Other jurisdictions use various definitions for determining what constitutes an offence that will bring a victim within the eligibility criteria of their state compensation schemes. Most of the schemes examined cover crimes of violence, and many of the jurisdictions examined below cover sexual crimes and domestic violence.

#### (i) EU Member States

##### *France*

[6.162] The French Code of Criminal Procedure<sup>206</sup> provides, subject to some exclusions,<sup>207</sup> that victims may obtain full compensation for damage resulting from acts which have the material nature of an offence where:

- the acts resulted in death, permanent incapacity or total incapacity for personal work equal to or greater than one month; or
- the acts constitute one of the offences included in the list of crimes provided in article 706-3.2°.<sup>208</sup>

[6.163] The list of crimes includes rape and other sexual assaults, slavery, human trafficking and offences relating to prostitution. A person will also be eligible for compensation in cases of domestic violence, such as where an attack was committed against a minor or by the victim's spouse or cohabiting partner.<sup>209</sup> However, the list of crimes does not appear to include harassment offences.<sup>210</sup>

[6.164] Road traffic offences and injuries sustained while hunting are generally excluded.<sup>211</sup> There is also a general exclusion for victims of theft, fraud, breach of trust, extortion or destruction, damage or deterioration of property, blackmail, abuse of weakness or damage to automated data processing systems. However,

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<sup>206</sup> Articles 706-3 – 706-15 of the Code of Criminal Procedure (France).

<sup>207</sup> Article 706-3.1° of the Code of Criminal Procedure (France) provides that full compensation may only be awarded where: "such injury does not fall within the scope of Article 53 of the Social Security Financing Act for 2001 (No 2000-1257 of 23 December 2000), nor of Article L 126-1 of the Insurance Code, nor of Chapter I of Law No 85-677 of 5 July 1985 on the improvement of the situation of victims of road traffic accidents and the acceleration of compensation procedures, and do not originate from an act of hunting or destruction of animals likely to cause damage".

<sup>208</sup> Article 706-3.2° enumerates the following articles from the French Criminal Code: articles 222-22 to 222-30, 224-1 A – 224-1 C, 225-4-1 – 225-4-5, 225-5 to 225-10, 225-14-1 and 225-14-2 and 227-25 – 227-27.

<sup>209</sup> Article 706-3.2° of the Code of Criminal Procedure (France).

<sup>210</sup> Contained in Article 222-33 of the French Criminal Code, which is not included in the list of offences provided in Article 706-3.2° of the French Code of Criminal Procedure.

<sup>211</sup> Article 706-3.1° of the Code of Criminal Procedure (France).

there is an exception where the victim cannot obtain adequate compensation elsewhere, is in a “serious material or psychological situation” and their resources fall below a certain threshold.<sup>212</sup>

### *Germany*

[6.165] Section 13(1) of the German Social Code, Book 14, provides that victims may receive compensation where they have suffered damage to their health owing to:

- (1) An intentional, unlawful direct assault against their person (physical violent crime) or lawfully defending themselves against such assault or
- (2) Other intentional, unlawful serious conduct aimed directly against a person’s free will (psychological violent crime).<sup>213</sup>

[6.166] Subsection (2) specifies that conduct within the meaning of the second category is, as a general rule, serious if it consists of the following offences: sexual abuse, sexual assault, sexual coercion, rape, human trafficking, stalking, hostage-taking, or extortion with use of force or threat of force,<sup>214</sup> or other conduct of a comparable severity. The German scheme is broader than the French scheme as it allows for victims of stalking to claim compensation.

[6.167] The Social Code includes a section entitled “equality of status”<sup>215</sup> which states that the following are equal to a violent crime:

- (1) The intentional administration of poison,
- (2) A violent crime which goes awry, as a result of which it affects a person other than the intended victim,
- (3) An attack carried out in the erroneous assumption that there are grounds for its justification,
- (4) The negligent causation of danger to the life and limb of another by the commission of a serious criminal offence (*Verbrechen*) using means which constitute a public danger,
- (5) The significant neglect of children, and
- (6) The production, dissemination and making available to the public of child pornography.<sup>216</sup>

### *Croatia*

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<sup>212</sup> Article 706-14 of the Code of Criminal Procedure (France).

<sup>213</sup> Section 13 of the Social Code Book XIV (Social Compensation) (Germany).

<sup>214</sup> These crimes are defined in sections 174 – 176d, 177, 178, 232 – 233a, 238(2) and (3), 239b and 255 of the German Criminal Code.

<sup>215</sup> Section 14 of the Social Code Book XIV (Social Compensation) (Germany).

<sup>216</sup> As defined in section 184b(1) of the German Criminal Code.

[6.168] In Croatia, compensation is provided for victims of violent offences. Section 5 of the Act on Financial Compensation to Victims of Crime 2008 provides that:

(3) The following criminal offences are considered to be violent offences:

- (a) A criminal offence committed intentionally with the use of force or a violation of sexual integrity,
- (b) A criminal offence of endangering life and property by a generally dangerous act or means that caused death, serious bodily injury or serious damage to the health of one or more persons, and is prescribed by the Criminal Code as a more serious form of the basic criminal offence committed with intent.<sup>217</sup>

#### *Slovenia*

[6.169] In Slovenia, compensation will be paid to victims of a “violent intentional act” defined as “an act committed by direct attack on life and body, by the use of force or violation of sexual integrity, and for which one or more years of imprisonment may be imposed under the Criminal Code” and to victims of domestic violence.<sup>218</sup>

#### *Northern Ireland*

[6.170] The Northern Ireland Criminal Injuries Compensation Scheme provides that compensation may be paid to victims who have sustained criminal injuries.<sup>219</sup> A ‘criminal injury’ means an injury sustained in and directly attributable to a crime of violence.<sup>220</sup> Crime of violence is not defined in the scheme. The Compensation Services state that:

“There is no legal definition of the term but crimes of violence usually involve a physical attack on the person, for example assaults, wounding and sexual offences. This is not always so, however, and we judge every case on the basis of its

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<sup>217</sup> Section 5(3) of the Act on Financial Compensation to Victims of Crime (Official Gazette of the Republic of Croatia Nos 80/08 and 27/11).

<sup>218</sup> Article 2 of the Law on Compensation to Victims of Crime (Slovenia).

<sup>219</sup> Paragraph 6 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>220</sup> Paragraph 8 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009). Note that a ‘criminal injury’ may also mean an injury sustained in and directly attributable to an offence of trespass on a railway, or the apprehension or attempted apprehension of an offender or a suspected offender, the prevention or attempted prevention of an offence, or the giving of help to any constable who is engaged in any such activity.

circumstances. For example, the threat of violence may, in some circumstances, be considered a crime of violence.”<sup>221</sup>

[6.171] This gives some discretion to the Compensation Services team to determine whether conduct towards a victim qualifies as violent by nature.

*England, Scotland and Wales*

[6.172] In England, Scotland and Wales, a ‘crime of violence’ for which victims are eligible to receive compensation from the Criminal Injuries Compensation Authority is defined as a crime which involves:

- (a) a physical attack;
- (b) any other act or omission of a violent nature which causes physical injury to a person;
- (c) a threat against a person, causing fear of immediate violence in circumstances which would cause a person of reasonable firmness to be put in such fear;
- (d) a sexual assault to which a person did not in fact consent; or
- (e) arson or fire-raising.<sup>222</sup>

*(ii) Australia*

*New South Wales*

[6.173] In New South Wales an ‘act of violence’ is defined by the Victims Rights and Support Act 2013 as an act or series of related acts, whether committed by one or more persons, that has:

- (a) apparently occurred in the course of the commission of an offence, and
- (b) involved violent conduct against one or more persons, and
- (c) resulted in injury or death to one or more of those persons.<sup>223</sup>

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<sup>221</sup> Department of Justice, *A Guide to the Northern Ireland Criminal Injuries Compensation Scheme (2009)* at para 7.9 <<https://www.nidirect.gov.uk/sites/default/files/2025-01/guide-criminal-injuries-compensation-scheme-2009%20latest.pdf>> accessed 23 March 2026.

<sup>222</sup> Annex B, para 2(1) of the Criminal Injuries Compensation Scheme 2012 (England, Scotland and Wales). Fire raising is an offence under Scottish law and means the wilful or reckless setting fire to the property of another.

<sup>223</sup> Section 19(1) of the Victims Rights and Support Act 2013 (New South Wales).

The Act specifies that 'violent conduct' extends to sexual assault and domestic violence.<sup>224</sup>

### *Victoria*

[6.174] In Victoria, compensation will be available to victims where an act of violence has occurred. An 'act of violence' is defined by the Victims of Crime (Financial Assistance Scheme) Act 2022 as a 'criminal act' or a series of related criminal acts, committed by one or more persons, that has occurred in Victoria and directly resulted in injury to or the death of one or more persons.<sup>225</sup>

[6.175] A 'criminal act' is defined as an act or omission that constitutes a relevant offence. A 'relevant offence' is in turn defined by reference to a list of violent offences, such as assault, rape and home invasion.<sup>226</sup> The list sets out a number of common law and statutory offences that will constitute a 'relevant offence', and also provides that additional relevant offences may be prescribed by regulations.

[6.176] The Financial Assistance Scheme also applies to a distinct kind of violence that is referred to in the Act and the Guidelines as 'family violence'.<sup>227</sup> Family violence can be physical violence, but it can also constitute other behaviours such as:

- psychological or emotional abuse that aims to intimidate or control a person's behaviour;
- verbal abuse, such as shouting, threats or insults;
- sexual abuse where a person tries to pressure or force another to have sex when they do not want to;
- financial or economic abuse, where the person tries to use money to control another;
- abuse using technology to threaten, embarrass or monitor another,
- mistreatment and neglect, where a carer does not provide proper care or the necessities for day-to-day living; and
- social abuse, where the person tries (or threatens) to cut another off from family, friends or community.<sup>228</sup>

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<sup>224</sup> Section 19(2) of the Victims Rights and Support Act 2013 (New South Wales).

<sup>225</sup> Section 3(1) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>226</sup> Section 3(1) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>227</sup> Section 3(1) of the Victims of Crime (Financial Assistance Scheme) Act 2022 provides that "family violence" has the meaning given in section 5 of the Family Violence Protection Act 2008 (Victoria).

<sup>228</sup> Victims of Crime, "Family Violence" (updated 14 August 2025) <<https://www.victimsofcrime.vic.gov.au/family-violence>> accessed 20 March 2026.



*(iii) North America**California*

[6.177] The California Government Code<sup>229</sup> provides that a person will be eligible for compensation where they sustained injury or death as a direct result of a crime<sup>230</sup> or where they sustained pecuniary loss as a result of injury or death to a victim.<sup>231</sup> A 'crime' is defined as a crime or public offence that would constitute a misdemeanour or a felony.<sup>232</sup> Although the legislation does not explicitly require that the crime be a 'violent' one, the California Victim Compensation Board ("CalVCB") has provided a non-exhaustive list of crimes that will be covered under their compensation programme:

"Crimes covered by CalVCB include but are not limited to: assault with a deadly weapon, battery, child abuse, child sexual assault, child endangerment and abandonment, domestic violence, driving under the influence, elder abuse, hate crimes, homicide, human trafficking, hit and run, kidnapping, murder, online harassment, rape, robbery, sexual assault, stalking, sexual battery, terrorism, vehicular manslaughter, and other crimes that result in physical injury or a threat of physical injury to the victim."<sup>233</sup>

[6.178] However, the legislation specifies that to be compensated for emotional injury where there was no physical injury or threat of physical injury, the crime in question must have violated one of a specified list of offences under the California Penal Code.<sup>234</sup>

**(f) Proposals for reform**

[6.179] The Commission considers that a definition of 'crime of violence' should be adopted that can include the harms associated with both physical and non-physical violence. The Commission recommends that the definition of a crime of violence should encompass non-physical impacts arising from particular offences such as sexual offences and domestic violence. This is the approach that has been taken in many of the jurisdictions examined above.

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<sup>229</sup> Sections 13950 – 13966 of the California Government Code.

<sup>230</sup> Section 13951(g) of the California Government Code.

<sup>231</sup> Section 13951(c) of the California Government Code.

<sup>232</sup> Section 13951(b)(1) of the California Government Code. Misdemeanours and felonies are used in American law to refer to less serious crimes and more serious crimes.

<sup>233</sup> California Victim Compensation Board, "Who Is Eligible" <<https://victims.ca.gov/for-victims/who-is-eligible/>> accessed 20 March 2026.

<sup>234</sup> Section 13955(f)(3) of the California Government Code.

- [6.180] The Commission particularly notes the approach in France, Germany and Victoria, where the compensation schemes prescribe specific offences which are recoverable under their victim compensation schemes. The Commission considers that this is a useful model for the statutory scheme. Outlining specific offences provides clarity for both victims and decision-makers regarding what constitutes a 'crime of violence' for the purpose of compensation.
- [6.181] The Commission therefore recommends that the proposed statute should contain a two-part definition of a crime of violence: the first part is a non-exhaustive list of criminal offences that will be set out in a schedule (referred to below as Schedule 1).
- [6.182] The second part is a general definition that the statutory body can use to determine eligibility. This is important for cases where a crime of violence may not have been included in the schedule.
- [6.183] In particular, the Commission recommends that the offences of harassment and stalking, intimate image abuse offences, and domestic violence offences should be included in the definition of crime of violence. Expressly including offences which may not otherwise be thought of as 'violent' in the traditional sense of the word provides clarity for victims of such crimes regarding their potential eligibility for compensation under the statutory scheme.
- [6.184] The Commission notes that under the EU Anti-Trafficking Directive, Member States must ensure that victims of trafficking can access state compensation schemes.<sup>235</sup> The Commission therefore recommends that the statutory scheme should ensure that compensation is available to victims of human trafficking. The relevant offences under the Criminal Law (Human Trafficking) Act 2008 and the Child Trafficking and Pornography Act 1998 should be included in the Schedule of offences covered by the definition of crime of violence.
- [6.185] Under the EU Counter-Terrorism Directive, the State must provide support and assistance with applying for compensation to victims of terrorism.<sup>236</sup> As discussed above, the Directive does not expressly confer an entitlement to state compensation on all victims of terrorism. The Commission considers that non-violent terrorist acts, such as cyberterrorism, should not attract compensation under the statutory scheme. The Commission recommends that only violent terrorist offences should fall within the definition of crime of violence.

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<sup>235</sup> Article 17 of the Anti-Trafficking Directive (2011/36/EU): "Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent. Member States may establish a national victims fund or a similar instrument, in accordance with their national legislation, in order to pay compensation to victims."

<sup>236</sup> Articles 24 and 26 of the Counter-Terrorism Directive ((EU) 2017/541).

[6.186] The Commission also recommends that traffic offences are excluded from the statutory scheme, with the exception of the deliberate use of a mechanically propelled vehicle with intent to cause injury or death.

[6.187] The Commission recommends that the Minister for Justice should have the power to amend the prescribed list of relevant offences and designate additional offences for inclusion in the scheme by regulation. This will ensure that the proposed statutory scheme is sufficiently flexible to adapt to a changing society.

[6.188] The Commission recommends the following definition:

- (1) A crime of violence is an offence, or series of offences, involving violence or the threat of violence against a person.
- (2) The offences listed in Schedule 1 are to be regarded as crimes of violence.
- (3) In considering whether a person is a victim of a crime of violence, it is irrelevant whether or not a person responsible for the crime—
  - (a) has been identified or located,
  - (b) has a legal defence to the crime,
  - (c) lacks the capacity to be convicted of the crime,
  - (d) has been charged with or convicted of the crime.

[6.189] The Commission recommends that the non-exhaustive schedule of offences should include the following:

- Murder at common law;
- Capital murder (section 3 of the Criminal Justice Act 1990);
- Manslaughter at common law;
- Assault (section 2 of the Non-Fatal Offences against the Person Act 1997);
- Assault causing harm (section 3 of the Non-Fatal Offences against the Person Act 1997);
- Non-fatal strangulation or non-fatal suffocation (section 3A of the Non-fatal Offences against the Person Act 1997);
- Assault causing serious harm (section 4 of the Non-Fatal Offences against the Person Act 1997);
- Non-fatal strangulation or non-fatal suffocation causing serious harm (section 4A of the Non-Fatal Offences against the Person Act 1997);

- Threats to kill or cause serious harm (section 5 of the Non-Fatal Offences against the Person Act 1997);
- Syringe attacks (sections 6 – 8 of the Non-Fatal Offences against the Person Act 1997);
- Coercion (section 9 of the Non-Fatal Offences against the Person Act 1997);
- Harassment (section 10 of the Non-Fatal Offences against the Person Act 1997);
- Poisoning (section 12 of the Non-Fatal Offences against the Person Act 1997);
- Endangerment (section 13 of the Non-Fatal Offences against the Person Act 1997);
- False imprisonment (section 15 of the Non-Fatal Offences against the Person Act 1997);
- Stalking (section 10 of the Non-Fatal Offences against the Person Act 1997);
- Violent offences aggravated by hatred (sections 2A, 3B, 4B, 5A, 9A, 10B and 13A of the Non-Fatal Offences against the Person Act 1997);
- Intimate image abuse (sections 2 – 4 of the Harassment, Harmful Communications and Related Offences Act 2020);
- Rape (section 2 of the Criminal Law (Rape) Act 1981);
- Sexual assault (section 2 of the Criminal Law (Rape) (Amendment) Act 1990);
- Aggravated sexual assault (section 3 of the Criminal Law (Rape) (Amendment) Act 1990);
- Rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990;
- Offences against children contained under section 4 of the Child Trafficking and Pornography Act 1998 and Part 2 of the Criminal Law (Sexual Offences) Act 2017;
- Sexual acts with protected persons (Part 3 of the Criminal Law (Sexual Offences) Act 2017);
- Forced marriage (section 38 of the Domestic Violence Act 2018);
- Coercive control (section 29 of the Domestic Violence Act 2018);

- Female Genital Mutilation (sections 2 and 3 of the Criminal Justice (Female Genital Mutilation) Act 2012);
- Robbery (section 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001);
- Human trafficking (section 3 of the Child Trafficking and Pornography Act 1998 and sections 2 and 4 of the Criminal Law (Human Trafficking) Act 2008);
- Terrorism under section 6 of the Criminal Justice (Terrorist Offences) Act 2005, insofar as it relates to homicide, non-fatal offences against the person, torture and sexual offences;
- Hostage-taking (section 9 of the Criminal Justice (Terrorist Offences) Act 2005);
- Terrorist bombing (section 10 of the Criminal Justice (Terrorist Offences) Act 2005).

[6.190] The Commission considers that, because the law is always subject to change, the Minister for Justice should be able to add offences to the list or modify existing entries to ensure that the statutory scheme is up to date, to the extent that such modifications are in line with the objectives of the statute.

[6.191] The Commission therefore recommends that the Minister for Justice should have the power to amend the list of offences, through regulation, by adding or modifying an entry.

**R. 6.17 The Commission recommends** that a person is eligible for compensation if the person is a victim of a crime of violence.

- (1) A crime of violence is an offence, or series of offences, involving violence or the threat of violence against a person.
- (2) The offences listed in Schedule 1 are to be regarded as crimes of violence.

**R. 6.18 The Commission recommends** that in deciding whether an act is capable of constituting a criminal offence, it is irrelevant whether or not a person responsible for the crime:

- (1) has been identified or located,
- (2) has a legal defence to the crime,
- (3) lacks the capacity to be convicted of the crime, or
- (4) has been charged with or convicted of the crime.

**R. 6.19 The Commission recommends** that the standard of proof for determining whether an individual is a victim of a crime of violence for the purposes of being eligible for a compensation payment by the statutory body should be 'the balance of probabilities'.

**R. 6.20 The Commission recommends** that the statute should contain a schedule providing that a crime of violence should include, but not be limited to:

- Murder at common law;
- Capital murder (section 3 of the Criminal Justice Act 1990);
- Manslaughter at common law;
- Assault (section 2 of the Non-Fatal Offences against the Person Act 1997);
- Assault causing harm (section 3 of the Non-Fatal Offences against the Person Act 1997);
- Non-fatal strangulation or non-fatal suffocation (section 3A of the Non-fatal Offences against the Person Act 1997);
- Assault causing serious harm (section 4 of the Non-Fatal Offences against the Person Act 1997);
- Non-fatal strangulation or non-fatal suffocation causing serious harm (section 4A of the Non-Fatal Offences against the Person Act 1997);
- Threats to kill or cause serious harm (section 5 of the Non-Fatal Offences against the Person Act 1997);
- Syringe and similar attacks (sections 6 – 8 of the Non-Fatal Offences against the Person Act 1997);
- Coercion (section 9 of the Non-Fatal Offences against the Person Act 1997);
- Harassment (section 10 of the Non-Fatal Offences against the Person Act 1997);
- Stalking (section 10 of the Non-Fatal Offences against the Person Act 1997);
- Poisoning (section 12 of the Non-Fatal Offences against the Person Act 1997);
- Endangerment (section 13 of the Non-Fatal Offences against the Person Act 1997);
- False imprisonment (section 15 of the Non-Fatal Offences against the Person Act 1997);
- Violent offences aggravated by hatred (sections 2A, 3B, 4B, 5A, 9A, 10B and 13A of the Non-Fatal Offences against the Person Act 1997);

- Intimate image abuse (sections 2 – 4 of the Harassment, Harmful Communications and Related Offences Act 2020);
- Rape (section 2 of the Criminal Law (Rape) Act 1981);
- Sexual assault (section 2 of the Criminal Law (Rape) (Amendment) Act 1990);
- Aggravated sexual assault (section 3 of the Criminal Law (Rape) (Amendment) Act 1990);
- Rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990;
- Offences against children contained section 4 of the Child Trafficking and Pornography Act 1998 and Part 2 of the Criminal Law (Sexual Offences) Act 2017;
- Sexual acts with protected persons (Part 3 of the Criminal Law (Sexual Offences) Act 2017);
- Forced marriage (section 38 of the Domestic Violence Act 2018);
- Coercive control (section 29 of the Domestic Violence Act 2018);
- Female Genital Mutilation (sections 2 and 3 of the Criminal Justice (Female Genital Mutilation) Act 2012);
- Robbery (section 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001);
- Human trafficking (section 3 of the Child Trafficking and Pornography Act 1998 and sections 2 and 4 of the Criminal Law (Human Trafficking) Act 2008);
- Terrorism under section 6 of the Criminal Justice (Terrorist Offences) Act 2005, insofar as it relates to homicide, non-fatal offences against the person, torture and sexual offences;
- Hostage-taking (section 9 of the Criminal Justice (Terrorist Offences) Act 2005);
- Terrorist bombing (section 10 of the Criminal Justice (Terrorist Offences) Act 2005).

**R. 6.21 The Commission recommends** that the Minister for Justice should have the power to amend Schedule 1, through regulation, where such amendment is in line with the objectives of the statutory scheme.

**R. 6.22 The Commission recommends** that for the avoidance of doubt, road traffic offences are excluded from the statutory compensation scheme, with the exception of the deliberate use of a mechanically propelled vehicle with intent to cause injury or death.

# CHAPTER 7

## OTHER ELIGIBILITY REQUIREMENTS

### Table of Contents

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|       |                                                       |     |
|-------|-------------------------------------------------------|-----|
| 1.    | <i>Introduction</i> .....                             | 231 |
| 2.    | <i>Jurisdiction</i> .....                             | 231 |
|       | (a) Introduction .....                                | 231 |
|       | (b) Current scheme and law.....                       | 232 |
|       | (c) Proposals for reform.....                         | 233 |
| 3.    | <i>Time limits</i> .....                              | 234 |
|       | (a) Introduction .....                                | 234 |
|       | (b) Current scheme.....                               | 234 |
|       | (c) Continuing acts.....                              | 236 |
|       | (d) Legal disability.....                             | 237 |
|       | (e) Comparative jurisdictions .....                   | 238 |
|       | (f) Submissions .....                                 | 240 |
|       | (g) Proposals for reform.....                         | 240 |
| (i)   | <i>Ordinary time limit</i> .....                      | 240 |
| (ii)  | <i>Exceptional circumstances</i> .....                | 241 |
| (iii) | <i>Continuing acts of violence</i> .....              | 241 |
| (iv)  | <i>Time limits for children</i> .....                 | 242 |
| (v)   | <i>Mental incapacity</i> .....                        | 242 |
| (vi)  | <i>Internal appeals</i> .....                         | 243 |
| 4.    | <i>Reporting obligations</i> .....                    | 244 |
|       | (a) Introduction .....                                | 244 |
|       | (b) Current scheme.....                               | 245 |
|       | (c) Comparative jurisdictions .....                   | 246 |
| (i)   | <i>EU Member States</i> .....                         | 246 |
| (ii)  | <i>Australia</i> .....                                | 247 |
|       | (d) Submissions .....                                 | 250 |
|       | (e) Proposals for reform.....                         | 251 |
| 5.    | <i>Obligation to give reasonable assistance</i> ..... | 255 |
|       | (a) Introduction .....                                | 255 |
|       | (b) Current scheme.....                               | 256 |
|       | (c) Comparative jurisdictions .....                   | 258 |
| (i)   | <i>EU Member States</i> .....                         | 258 |
| (ii)  | <i>United Kingdom</i> .....                           | 259 |



|       |                                                                                        |     |
|-------|----------------------------------------------------------------------------------------|-----|
| (iii) | <i>Australia .....</i>                                                                 | 260 |
| (d)   | Submissions .....                                                                      | 262 |
| (e)   | Proposals for reform.....                                                              | 263 |
| (i)   | <i>Providing reasonable assistance to the statutory body.....</i>                      | 263 |
| (ii)  | <i>Providing reasonable assistance to An Garda Síochána, Fiosrú, or<br/>to the DPP</i> | 266 |



## 1. Introduction

- [7.1] This Chapter builds on the previous Chapter, which proposed a definition of ‘victim’ and of ‘crime of violence’ for the purposes of establishing eligibility under the statutory scheme, as well as certain other categories of eligible applicants. This Chapter addresses other eligibility requirements for the proposed statutory scheme. ‘Eligibility requirements’ mean what factors or circumstances are required for an applicant to be able to access compensation under the scheme.
- [7.2] The Commission considers that clear eligibility criteria would assist victims to understand whether they can access state compensation through the proposed statutory scheme. Applicants should be able to understand, with a reasonable degree of certainty, whether their case falls within the terms of the statutory scheme and what actions are required of them in order to be eligible for compensation under the scheme.
- [7.3] In keeping with Irish constitutional principles, including the related principles of legality and legal certainty,<sup>1</sup> as well as European Union (“EU”) law requirements, eligibility criteria must be clear, fair, and consistently applied. In addition to helping victims to better understand whether they are likely to be successful in their claim, clear criteria would assist staff of the proposed statutory body to provide clear information to applicants on their eligibility. Clear criteria can also assist decision-makers to make consistent, and reasonably predictable decisions.
- [7.4] In this Chapter, the Commission considers the issues of jurisdiction, time limits, reporting obligations, and the requirement for applicants to give reasonable assistance to the statutory body, as well as to police and prosecutors. Exclusionary criteria are addressed in the following Chapter.

## 2. Jurisdiction

### (a) Introduction

- [7.5] This section examines the jurisdictional requirements for making an application for state-funded compensation. Jurisdiction generally refers to the country (or place) in which the crime of violence has to occur for a victim to be eligible to apply to a scheme. The Commission looks at the Criminal Injuries Compensation Scheme (“the current scheme”), the approach adopted under a number of international instruments, and considers what approach would be most practical for the statutory scheme.

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<sup>1</sup> In *State (Creedon) v Criminal Injuries Compensation Tribunal* [1988] IR 51 it was held that despite the Criminal Injuries Compensation Scheme being established by an administrative action of the government, it is still subject to the requirement of proper procedures.

## **(b) Current scheme and law**

- [7.6] Paragraph 1 of the current scheme provides that applications will only be considered where the injury was sustained “within the State or aboard an Irish ship or aircraft.”<sup>2</sup> The Criminal Injuries Compensation Tribunal (“the Tribunal”) has previously refused compensation on the basis that the injury was sustained outside the territorial jurisdiction of the State.<sup>3</sup>
- [7.7] Such provisions are common in state-funded victim compensation schemes. It is generally seen as reasonable from a public policy and financial perspective to limit a state’s obligation to provide compensation to victims of crime to only those victims who were injured in the state itself. Limiting applications in this way prevents forum shopping. This means applicants cannot pursue claims in jurisdictions that they believe will treat their claim more favourably.
- [7.8] The 1977 Council of Europe Resolution on the Compensation of Victims of Crime provides that, except where special conventions apply, compensation shall be paid by the state on whose territory the crime was committed. This includes crimes committed on ships and aircraft registered under the state’s flag.<sup>4</sup>
- [7.9] The 1983 European Convention on the Compensation of Victims of Violent Crimes provides that compensation shall be paid to nationals of Member States that have ratified the Convention, and to nationals of Member States who are permanent residents in the state where the crime was committed.<sup>5</sup> Although Ireland did not sign or ratify this instrument, it was an influential document on later developments, including the Directive relating to compensation to crime victims (“Compensation Directive”).
- [7.10] The only jurisdictional criterion included in the Compensation Directive is that victims must be able to apply for compensation in the EU Member State where the crime was committed.<sup>6</sup> No other criteria relating to jurisdiction are contained in the Compensation Directive.

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<sup>2</sup> Paragraph 1 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>3</sup> Criminal Injuries Compensation Tribunal, Case Reference 50592 (27 January 2023) <<https://www.gov.ie/en/publication/13f7c-50592-27-january-2023/>> accessed 23 March 2025.

<sup>4</sup> Article 12 of Council of Europe Resolution (77) 27 on the Compensation of Victims of Crime (Adopted by the Committee of Ministers on 28 September 1977, at the 275th meeting of the Ministers’ Deputies).

<sup>5</sup> Article 3 of the Council of Europe, European Convention on the Compensation of Victims of Violent Crimes 1983 (ETS No 116).

<sup>6</sup> Article 1 of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims [2004] OJ L 261/15 (“Compensation Directive”).

### (c) Proposals for reform

- [7.11] The Commission gave some consideration to expanding the jurisdiction of the scheme in light of the EU Commission President's Special Advisor, Milquet's recommendation that there could be:
- "A shift from the principle of compensation by the Member State where the violent act occurs to the possibility for victims to choose compensation from the Member State of their residence. In this case the Member State of residence would be able to recuperate the compensation from the Member State of the crime."<sup>7</sup>
- [7.12] The policy rationale for this proposal is to enable a victim to access compensation in their country of residence, easing cross-border challenges and minimising the risk of secondary victimisation.
- [7.13] However, there is currently no readily available mechanism by which the Irish State could recuperate compensation paid to Irish residents who were victims of crime outside of Ireland from the State where the crime occurred. The Commission considers that such a mechanism would require EU legislation or some other form of co-ordinated action. In practice, it may also require some degree of harmonisation as to the scope and level of compensation available in Member States. Such a shift would also require cross-border procedures in relation to other aspects of the schemes, such as evidence-sharing, that are not currently in place.<sup>8</sup> The Commission is therefore recommending that the statutory scheme should require that the harm for which compensation is being sought was sustained within the State or aboard an Irish registered vessel or aircraft.
- [7.14] The Commission notes that when an Irish resident is injured by a violent crime in another EU Member State, staff at the Tribunal in Ireland assist them in applying for compensation from the other Member State's compensation scheme. In the Chapter on the Structure of the Statutory Body and the Application Process, the Commission recommends that the statutory body should provide Irish residents with assistance with cross-border applications where the crime occurred in another EU Member State.

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<sup>7</sup> Milquet, *Strengthening Victims' Rights: From Compensation to Reparation for a new EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at page 36.

<sup>8</sup> However, the Commission notes that the Department of Justice has published the General Scheme of the Criminal Justice (International Cooperation Office) Bill 2025, which will establish the Criminal Justice International Cooperation Office and set out its powers in line with the EU e-Evidence Regulation and Directive. See: <<https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/press-releases/minister-ocallaghan-secures-government-approval-to-establish-a-new-office-for-eu-criminal-justice-cooperation/>> accessed 23 March 2026.

**R. 7.1 The Commission recommends** that the statutory scheme should require that the harm for which compensation is being sought was sustained within the State or aboard an Irish registered vessel or aircraft.

### 3. Time limits

#### (a) Introduction

[7.15] This section examines the time limits for applications under the current scheme, including recent changes to the scheme. It examines the issue of ‘continuing’ acts of violence for the purpose of time limits with reference to other bodies, as well as the approach in other jurisdictions. It makes proposals for ordinary time limits for applications to the statutory body, as well as the time limits applying in exceptional circumstances, to applications from children and those under a mental incapacity, and for internal appeals.

#### (b) Current scheme

[7.16] Under the current scheme, applicants should submit their application form and all the required documentation as soon as possible and applications must be submitted not later than three months after the crime which caused the injury.<sup>9</sup> If an applicant cannot meet the three-month deadline, the Tribunal may still consider the application if it finds that there are circumstances that justify exceptional treatment, but only up to two years after the injury occurred.<sup>10</sup>

[7.17] The two-year limit to accepting applications in exceptional circumstances was introduced in 2021 as part of a number of changes to the current scheme.<sup>11</sup> Before these changes were made, the Tribunal had an unlimited discretion to waive the time limit where there were exceptional circumstances. The changes to the scheme in 2021 were challenged in the case of *Bowes and Brophy v Criminal Injuries Compensation Tribunal*.<sup>12</sup> The High Court held that this new restriction on the Tribunal’s discretion to accept out-of-time applications breached the

<sup>9</sup> Paragraph 20 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>10</sup> Paragraph 20 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>11</sup> For a full description of the changes introduced to the current scheme in 2021 by the Government see further Department of Justice, Home Affairs and Migration, *Annual Report 2021* (Criminal Injuries Compensation Tribunal, 20 September 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/criminal-injuries-compensation-tribunal-annual-report-2021/>> accessed 23 March 2026. See also: Chapter 1 of the Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022).

<sup>12</sup> *Bowes and Brophy v Criminal Injuries Compensation Tribunal* [2022] IEHC 703.

principle of effectiveness in EU law because it was applied retrospectively and was introduced without an appropriate transition period.<sup>13</sup>

- [7.18] A special temporary provision was put in place to accommodate this issue. This temporary provision permitted applicants injured outside of the two-year time limit to make an application for injuries sustained between 30 June 2005 and 20 April 2021.<sup>14</sup> Applicants who were injured between those dates were required to submit their applications between 31 January 2024 and 30 January 2025.<sup>15</sup> Such applications could only be considered by the Tribunal if it determined that there were exceptional circumstances to justify a late application. This date has now passed, so the temporary provision no longer applies.
- [7.19] The current scheme does not define what criteria are to be used by the Tribunal when deciding whether there are circumstances justifying exceptional treatment. Past Tribunal decisions provide an indication as to how the discretion to extend the three-month time limit is applied in practice. It appears from these decisions that the discretion is strictly interpreted. Applicants are generally required to provide detailed reasons explaining why their application was late.
- [7.20] Some Tribunal decisions show the potential for inconsistency. For example, one application was accepted outside the time limit due to an ongoing Garda investigation,<sup>16</sup> while another was rejected in the same circumstances and the decision stated that awaiting the outcome of an ongoing Garda investigation has never been accepted as a justifying excuse.<sup>17</sup>
- [7.21] Other Tribunal cases demonstrate that the three-month time limit has been waived by the Tribunal for particularly traumatic cases, logistical issues and because of the nature of the victims' injuries. In one case, the Tribunal member waived the three-month time limit due to the emotional trauma and logistical difficulties experienced by the applicant.<sup>18</sup> Similarly, in another decision the

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<sup>13</sup> *Bowes and Brophy v Criminal Injuries Compensation Tribunal* [2022] IEHC 703 at para 219 (Holland J).

<sup>14</sup> Paragraph 20A of the Criminal Injuries Compensation Scheme (no longer in force as of 31 January 2025).

<sup>15</sup> Paragraph 20A of the Criminal Injuries Compensation Scheme (no longer in force as of 31 January 2025).

<sup>16</sup> Criminal Injuries Compensation Tribunal, Case Reference F/52553 (13 May 2020) <<https://www.gov.ie/en/publication/8e351-f52553-13-may-2020/>> accessed 23 March 2026.

<sup>17</sup> Criminal Injuries Compensation Tribunal, Case Reference 51140 (20 December 2020) <<https://www.gov.ie/en/publication/66bec-51140-20-december-2020/>> accessed 23 March 2026.

<sup>18</sup> Criminal Injuries Compensation Tribunal, Case Reference F50207 (26 June 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/f50207-26-june-2022/>> accessed 23 March 2026.

Tribunal member waived the three-month time limit because the circumstance of the victim's death "was so traumatic for the Applicant and her family that the delay in submitting her application was entirely reasonable."<sup>19</sup> In a case from September 2024, the applicant submitted an application 2 years and 9 months after the date of injury but the Tribunal was satisfied that the serious and life-changing nature of the individual's injuries justified exceptional treatment.<sup>20</sup> In 2022, the Tribunal accepted an application made 40 years after the injury due to the "young age of the applicant at the time of the injuries, and because of the severe nature of the injuries and their significant psychological effect".<sup>21</sup>

### (c) Continuing acts

- [7.22] A crime of violence may consist of many acts over a period of time. Where this occurs, it may be unclear whether a person can be compensated for all of the acts or only the acts that occurred within the time limit. Coercive control, harassment, and repeated sexual or physical assaults are examples of situations which may involve more than a single crime of violence.
- [7.23] The Workplace Relations Commission ("WRC") has considered this issue in the context of continuing acts of discrimination. The Workplace Relations Act 2015 provides that a complaint or dispute must be referred to the WRC within six months of the alleged contravention.<sup>22</sup> An extension may be granted by an Adjudication Officer up to a maximum time limit of 12 months where the complainant has demonstrated "reasonable cause" for the delay.<sup>23</sup>
- [7.24] In discrimination cases where there have been multiple instances of discrimination, the WRC will consider incidents that occurred outside the time limit if the last act relied upon was within the time limit. The Labour Court<sup>24</sup> in *Hurley v County Cork VEC* held that the other acts complained of must have been sufficiently connected to the final act so as to make all of the acts part of a

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<sup>19</sup> Criminal Injuries Compensation Tribunal, Case Reference F/53765 (28 February 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/f53765-28-february-2023/>> accessed 23 March 2026.

<sup>20</sup> Criminal Injuries Compensation Tribunal, Case Reference 50262 (13 September 2024) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/50262-13-september-2024/>> accessed 23 March 2026.

<sup>21</sup> Criminal Injuries Compensation Tribunal, Case Reference 10549 (29 July 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/10549-29-july-2022/>> accessed 23 March 2026.

<sup>22</sup> Section 41(6) of the Workplace Relations Act 2015.

<sup>23</sup> Section 41(8) of the Workplace Relations Act 2025. See also: Workplace Relations Commission, "WRC Procedures in the Adjudication and Investigation of All Employment and Equality Complaints and Disputes" (16 September 2024) at page 3.

<sup>24</sup> The Workplace Relations Commission is the tribunal of first instance for employment disputes, and the Labour Court is the appellate body.



continuum.<sup>25</sup> The complainant must establish a link between the occurrences outside the time limit and those inside the limitation period which makes it just and reasonable for them to be treated as part of a continuing act. This principle was recently applied in the 2025 WRC decision of *Health Care Assistant v Health Service Executive*, where the Adjudication Officer noted that for continuing discrimination to be made out, the acts complained of must be similar.<sup>26</sup>

- [7.25] The Commission considers that this is a sensible approach to the issue of continuing acts and time limits.

#### **(d) Legal disability**

- [7.26] The current scheme does not contain any provisions explicitly dealing with the effect of legal disability on time limits for applications. In civil law, the Statute of Limitations 1957 provides that if a person is under a 'disability' on the date that a right of action comes into existence, the relevant time limits will only start running on the date when the person ceases to be under a disability.<sup>27</sup> Section 48 states that, for the purposes of the Act, a person shall be under a disability while they are an infant (a person under the age of 18), or while they are of 'unsound mind'.<sup>28</sup> There is no statutory definition of unsound mind.
- [7.27] Section 48A of the Statute of Limitations sets out special provisions for victims of child sexual abuse who are suffering from a consequent psychological injury. It provides that a person bringing a tort action in respect of an act of sexual abuse committed against them when they were a child is to be treated as being under a disability while:

- (a) they are suffering from a psychological injury;
- (b) caused, in whole or in part, by the acts of sexual abuse; and

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<sup>25</sup> *Hurley v County Cork VEC* (EDA1124)  
<<https://www.workplacerelations.ie/en/cases/2011/july/eda1124.html>> accessed 23 March 2026.

<sup>26</sup> *Health Care Assistant v Health Service Executive* (ADJ-00046170)  
<<https://www.workplacerelations.ie/en/cases/2025/january/adj-00046170.html>> accessed 23 March 2026.

<sup>27</sup> Section 49(1)(a) of the Statute of Limitations 1957: "If, on the date when any right of action accrued for which a period of limitation is fixed by this Act, the person to whom it accrued was under a disability, the action may, subject to the subsequent provisions of this section, be brought at any time before the expiration of six years from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired."

<sup>28</sup> Section 48 of the Statute of Limitations 1957.

- (c) the psychological injury is of such significance that the victim's will, or ability to make a reasoned decision, to bring such an action is substantially impaired.<sup>29</sup>

[7.28] This test concentrates on the victim's capacity to initiate litigation in response to the abuse.<sup>30</sup> The Supreme Court considered the issue of when a person's will is 'substantially impaired' in *Doherty v Quigley*.<sup>31</sup> In that case, the plaintiff claimed that, as a child, she had been subjected to acts of sexual abuse between the years 1982 and 1989. She suffered from serious post-traumatic stress disorder which the court found substantially impaired her capacity to initiate civil proceedings against the perpetrator. Although the plaintiff was competent in other areas of her life and was not a person of unsound mind,<sup>32</sup> the effects of her PTSD operated to make it extremely difficult for her to think about the abuse or related events and interfered with her capacity to make a reasoned decision. The Supreme Court held that section 48A does not require that the victim's ability must be totally impaired, or substantially impaired at every moment of time.<sup>33</sup> A court has to take an overall view of the nature and impact of the injury on the plaintiff's ability to confront the perpetrator by bringing civil proceedings.<sup>34</sup>

### **(e) Comparative jurisdictions**

[7.29] Time limits to apply for state compensation for criminal injuries vary across EU Member States. At the more restrictive end of the spectrum, Hungary<sup>35</sup> and Slovenia<sup>36</sup> require victims to apply for compensation within six months or less of the crime. In the Czech Republic, applicants must apply for compensation within two years from the day the victim became aware of the damage caused by the crime, with a statutory long-stop of five years from the commission of the

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<sup>29</sup> Section 48A(1) of the Statute of Limitations 1957.

<sup>30</sup> McMahon and Binchy, *Law of Torts* 4th ed (Bloomsbury Professional 2013) at para 46.170.

<sup>31</sup> *Doherty v Quigley* [2015] IESC 54.

<sup>32</sup> *Doherty v Quigley* [2015] IESC 54 at para 23 (Murray J).

<sup>33</sup> *Doherty v Quigley* [2015] IESC 54 at para 47 (Murray J).

<sup>34</sup> *Doherty v Quigley* [2015] IESC 54 at para 48 (Murray J).

<sup>35</sup> Section 22(1) of the Act CXXXV of 2005 on Crime Victim Support and State Compensation (Hungary).

<sup>36</sup> Article 29(1) of the Law on Compensation to Victims of Crime (Slovenia). Article 29(2) provides that if the beneficiary is unable to file a claim on time due to bodily injury, they must submit their claim within three months from the date on which the reason ceases to exist, and no later than five years from the commission of the crime.

crime.<sup>37</sup> In France, applications must be made within three years of the commission of the offence.<sup>38</sup>

- [7.30] Other Member States allow for more generous time limits, such as in the Netherlands, where there is a 10-year time limit to apply for criminal injuries compensation.<sup>39</sup> Germany does not have a time limit to apply for state-funded criminal injuries compensation.<sup>40</sup>
- [7.31] In the Australian state of Victoria, victims must submit an application within three years after the occurrence of the act of violence or three years after the death of the primary victim in fatal cases.<sup>41</sup> However, in cases concerning sexual offences or family violence, a longer time limit of 10 years applies.<sup>42</sup> Where applications are made out of time, the scheme decision-maker may allow the application where they consider it appropriate to do so having regard to a number of prescribed matters.<sup>43</sup>
- [7.32] In relation to crimes where there have been multiple incidents of violence, the Victorian legislation, namely the Victims of Crime (Financial Assistance Scheme) Act 2022, provides that a series of related criminal acts committed by one or more persons will be deemed to constitute a single act of violence.<sup>44</sup> A criminal act is deemed to be related to another criminal act if the acts were committed against the same person and occurred at approximately the same time, or occurred over a period of time and were committed by the same person, or share some other common factor.<sup>45</sup> For the purposes of the time limits, an act of violence that consists of a series of related criminal acts occurs on the occurrence of the *last* of those criminal acts.<sup>46</sup>

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<sup>37</sup> Section 30(2) of Act No 45/2013 Coll. Victims of Crime Act and Amendment of Certain Acts (Victims of Crime Act) (Czech Republic).

<sup>38</sup> Article 706-5 of the Code of Criminal Procedure (France). However, the time limit is extended where criminal proceedings have been initiated, or where the applicant was not in a position to enforce their rights within the stated time limit, or where the harm they have suffered has worsened, or for any other legitimate ground.

<sup>39</sup> Article 7 of the Violent Crimes Compensation Fund Act (Wet schadefonds geweldsmisdrijven) (Netherlands).

<sup>40</sup> See the Social Code Book XIV (Social Compensation) (Germany).

<sup>41</sup> Section 23(1) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>42</sup> Section 23(4) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>43</sup> Section 24 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>44</sup> Section 4(4) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>45</sup> Section 4 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>46</sup> Section 23(6) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

**(f) Submissions**

- [7.33] In its Consultation Paper, the Commission asked consultees for their views as to whether time limits are required for a compensation scheme and, if so, whether the existing time limits are appropriate.<sup>47</sup> Submissions in response to the Consultation Paper were unanimous in the view that the current time limits are far too restrictive. Consultees suggested that the scheme's time limits should be closer to the Statute of Limitations in personal injuries cases of two years after the injury. The Commission notes that the applicable time limit for claims for intentional torts such as trespass, false imprisonment and assault, among others, is 6 years.<sup>48</sup>
- [7.34] A number of submissions argued that there should be no time limits for victims of domestic violence, sexual offences, historic sexual abuse, and homicide. One submission said that time limits in the context of domestic violence-related offences were neither required nor desirable as it may take years for victims to disclose their injuries. The Commission considers that although these are very serious offences which have significant and long-lasting effects on victims, this approach risks creating a hierarchy of victims under the scheme, with some victims being treated differently to others. To avoid potentially creating such a hierarchy, the Commission proposes a general exception to the time limit below. This could encapsulate victims of all offences, without distinction based on the particular type of crime that led to their injuries.

**(g) Proposals for reform**

- [7.35] The Commission considers that it is in the public interest that claims for compensation should be made and determined on a timely basis. It also believes that time limits are necessary to prevent an unpredictable, and potentially very large number of historical claims coming before the statutory body, which could have a very significant impact on its resources. At the same time, the Commission considers that it is important to ensure that compensation is available to those who may have strong justifications in exceptional cases for not making an application within the time limit.

**(i) Ordinary time limit**

- [7.36] The Commission considers that the current three-month time limit is excessively restrictive. The issues identified in cases before the Tribunal as good reasons for applications beyond the three-month limit, relating to emotional trauma and logistical difficulties, will often arise in cases concerning violence. Violent crime is inherently traumatic in nature, and victims who are significantly traumatised may

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<sup>47</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 228, question 6.3.

<sup>48</sup> Section 2(a) of the Statute of Limitations 1957.

need time to focus on their recovery rather than taking immediate action for financial compensation. The Commission has considered the many examples from the Tribunal of cases where the time limit has been waived, and it notes the strong views expressed by consultees. The Commission considers that aligning with the general rule of the Statute of Limitations seems reasonable in the circumstances of violent crime. The Commission therefore recommends that the ordinary time limit for applications to the statutory scheme should be two years without the need to demonstrate exceptional circumstances.

*(ii) Exceptional circumstances*

- [7.37] The Commission considers that the current strict two-year long-stop for accepting applications in exceptional circumstances might result in harsh treatment in certain circumstances. Take, for example, where an applicant was incapacitated (physically or mentally) for more than two years and was therefore not in a position to make an application within that timeframe. In Tribunal case 50262, referred to above, the victim suffered life-changing injuries and for that reason made their application two years and nine months after the injuries occurred.<sup>49</sup> The Tribunal was only able to accept the application in that case because the new strict two-year long-stop was not yet in place. To mitigate against unfairness and allow for flexibility, the Commission recommends that the statutory body should have a discretion to accept applications outside of the proposed ordinary time limit of two years. The statutory body may accept out-of-time applications where there is a good reason justifying the delay and the statutory body is satisfied that the application can be dealt with fairly.
- [7.38] However, the Commission considers that it is desirable to retain some kind of statutory long-stop in the scheme, as there is a public interest in the timely determination of claims for compensation. It believes that an ultimate time limit of 10 years strikes a balance between ensuring fairness for applicants who had a reasonable justification for not applying within the ordinary time limit, while also promoting legal certainty and finality. The Commission therefore recommends that there should be a statutory long-stop of 10 years for all applications.

*(iii) Continuing acts of violence*

- [7.39] The Commission has also considered how time limits should apply in cases where there is a series of related acts, having particular regard to the continuous nature of certain crimes such as coercive control and other forms of domestic violence. It has considered the approaches taken by the WRC and by the Victorian compensation scheme, as outlined above. The Commission is of the view that it is fair and just to compensate a person for a series of crimes, even where only the

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<sup>49</sup> Criminal Injuries Compensation Tribunal, Case Reference 50262 (13 September 2024) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/50262-13-september-2024/>> accessed 23 March 2026.

last of the series occurs within the time limit. The Commission therefore recommends that for the purposes of the time limit, a crime of violence that consists of a series of related criminal acts should be considered to occur on the last of those criminal acts.

*(iv) Time limits for children*

- [7.40] The Commission recommends that, in line with the usual rule in civil cases about applications from children, children who suffered harm as a result of a crime of violence at any time under the age of 18 may apply to the statutory body for compensation on reaching the age of 18. The two-year time limit will run from the date they turn 18.
- [7.41] The Commission recommends that a child's parent or guardian, or 'next friend', can apply to the statutory body on their behalf. However, in the case of an application by a 'next friend' the standard time limits proposed by the Commission should apply. In other words, the application should be made within two years of the date of the crime of violence, or ten years from that date where there is good reason for the delay and the application can be dealt with fairly.

*(v) Mental incapacity*

- [7.42] The Commission also considers that it is appropriate to take account of those victims who would be eligible under the statutory scheme but because they have a mental incapacity, have not been in a position to make an application within the ordinary time limits proposed by the Commission as a result of the mental incapacity. The Commission has considered the rule in civil cases should be applied in such cases and therefore recommends that, if a victim is under a mental incapacity, they may apply to the statutory body for compensation when they cease to have a mental incapacity. The ordinary time limits will run from the date they cease to have a mental incapacity, in other words, two years from this date, or, where there is good reason justifying the delay and the application can be dealt with fairly, ten years from this date.
- [7.43] In defining mental incapacity, the Commission considers that the statutory body should apply the test set out in section 48A of the Statute of Limitations 1957. The Commission considers that this test is appropriate for the statutory scheme because it was introduced for the protection of persons who suffered traumatic injury of a criminal nature. The Commission is of the view that there should be no requirement that the crime of violence caused the mental incapacity. The Commission therefore recommends that a victim shall be considered, for the purposes of making an application, to have a mental incapacity while they are suffering from any psychological condition that is of such significance that the victim's will, or the victim's ability to make a reasoned decision, to make such an application is substantially impaired.

- [7.44] The Commission recommends that a 'next friend' can make an application on behalf of a person with a mental incapacity, but in that case, as with a 'next friend' application for a child, the standard time limits proposed by the Commission should apply. In other words, the application should be made within two years of the date of the crime of violence, or ten years from that date where there is good reason for the delay and the application can be dealt with fairly.

*(vi) Internal appeals*

- [7.45] Finally, the Commission recommends that the time limit for an internal appeal should be three months. This is the time limit for the current scheme. The Commission considers that three months is a sufficient amount of time for an applicant to submit an appeal on a decision by the assessment and adjudicative tier of the statutory body to the internal appeals tier.

- R. 7.2 The Commission recommends** that the time limit to apply to the proposed statutory scheme should be up to two years after the date of the crime of violence.
- R. 7.3 The Commission recommends** that the statutory body should have a discretion to accept out-of-time applications if:
- (1) there is a good reason justifying the delay, and
  - (2) the statutory body is satisfied that the application can be dealt with fairly.

- R. 7.4 **The Commission recommends** that there should be a statutory long-stop of 10 years from the date of the crime of violence for out-of-time applications.
- R. 7.5 **The Commission recommends** that for the purposes of the time limit, an act of violence that consists of a series of related criminal acts occurs on the last of those criminal acts.
- R. 7.6 **The Commission recommends** that a 'next friend', such as a child's parent or guardian, can apply to the statutory body on their behalf.
- R. 7.7 **The Commission recommends** that children who suffered harm as a result of a crime of violence when under the age of 18 may apply to the statutory body for compensation on reaching the age of 18, or at any time before then. The ordinary time limits will run from the date the person turns 18. In other words, they must apply within two years of the date they turn 18, unless there is good reason for further delay and the application can be dealt with fairly, in which case the long-stop of 10 years will apply from the date the person turns 18.
- R. 7.8 **The Commission recommends** that if a victim of a crime of violence has a mental incapacity, the victim may apply to the statutory body for compensation when they cease to have a mental incapacity. The ordinary time limits will run from the date they cease to be under a mental incapacity.
- R. 7.9 **The Commission recommends** that, for the purposes of making an application for compensation, a victim shall be considered to have a mental incapacity while they are suffering from any psychological condition that is of such significance that the victim's will, or the victim's ability to make a reasoned decision, to make such an application is substantially impaired.
- R. 7.10 **The Commission recommends** that a 'next friend' can apply to the statutory body on behalf of a person with a mental incapacity.
- R. 7.11 **The Commission recommends** that where a person is making an application on behalf of a child or a person with a mental incapacity, the standard time limits for applicants should apply.
- R. 7.12 **The Commission recommends** that the time limit for an internal appeal from the assessment and adjudicative tier to the appeals tier of the statutory body should be three months.

## 4. Reporting obligations

### (a) Introduction

- [7.46] This section examines whether there should be an obligation on a victim to report the crime of violence that gave rise to the harm for which they are seeking compensation to the Gardaí. Reporting requirements are a common feature of state-funded compensation schemes across the EU and in other common law jurisdictions. A requirement to report generally serves a dual purpose – to ensure



the compensation authority has sufficient evidence to make an award, and to support the state in the administration of justice.

- [7.47] However, there may be circumstances where it would be difficult for the victim to report the crime, such as where the victim was afraid of repercussions from the offender. In this section, the Commission proposes that the statutory body should, in certain circumstances, have a discretion to accept applications where the crime was not reported. It proposes a list of factors which decision-makers should have regard to when exercising this discretion.

## **(b) Current scheme**

- [7.48] Under the current scheme, applicants must show that the offence giving rise to the injury was the subject of criminal proceedings or reported without delay to An Garda Síochána or Fiosrú, the Office of the Police Ombudsman ("Fiosrú").<sup>50</sup> The Tribunal has a discretion to waive this requirement where it is satisfied that "all reasonable efforts were made by or on behalf of the claimant to notify the Gardaí or Fiosrú as the case may be, of the offence and to co-operate with them."<sup>51</sup> The exercise of this discretion can be said to have been interpreted somewhat broadly. For example, in *Decision 51464* (3 October 2023) the Tribunal waived the requirement for an applicant to report the incident to the Gardaí due to the applicant's mistaken belief that security staff present at the time had reported the incident.<sup>52</sup>
- [7.49] The duty to report the alleged offence causing injury can be distinguished from a duty to provide reasonable assistance to the Tribunal, and to Gardaí and prosecutors in any investigation or criminal proceedings that may be taken against the alleged offender. The duty to provide reasonable assistance is discussed in the next section of this Chapter.
- [7.50] The Tribunal requests a Garda report in relation to all applications.<sup>53</sup> This report is used to determine that the victim's injuries resulted from an alleged crime of violence. The details in the report are generally relied upon by Tribunal members

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<sup>50</sup> Paragraph 22 of the Criminal Injuries Compensation Scheme (31 January 2025). Offences are reported to Fiosrú where it is alleged that the perpetrator was a member of An Garda Síochána.

<sup>51</sup> Paragraph 22 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>52</sup> Criminal Injuries Compensation Tribunal, Case Reference 51464 (3 October 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/51464-3-october-2023/>> accessed 23 March 2026.

<sup>53</sup> Criminal Injuries Compensation Scheme, "Your questions answered" (8 September 2025): "In considering applications, the Tribunal will require a report about the incident from An Garda Síochána." <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/criminal-injuries-compensation-scheme-your-questions-answered/>> accessed 23 March 2026.

when exercising their discretion as to whether compensation should be awarded, refused or reduced.

### **(c) Comparative jurisdictions**

- [7.51] Other jurisdictions vary in their requirements regarding reporting to police authorities. The Commission has identified three main approaches: an express requirement to report with exceptions; no requirement to report but generally expected; and no requirement to report.

#### *(i) EU Member States*

##### *France*

- [7.52] In France, compensation can be requested from the Victims Guarantee Fund through the Commission for Compensation of Victims of Crime ("CIVI").<sup>54</sup> The legal provisions governing compensation do not state that a crime must be reported to the police.<sup>55</sup> Although there is no statutory requirement to make a police report, CIVI has the power to request information and documentation. They may request any reports recording the offence or any documents relating to criminal proceedings.<sup>56</sup> The claim for compensation is submitted via an online application form and the form details certain documents which may be attached to prove a claim. This may consist of medical reports, a police report, or other court documents.<sup>57</sup>

##### *Germany*

- [7.53] In Germany, victims of a violent crime are entitled to claim compensation under the social compensation scheme.<sup>58</sup> The Social Code places an onus on the victim to give reasonable assistance to prosecutors. This suggests that a police report is generally required, though not mandatory:

"Benefits and services may be denied in full or in part if the person suffering health damage has failed to do everything in his or her

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<sup>54</sup> République Française, "Victims of crime: compensation from the Victims Guarantee Fund" (26 January 2024) <<https://www.service-public.fr/particuliers/vosdroits/F2313?lang=en>> accessed 23 March 2026.

<sup>55</sup> The relevant legislative provisions in France regarding compensating victims of crimes are articles 706-3 – 706-15 of the Code of Criminal Procedure (France).

<sup>56</sup> Article 706-6 of the Code of Criminal Procedure (France).

<sup>57</sup> République Française, "12825\*05 – Request for compensation addressed to the Commission for Compensation of Victims of Crimes (CIVI)" <<https://www.service-public.fr/simulateur/calcul/12825>> accessed 23 March 2026.

<sup>58</sup> Section 13 of the Social Code Book XIV (Social Compensation) (Germany).

power and which is reasonable to contribute to clarifying the facts and prosecuting the offender.”<sup>59</sup>

### *Netherlands*

- [7.54] In the Netherlands, victims of a crime may claim compensation under the Violent Crimes Compensation Fund Act. The Committee decides who is entitled to compensation.<sup>60</sup> The Policy Manual on the operation of the scheme contains ‘guiding principles’ on how the Committee assesses an application.<sup>61</sup> A list of documents which can be submitted to the Commission as supporting evidence of the application is set out in the manual.<sup>62</sup> This includes a police report. Similar to the French scheme, while it is not a requirement to report to the police, the policy manual states that: “a report to the police and the criminal investigation following it ... contribute to a high degree to the substantiation of a request.”<sup>63</sup> There is an emphasis on submitting a sufficient number of documents that come from objective and authoritative sources in order to substantiate an application.<sup>64</sup>

### *(ii) Australia*

#### *Australian Capital Territory*

- [7.55] In the Australian Capital Territory, an application for financial assistance must be accompanied by evidence that the act of violence has been reported to the police,<sup>65</sup> but this is subject to exceptions. If an applicant is regarded as a ‘special reporting class victim’, they don’t have to report to the police but will need to have reported the incident to at least two other named bodies/persons, which are listed in the Act.<sup>66</sup> In some circumstances, a victim may report the crime to a

<sup>59</sup> Section 17(2) of the Social Code Book XIV (Social Compensation) (Germany).

<sup>60</sup> The composition of the Committee is outlined in Article 8 of the Violent Crimes Compensation Fund Act (Wet schadefonds geweldsmisdrijven) (Netherlands).

<sup>61</sup> Schadefonds Geweldsmisdrijven, “Policy Manual” (1 January 2026) <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>62</sup> Schadefonds Geweldsmisdrijven, “Policy Manual” (1 January 2026) at pages 6-7 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>63</sup> Schadefonds Geweldsmisdrijven, “Policy Manual” (1 January 2026) at page 7 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>64</sup> Schadefonds Geweldsmisdrijven, “Policy Manual” (1 January 2026) at page 8 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>65</sup> Section 31(2)(d)(i) of the Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory).

<sup>66</sup> Section 31(4) and (5) of the Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory).

"Government Agency".<sup>67</sup> A victim may also report to "an appropriately qualified non-government agency".<sup>68</sup>

[7.56] A 'special reporting class victim' includes "primary victims:

- (a) of a sexual offence; or
- (b) of an offence in which the person responsible for the act of violence against the primary victim was in a position of power, trust or authority in relation to the primary victim; or
- (c) who has impaired physical, psychological or intellectual capacity; or
- (d) who was under 18 years old when the act of violence occurred; or
- (e) who did not report the act of violence to police because of threats made, or intimidation by, another person".<sup>69</sup>

#### *New South Wales*

[7.57] Section 39 of the Victims Rights and Support Act 2013 in New South Wales sets out the documentary evidence that is required to support a person's application for financial assistance.<sup>70</sup> Applicants are required to produce either a police report or, alternatively, a report by a Government agency or any other victim support agency sufficient to support, on the balance of probabilities, their claim to be a victim of an act of violence.<sup>71</sup> This report can be provided by a government agency, or an organisation that receives funding from the New South Wales or Australian government to provide welfare, health, counselling or legal assistance to victims of crime.<sup>72</sup>

#### *Queensland*

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<sup>67</sup> Defined in section 79(3) of the Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory).

<sup>68</sup> Section 31(6) of the Victims of Crime (Financial Assistance) Act 2016 states this is to be defined separately in the "commissioner's guidelines". See the Victims of Crime (Financial Assistance) (Appropriately qualified non-government agencies) Guideline 2025 (No 1) (Australian Capital Territory).

<sup>69</sup> Section 31(4) of the Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory).

<sup>70</sup> Section 18 of the Victims Rights and Support Act 2013 (New South Wales) defines 'victims' support' as "support in the form of approved counselling services, financial support or a recognition payment under the Scheme".

<sup>71</sup> Section 39(2)(b)(i) of the Victims Rights and Support Act 2013 (New South Wales).

<sup>72</sup> New South Wales Government, "Supporting documents for Victims Support Scheme applications" <<https://victimsservices.justice.nsw.gov.au/how-can-we-help-you/victims-support-scheme/supporting-documents.html>> accessed 23 March 2026.

[7.58] In Queensland, the Victims of Crime Assistance Act 2009 provides that an applicant will not be granted assistance if they do not report the act of violence to the police unless they have a reasonable excuse.<sup>73</sup> 'Special primary victims'<sup>74</sup> do not have to report to the police but must report the act of violence to another person or service that is listed in the Act, such as a doctor, a counsellor or a domestic violence counsellor.<sup>75</sup> A 'special primary victim' means a primary victim of an act of violence involving a sexual offence, an abuse of power or trust, domestic violence, a child, a person lacking capacity, intimidation or threat.<sup>76</sup> This requirement may be dispensed with if the assessor is reasonably satisfied that the applicant has a reasonable excuse for not reporting the act of violence.<sup>77</sup>

#### *Victoria*

[7.59] Under section 31 of the Victims of Crime (Financial Assistance Scheme) Act 2022, an application for compensation must be refused if the act of violence was not reported to the police within a reasonable time unless the decision maker considers that there were special circumstances or the applicant is a person in a 'special reporting category'.<sup>78</sup> The Financial Assistance Scheme Guidelines ('FAS') state that special circumstances are not defined in the Act but mean something "out of the ordinary."<sup>79</sup> The Guidelines explain that:

"To decide this, the FAS will look at factors such as:

- the victim's reasons for not reporting or delaying reporting the violent act which may include:
  - a sense of shame, distress or trauma
  - fear of stigmatisation or ostracism from community

<sup>73</sup> Section 81 of the Victims of Crime Assistance Act 2009 (Queensland). See Queensland Government, "Reporting requirements for all victims" (9 December 2024) <<https://www.qld.gov.au/law/crime-and-police/victims-and-witnesses-of-crime/financial-assistance/making-claim/report-violence>> accessed 23 March 2026.

<sup>74</sup> Defined in section 81(2) of the Victims of Crime Assistance Act 2009 (Queensland). An example would be a primary victim of a sexual offence.

<sup>75</sup> Section 81(1)(a)(ii) of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>76</sup> Section 81(2) of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>77</sup> Section 81(1)(b) of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>78</sup> Section 73 of the Victims of Crime (Financial Assistance Scheme) Act 2022 provides that regulations may be passed prescribing special reporting categories of victims. No such regulations have been passed as of the date of publication of this Report.

<sup>79</sup> Victoria State Government, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 22 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 23 March 2026.

- fear of retaliation or further violence from the offender or their family, friend or associates
  - fear of criminalisation
  - fear of not being believed, being blamed or re-traumatised
  - the impact of intergenerational trauma and general and systemic racism
  - mistrust of authorities, including because of past negative experiences with police
  - fear of re-traumatisation from the criminal justice system, including the police or court system, or
  - religious or cultural reasons, including due to religious beliefs or community expectations
- the victim’s personal circumstances
  - whether the victim reasonably thought that reporting to police would likely cause them harm
  - the nature and dynamic of the offending, such as whether the offender was in a position of power, trust and influence over the victim, or
  - whether the victim was a child at the time of the violent act.”<sup>80</sup>

[7.60] Applicants must provide a statutory declaration explaining the circumstances of the violent act and the reasons for not reporting it to police.<sup>81</sup>

#### **(d) Submissions**

[7.61] Submissions to the Commission’s Consultation Paper outlined a variety of scenarios where a victim will be reluctant or unable to report the crime to An Garda Síochána. A victim may be afraid of the offender or of the Gardaí

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<sup>80</sup> Victoria State Government, “Financial Assistance Scheme Guidelines” (30 June 2025) at page 22 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 23 March 2026.

<sup>81</sup> Victoria State Government, “Financial Assistance Scheme Guidelines” (30 June 2025) at page 23 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 23 March 2026.

themselves, or they may fear secondary victimisation in the process of reporting. Some consultees emphasised that members of minority communities can be reluctant to report crimes to An Garda Síochána, for fear that they may encounter discrimination or experience negative consequences for their community. Many submissions emphasised that an application should not be considered invalid if a victim withdraws their complaint to the Gardaí following an initial report.

### **(e) Proposals for reform**

- [7.62] The Commission considers that, in general, all applicants should be required to report the crime of violence to An Garda Síochána or to Fiosrú, as is required under the current scheme.<sup>82</sup> Fiosrú generally deals with complaints from the public concerning Garda misconduct.<sup>83</sup> The requirement to report can be justified on two main grounds.
- [7.63] First, it can be considered a means of providing the statutory body with necessary evidence. A report to the Gardaí of the alleged offence would provide assistance to the statutory body in determining whether an offence actually occurred and, potentially, the details of the offence. Requiring a Garda report may filter out unsubstantiated or fraudulent claims. It is important to note, as discussed in the Chapter on Defining Eligible Applicants and Crimes of Violence that for the statutory body to make its decision, the reporting of the offence does not need to lead to identification of an offender, a prosecution or a conviction.
- [7.64] Secondly, the requirement of a Garda report is a means of supporting the State's role in the administration of justice. The State has an important public policy interest in the prosecution of crimes and in the identification and punishment of violent offenders. When individuals seek compensation from state-funded victim compensation schemes, the Commission considers that it is reasonable to expect a victim to assist the State in pursuing the offender. By reporting the offence, the victim supports the State's efforts in maintaining law and order, thereby contributing to the broader pursuit of justice.
- [7.65] The Commission has examined the approach of schemes to requiring police reporting in a number of comparative jurisdictions. Some, such as Victoria and Germany, generally require reports to the police but allow for exceptions to this requirement. Others, such as Queensland and New South Wales, provide for alternative reporting procedures; and others, such as France do not impose a strict requirement but reports may be requested by decision-makers.

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<sup>82</sup> The Office of the Police Ombudsman.

<sup>83</sup> Section 173(1) of the Policing, Security and Community Safety Act 2024; Fiosrú, "What we do" <<https://www.fiosru.ie/complaints/what-we-do/#For%20the%20Public>> accessed 23 March 2026.

[7.66] The Commission recognises that there may be special circumstances where reporting the crime may be exceptionally difficult for a victim, due to their personal situation or the circumstances of the crime. Such circumstances are outlined clearly in the submissions received as part of the consultation process. The Commission also notes the observation by Special Advisor to EU Commission President, Milquet, that victims who do not report crimes “are often the most vulnerable victims, such as children, undocumented migrants, homeless, trafficked victims to name a few. They are arguably the most in need of emergency compensation.”<sup>84</sup>

[7.67] The Commission further notes the observations made in a recent report by the Sentencing Guidelines and Information Committee of the Judicial Council regarding the reduced likelihood that a victim of a partner in an intimate relationship will report the act of violence to An Garda Síochána. The authors note that:

“victims are less likely to disclose an offence where there is a relevant relationship. The existence of the relationship may have created a barrier to disclosure, whether to Gardaí, medical advisers or others, meaning that there may have been a hidden pattern of abusive conduct and harm over a significant period of time. The barrier may have been due in part to fear of retaliation and of financial consequences, perhaps including homelessness, as well as to the fact that abusive actions affect the victim’s self-esteem and any confidence that they will be believed.”<sup>85</sup>

[7.68] The Victorian Law Reform Commission has observed that victims of family violence will often not make a report to the police for a number of reasons, including feelings of shame and stigma, fear of the perpetrator, fears for their own safety or the safety of their children and concern they will not be believed.<sup>86</sup> The Victorian Commission also highlighted that victims from marginalised communities may have a general distrust of authorities or may be less likely to report to police because of actual or perceived discrimination and harassment.<sup>87</sup>

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<sup>84</sup> Milquet, *Strengthening Victims’ Rights: From Compensation To Reparation for a new EU Victims’ Rights Strategy 2020-2025* (European Commission 2019) at page 25.

<sup>85</sup> Sentencing Guidelines and Information Committee of the Judicial Council, *Report of the Sentencing Guidelines and Information Committee on the Application of Section 40 of the Domestic Violence Act 2018* (May 2025) at para 15.

<sup>86</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.50.

<sup>87</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.96.



- [7.69] The Commission notes similar observations in a 2022 report on Irish Travellers' access to justice,<sup>88</sup> carried out by the European Centre for the Study of Hate. In this report, the authors commented that victims of crime from the Traveller community generally reported negative experiences of engaging with An Garda Síochána. The report found that many Travellers who did report a crime to the Gardaí felt that they were not taken seriously.<sup>89</sup> The report stated that these experiences lead to underreporting of crime, and a feeling amongst victims that they are not protected by the Gardaí.<sup>90</sup> The report stated that victims of domestic violence are particularly vulnerable because they are reluctant to "bring the Gardaí down" on their communities. The report argued that this poses a significant obstacle to the reporting of domestic violence by Travellers.<sup>91</sup>
- [7.70] The Commission is of the view that certain vulnerable victims, including victims of trafficking, may experience fear of the perpetrator and fears for their own safety, which may preclude them from reporting to the Gardaí in particular circumstances.
- [7.71] The Commission therefore recommends that the statutory body may accept applications where the applicant has not made a report of the crime of violence to An Garda Síochána or to Fiosrú. However, in order to meet the twin rationales outlined above of providing a source of evidence to the statutory body and assisting the State in the administration of justice, the Commission considers that the requirement to report the crime should only be waived in special circumstances such that it would not be in the interests of justice to deny or reduce a compensation payment for this reason.
- [7.72] In addition, the decision-maker may only waive this requirement where they have sufficient evidence to determine an application, and the decision-maker must consider that the failure to report the crime of violence was reasonable in all the circumstances. In exercising this discretion, the decision-maker should have regard to the following factors:
- (1) the age and capacity of the applicant;
  - (2) the nature of the harm and its effect on the applicant;

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<sup>88</sup> Joyce, O'Reilly, O'Brien, Joyce, Schweppe and Haynes, *Irish Travellers' Access to Justice* (European Centre for the Study of Hate 2022).

<sup>89</sup> Joyce, O'Reilly, O'Brien, Joyce, Schweppe and Haynes, *Irish Travellers' Access to Justice* (European Centre for the Study of Hate 2022) at page 64.

<sup>90</sup> Joyce, O'Reilly, O'Brien, Joyce, Schweppe and Haynes, *Irish Travellers' Access to Justice* (European Centre for the Study of Hate 2022) at page 73.

<sup>91</sup> Joyce, O'Reilly, O'Brien, Joyce, Schweppe and Haynes, *Irish Travellers' Access to Justice* (European Centre for the Study of Hate 2022) at page 68.

- (3) the nature of the crime of violence giving rise to the harm and its effect on the applicant;
- (4) whether the crime of violence occurred in the context of domestic abuse or sexual violence;
- (5) the relationship between the applicant and the alleged offender, including any history of coercion, abuse, or threatening behaviour;
- (6) any fear the applicant may have of retribution from the offender;
- (7) whether the applicant is from a minority community and may fear discrimination from a state actor on reasonable grounds;
- (8) whether the applicant is a victim of trafficking;
- (9) whether the applicant reported the crime of violence to another body or organisation.

[7.73] Such applicants would still have to satisfy the statutory body that they had been a victim of a crime of violence to be eligible for compensation. However, this could be established by reference to other documentation, including observations and attendances of Gardaí, reports of social workers, hospital and other medical reports and records and perhaps affidavits from witnesses. The Commission observes that a Garda may have a record of attendance at the scene of a crime, even where the victim has not made a report.

[7.74] The Commission considered whether there were viable alternative options for reporting the crime of violence, such as to a relevant, established NGO. However, the Commission decided that such a recommendation would be outside of its remit due to the fact that it would potentially impose significant additional resource requirements on other bodies. Instead, the fact that an applicant reported the crime of violence to another body may be taken into account as a factor when deciding whether to waive the requirement to report an offence to the Gardaí.

- R. 7.13 The Commission recommends** that applicants are required to make all reasonable efforts to report the alleged crime of violence giving rise to the harm to An Garda Síochána, or to Fiosrú, the Office of the Police Ombudsman.
- R. 7.14 The Commission recommends** that the statutory body may accept applications where the applicant has not made a report of the crime of violence to An Garda Síochána, or to Fiosrú in special circumstances such that it would not be in the interests of justice to deny or reduce a payment for this reason. The decision-maker must have sufficient evidence to determine an application, and the decision-maker must consider that the failure to report the crime of violence was reasonable in all the circumstances.
- R. 7.15 The Commission recommends** that in determining whether failure to report the offence was reasonable in all the circumstances, the decision-maker should have regard to:
- (1) the age and capacity of the applicant;
  - (2) the nature of the harm and its effect on the applicant;
  - (3) the nature of the offence giving rise to the harm and its effect on the applicant;
  - (4) whether the crime of violence occurred in the context of domestic abuse or sexual violence;
  - (5) the relationship between the applicant and the alleged offender, including any history of coercion, abuse, or threatening behaviour;
  - (6) any fear the applicant may have of retribution from the offender;
  - (7) whether the applicant is from a minority community and may fear discrimination from a state actor on reasonable grounds;
  - (8) whether the applicant is a victim of trafficking;
  - (9) whether the applicant reported the crime of violence to another body or organisation.

## 5. Obligation to give reasonable assistance

### (a) Introduction

- [7.75] Many compensation schemes, including the current Irish scheme, place an obligation on applicants to provide reasonable assistance. This requirement can be divided into three distinct obligations. The first is an obligation to provide reasonable assistance to the compensation body itself. The second is an obligation to provide reasonable assistance to the police as they investigate the crime. The third is to provide reasonable assistance to prosecutors as they seek to prosecute an alleged offender. Comparative compensation schemes are not

always clear which of these three obligations are being imposed on victims when there is an obligation to provide reasonable assistance.

- [7.76] The justification for the requirement to provide reasonable assistance is threefold. It aims to ensure that the procedures of the compensation scheme operate as smoothly and efficiently as possible; the state's resources are utilised effectively in the pursuit of justice; and accountability for offending is supported through victims' participation in criminal proceedings.
- [7.77] As with the requirement to report the crime to the police, a number of jurisdictions provide for exceptions to these requirements in certain circumstances, recognising that there may be valid reasons for a victim's non-cooperation. Issues such as psychological injury, the desire to avoid retraumatisation, fear of the offender or suspicion of state actors can impede or prevent cooperation with police and prosecutors. This is explored further below.

### **(b) Current scheme**

- [7.78] The current scheme provides that "no compensation will be payable to an applicant who has not, in the opinion of the Tribunal, given all reasonable assistance, in relation to any medical report that it may require, and otherwise".<sup>92</sup>
- [7.79] "Reasonable assistance" is not defined in the terms of the scheme, and Tribunal members may exercise their discretion when applying this limitation on eligibility. As noted by the Commission's Consultation Paper, annual reports by the Tribunal were available from 1975 – 1989,<sup>93</sup> and they show that failure to provide reasonable assistance was a frequent reason for refusal of awards under the scheme in its initial years of operation.<sup>94</sup>
- [7.80] The Tribunal has been publishing its decisions again since 2021, so it is also possible to examine the application of the requirement to give "reasonable assistance" over recent years. Between 10 December 2021 and 12 December 2023, this reason for refusal was applied over 500 times.<sup>95</sup> It would appear that

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<sup>92</sup> Paragraph 10 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>93</sup> The Criminal Injuries Compensation Tribunal Annual Reports are available up until 1989 but were not published annually. Often one report was used to provide information on several years of the Scheme's operation: First Report 1975 (pl 4991), Second Report 1977 (pl 6094), Third Report 1978 (pl 7224), Fourth Report 1978 (pl 9537), Fifth Report 1978 (pl 9537), Sixth Report 1981 (pl 9770), Seventh Report 1981 (pl 9875), Eighth Report 1983 (pl 1600), Ninth Report 1986 (pl 3958), Tenth Report 1986 (pl 3958), Eleventh Report 1986 (pl 3959), Twelfth Report 1987 (pl 4996), Thirteenth Report 1989 (pl 6579), Fourteenth Report 1989 (pl 6580), Fifteenth Report 1990 (pl 7521), Sixteenth Report 1991 (pl 8462).

<sup>94</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at para 5.34.

<sup>95</sup> See Criminal Injuries Compensation Scheme, "Decisions by the Criminal Injuries Compensation Tribunal" (8 September 2025) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/collections/decisions-by-the-criminal-injuries-compensation->

many applications were rejected where a victim had made an initial application, often accompanied by a Garda report, but did not send in any, or in the Tribunal's view, sufficient documentation to verify their expenses, and did not respond to a request from the Tribunal for these documents.<sup>96</sup> In certain cases, some documentation was received but correspondence was not responded to, including in one case where a solicitor's firm had ceased operating. The Tribunal decided not to make an award, but the decision-maker expressed some regret that they were unable to provide compensation to the applicant in the case:

"In the absence of the provision of sufficient information by the Applicant ... regrettably despite the very serious nature of the Applicant's injuries at this juncture I have no alternative but to make no award pursuant to paragraph 10 (previously 11) of the Scheme."<sup>97</sup>

- [7.81] In other cases, the Tribunal did make an award where some documentation had been received, even where a request for further documentation was not responded to by the applicant.<sup>98</sup>
- [7.82] There is no explicit paragraph in the current scheme requiring an applicant to provide assistance to the Gardaí or to prosecutors. However, as outlined above, applicants must have reported the crime of violence or alternatively have made "all reasonable efforts" to notify the Gardaí of an offence and "to cooperate with them".<sup>99</sup> This has been interpreted by the Tribunal as a requirement to cooperate with Gardaí. A number of claims have therefore been rejected due to the victim's failure to cooperate with or assist An Garda Síochána, for example by refusing to

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[tribunal/#paragraph-10-previously-11-need-to-provide-all-reasonable-assistance](#)> accessed 23 March 2026.

<sup>96</sup> See Criminal Injuries Compensation Tribunal, Case Reference 51767 (10 October 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/51767-10-october-2022/>>; Case Reference 53157 (29 March 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/53223-29-march-2023/>>; Case Reference 50732 (12 December 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/50732-12-december-2023/>>; Case Reference 53006 (27 May 2024) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/53006-27-may-2024/>> accessed 23 March 2026.

<sup>97</sup> Criminal Injuries Compensation Tribunal, Case Reference 53077 (12 December 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/53077-12-december-2023/>> accessed 23 March 2026.

<sup>98</sup> See Criminal Injuries Compensation Tribunal, Case Reference 50010 (13 May 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/50010-13-may-2022/>>; Case Reference 50855 (13 May 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/50855-13-may-2022/>> accessed 23 March 2026.

<sup>99</sup> Paragraph 22 of the Criminal Injuries Compensation Scheme (31 January 2025).

make, or withdrawing, a statement; refusing to testify in Court; or refusing to identify persons present at the scene.<sup>100</sup>

### **(c) Comparative jurisdictions**

- [7.83] Compensation schemes in other jurisdictions vary as regards the requirement to provide reasonable assistance. Some require reasonable assistance with the compensation scheme itself, some with the police, some with prosecutors, and some with all three. Most schemes examined provide for exceptions to these requirements in certain circumstances.

#### *(i) EU Member States*

##### *Croatia*

- [7.84] The Victims of Crime (Financial Compensation) Act 2008 in Croatia provides that when deciding on an award of compensation, the decision-maker will take into account whether the victim cooperated with the police and the competent authorities in order to bring the perpetrator of the crime to justice.<sup>101</sup>

##### *Czech Republic*

- [7.85] In the Czech Republic, the 2013 Victim of Crimes Act provides that financial assistance will be refused if the victim failed to provide the necessary cooperation to the law enforcement authorities, in particular by failing to report the criminal offence without undue delay, unless the victim had a serious reason for this failure.<sup>102</sup>

##### *France*

- [7.86] The French legislation on victim compensation<sup>103</sup> does not state that a crime must be reported to the police nor that reasonable assistance should be provided to the police or CIVI.

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<sup>100</sup> See Criminal Injuries Compensation Tribunal, Case Reference 52408 (17 November 2015) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/52408-17-november-2015/>>; Case Reference 53593 (28 December 2020) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/53593-28-december-2020/>>; Case Reference 23515 (23 May 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/23515-23-may-2022/>>; Case Reference 50087 (27 January 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/50087-27-january-2023/>> accessed 23 March 2026.

<sup>101</sup> Article 14(1)(d) of the Act on Financial Compensation to Victims of Crime (Official Gazette of the Republic of Croatia Nos 80/08 and 27/11).

<sup>102</sup> Section 27(c) of the Act on Victims of Crime and on the Amendment of Certain Acts 2013 (Czech Republic).

<sup>103</sup> Articles 706-3 – 706-15 and R49-20-1 – R54-9 of the Code of Criminal Procedure (France).

*Germany*

- [7.87] As noted in the section on reporting requirements above, the German Social Code places an onus on the victim to give reasonable assistance to those prosecuting:

“Benefits and services may be denied in full or in part if the person suffering health damage has failed to do everything in his or her power and which is reasonable to contribute to clarifying the facts and prosecuting the offender.”<sup>104</sup>

*(ii) United Kingdom*

*Northern Ireland*

- [7.88] In Northern Ireland, compensation can be applied for under the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009). The Secretary of State has responsibility for determining claims for compensation.<sup>105</sup>
- [7.89] The Secretary of State has the power to withhold or reduce an award if the applicant failed to cooperate with the police or other authority attempting to bring the assailant to justice.<sup>106</sup> An award can also be withheld or reduced if the applicant failed to give all reasonable assistance to the Secretary of State or other body or person in connection with their application.<sup>107</sup>

*England, Scotland and Wales*

- [7.90] The Criminal Injuries Compensation Scheme 2012 in England, Scotland and Wales stipulates that an award will be withheld unless the applicant has cooperated as far as reasonably practicable in bringing the assailant to justice.<sup>108</sup> An award may be withheld or reduced where an applicant fails to take all reasonable steps to assist a claims officer<sup>109</sup> or other body or person in relation to consideration of

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<sup>104</sup> Section 17(2) of the Social Code Book XIV (Social Compensation) (Germany).

<sup>105</sup> Paragraph 2 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>106</sup> Paragraph 14(1)(b) of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>107</sup> Paragraph 14(1)(c) of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>108</sup> Paragraph 23 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>109</sup> The claims officer is appointed under section 3(4) of the Criminal Injuries Compensation Act 1995 (England, Scotland, Wales). They consider applications and determine the compensation to be paid.

their application. Such failure includes repeated failure to respond to communications sent to the address given by the applicant.<sup>110</sup>

*(iii) Australia*

*Australian Capital Territory*

- [7.91] In the Australian Capital Territory, the Victims of Crime (Financial Assistance) Act 2016 provides that an application for financial assistance may be disqualified if “the applicant has unreasonably failed to give assistance to the police in relation to the act of violence that is the subject of the application.”<sup>111</sup> An opportunity is afforded to the applicant to rebut this assertion before they are disqualified.<sup>112</sup>

*New South Wales*

- [7.92] Under the Victims Rights and Support Act 2013 in New South Wales, in deciding whether or not to grant compensation and in determining the appropriate amount of compensation, the Commissioner<sup>113</sup> must have regard to whether the victim:

“failed to provide reasonable assistance to any person or body duly engaged in the investigation of the act of violence or act of modern slavery or in the arrest or prosecution of any person by whom the act of violence or act of modern slavery was committed or alleged to have been committed.”<sup>114</sup>

*Queensland*

- [7.93] In Queensland, the Victims of Crime Assistance Act 2009 provides that a government assessor<sup>115</sup> cannot grant financial assistance to an applicant if they are satisfied, on the balance of probabilities, that the applicant has not provided reasonable assistance to the police investigation.<sup>116</sup> The government assessor may dispense with this requirement if they are “reasonably satisfied the person

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<sup>110</sup> Paragraph 24 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>111</sup> Section 45(1)(e) of the Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory).

<sup>112</sup> Section 45(2) of the Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory).

<sup>113</sup> The ‘Commissioner’ manages and administers the scheme. Their functions are defined under section 10 of the Victims Rights and Support Act 2013 (New South Wales).

<sup>114</sup> Section 44(1)(e) of the Victims’ Rights and Support Act 2013 (New South Wales).

<sup>115</sup> The government assessor’s role is defined under section 128 of the Victims of Crime Assistance Act 2009 (Queensland). It is their responsibility to decide if a victim receives financial assistance.

<sup>116</sup> Section 82(1)(a)(i) of the Victims of Crime Assistance Act 2009 (Queensland).



had a reasonable excuse for not providing the assistance.”<sup>117</sup> In considering whether a person had a reasonable excuse for not providing the assistance, the government assessor must have regard to the following factors:

- (a) the person’s age when the act was committed;
- (b) whether the person has an impaired capacity, whether or not it existed when the act was committed;
- (c) if the person is the primary victim of the act of violence, whether the act of violence involves a sexual offence;
- (d) whether the person who allegedly committed the act of violence is in a position of power, influence or trust in relation to the person (such as a parent, spouse or carer);
- (e) whether the act of violence involves domestic violence;
- (f) whether the person was threatened or intimidated by the person who committed, or allegedly committed, the act or violence or by someone else;
- (g) the nature of the person’s injury or alleged injury;
- (h) whether any other special circumstances prevented the person from providing the assistance;
- (i) any other matter the assessor considers relevant.<sup>118</sup>

[7.94] In terms of providing reasonable assistance to the assessing body, the government assessor may ask an applicant for further information or documentation.<sup>119</sup> They may also ask for consent from the applicant should they wish to request information or documentation from another person in relation to the application.<sup>120</sup> The government assessor may pause its consideration of an application until this information or consent is received<sup>121</sup> and the application will lapse if this is not complied with.<sup>122</sup> However, this does not prevent the applicant from submitting another application for financial assistance.<sup>123</sup>

### *Victoria*

[7.95] In Victoria, the decision-maker may refuse an application for compensation on the grounds that an applicant

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<sup>117</sup> Section 82(2) of the Victims of Crime Assistance Act 2009 (Queensland) with section 82(3) listing what a government assessor may consider when deciding on what is a reasonable excuse for not providing assistance.

<sup>118</sup> Section 82(3) of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>119</sup> Section 64(1)(a) of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>120</sup> Section 64(1)(b) of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>121</sup> Section 64(2) of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>122</sup> Section 64(3) of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>123</sup> Section 64(4) of the Victims of Crime Assistance Act 2009 (Queensland).

“failed to provide reasonable assistance to any person or body duly engaged in the investigation of the act of violence or in the arrest or prosecution of any person by whom the act of violence was committed or alleged to have been committed.”<sup>124</sup>

[7.96] However, as with the obligation to report the crime, the decision-maker can waive this requirement if they are persuaded that there are “special circumstances” justifying why the applicant did not provide the required assistance or where the person is in a ‘special reporting category’.<sup>125</sup> The factors which the Financial Assistance Scheme will look at when considering whether special circumstances exist include:

- the victim’s personal circumstances,
- whether they reasonably thought assisting the police would cause them harm,
- whether the offender was in a position of trust and influence over the victim, and
- whether the victim was a child.<sup>126</sup>

[7.97] The list of factors is outlined in full in the above section on reporting requirements.

#### **(d) Submissions**

[7.98] The Commission asked in its Consultation Paper:

“Is it fair and appropriate to refuse an award of compensation if an applicant has withdrawn their complaint from the Garda Síochána?”<sup>127</sup>

[7.99] The majority of consultees responded strongly that it would not be fair and appropriate to refuse an award in many cases where an applicant has withdrawn

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<sup>124</sup> Section 31(1)(a)(ii) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>125</sup> Section 31(2) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria). Section 73 of the Victims of Crime (Financial Assistance Scheme) Act 2022 provides that regulations may be passed prescribing special reporting categories of victims. No such regulations have been passed as of the date of publication of this Report.

<sup>126</sup> Victoria State Government, “Financial Assistance Scheme Guidelines” (30 June 2025) at pages 22 and 24 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 20 March 2026: “The FAS will not refuse an application if it is satisfied that the victim had ‘special circumstances’ for not assisting authorities as outlined above in 4.3.”

<sup>127</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 226, question 5.4.

a complaint. A number of submissions emphasised that there are many reasons why a victim may decide to withdraw a complaint or refuse to cooperate in criminal proceedings.

[7.100] Consultees provided a number of examples. They stated that victims may not cooperate due to:

- fear of intimidation or retaliation by the offender;
- reluctance to pursue a case against a family member;
- a desire to avoid prolonged exposure to the facts of the case;
- the risk of re-traumatisation; or
- feeling intimidated by the criminal justice process.

[7.101] A number of submissions also stated that victims of particular crimes such as domestic violence or sexual violence are less likely to proceed with a complaint or cooperate with a prosecution because of the nature of the crime, the relationship with, or fear of, the offender, and sometimes because of shame or societal stigma.

### **(e) Proposals for reform**

#### *(i) Providing reasonable assistance to the statutory body*

[7.102] The Commission considers that requiring applicants to provide reasonable assistance to the statutory body in the course of the compensation process is vital to ensure the timely processing of claims, as well as a thorough consideration of the application.

[7.103] In the Chapter on the Structure of the Statutory Body and the Application Process, the Commission examines how the statutory body could best assist victims in their applications, and recommends an assistive service within the proposed statutory body. The Commission considers that with the clear guidance and practical assistance that will be provided by the assistive tier, the obligation on a victim to provide reasonable assistance to the statutory body will not be onerous.

[7.104] The Commission recommends in the Chapter on the Structure of the Statutory Body and the Application Process that the statutory scheme should be clear as to the procedure for obtaining supporting documents, including when members of the assistive tier can obtain documents directly from a particular source, on behalf of the applicant. This should help to reduce procedural hurdles and streamline the process for applicants, staff at the assistive tier and decision-makers. The Commission's recommendation that staff be appropriately trained in trauma-awareness should also make this stage of the process easier for victims.

[7.105] Nevertheless, the Commission recognises that there may be some special circumstances where an applicant is unable to provide the assistance requested by the statutory body. This may be because of their injuries, their trauma or other challenging circumstances, which may make it difficult for them to engage with the processes of the statutory body. In addition, if they are in a vulnerable position or situation, such as a continuing relationship with the offender, which is abusive or controlling, and where they may have come under pressure to stop engaging with the statutory body.

[7.106] The Commission therefore recommends that the requirement to provide reasonable assistance to the statutory body may be waived, but only in special circumstances. These special circumstances will mean that it would not be in the interests of justice to deny or reduce a payment for a failure to provide reasonable assistance. However, the decision-maker must have sufficient evidence to determine an application, and the decision-maker must also be satisfied that the failure to provide reasonable assistance was reasonable in all the circumstances.

[7.107] The statutory body should have regard to a number of factors when considering whether to waive this requirement. The Commission considers that the same factors outlined in the section above on reporting requirements should apply when the statutory body is considering waiving the requirement to provide reasonable assistance to the statutory body. This may include:

- (1) the age and capacity of the applicant;
- (2) the nature of the harm and its effect on the applicant;
- (3) the nature of the crime of violence giving rise to the harm and its effect on the applicant;
- (4) whether the crime of violence occurred in the context of domestic abuse or sexual violence;
- (5) the relationship between the applicant and the alleged offender, including any history of coercion, abuse, or threatening behaviour;
- (6) any fear the applicant may have of retribution from the offender;
- (7) whether the applicant is from a minority community and may fear discrimination from a state actor on reasonable grounds;
- (8) whether the applicant is a victim of trafficking.

[7.108] The Commission notes that if, due to non-cooperation, the statutory body doesn't have enough information to assess an application, then it will be justified in refusing the application. Or, where the statutory body does not have sufficient information to make a payment in line with the losses outlined in the application, it may be justified in making a lower payment than it might otherwise have made,

had all the necessary information been provided to it. For example, a payment may be made for expenses that are verified by receipts but not for expenses that have not been verified by receipts.

- R. 7.16 The Commission recommends** that an application for a compensation payment may be refused or reduced if an applicant fails to provide reasonable assistance to the statutory body.
- R. 7.17 The Commission recommends** that the statutory body may waive this requirement in special circumstances such that it would not be in the interests of justice to deny or reduce a payment for this reason. The decision-maker must have sufficient evidence to determine an application, and the decision-maker must consider that the failure to provide reasonable assistance was reasonable in all the circumstances.
- R. 7.18 The Commission recommends** that in deciding whether to waive this obligation, the decision maker should have regard to:
- (1) the age and capacity of the applicant;
  - (2) the nature of the harm and its effect on the applicant;
  - (3) the nature of the crime of violence giving rise to the harm and its effect on the applicant;
  - (4) whether the crime of violence occurred in the context of domestic abuse or sexual violence;
  - (5) the relationship between the applicant and the alleged offender, including any history of coercion, abuse, or threatening behaviour;
  - (6) any fear the applicant may have of retribution from the offender;
  - (7) whether the applicant is from a minority community and may fear discrimination from a state actor on reasonable grounds;
  - (8) whether the applicant is a victim of trafficking.

*(ii) Providing reasonable assistance to An Garda Síochána, Fiosrú, or to the DPP*

[7.109] The Commission considers that it is also reasonable to require a victim who is applying for compensation from the State to provide reasonable assistance to the Gardaí or to Fiosrú, the Office of the Police Ombudsman, and to the Office of the Director of Public Prosecutions (“DPP”), as it seeks to prosecute a crime. This is a requirement in many jurisdictions.

[7.110] The State is providing financial assistance to victims in recognition of the harm done by an offender. In return, cooperation from a victim will generally be required to conduct a thorough investigation and successful prosecution. The Commission recommends including this requirement as a general rule in the statutory scheme. However, like the requirements to report the crime and provide assistance to the statutory body, it recognises that there may be circumstances where this requirement should be waived. There could be cases where the special circumstances of the victim lead them to withdraw a complaint from the Gardaí or Fiosrú, and/or fail to provide assistance with an investigation or prosecution. Where such special circumstances exist, the Commission believes that a victim should not be denied compensation on the basis of their failure to provide reasonable assistance.

[7.111] In coming to this conclusion, the Commission has taken into account the views of consultees. Submissions emphasised that there should be an exception to the rule that cooperation is required with the Gardaí, particularly for victims of domestic violence and sexual offences. The Commission further notes that, in the past, the Tribunal has proceeded to decisions on compensation even where a complaint has been withdrawn, and a number of other jurisdictions provide for exceptions to the general rule that cooperation is required.<sup>128</sup>

[7.112] The Commission considers that the same threshold for waiving this requirement as outlined in the sections above should apply to the requirement to provide reasonable assistance to the Gardaí, Fiosrú, or the DPP. It would not be consistent to permit the statutory body to waive the requirement to report to the Gardaí and to cooperate with the statutory body for certain reasons but not permit the requirement to provide reasonable assistance to the Gardaí, Fiosrú and the DPP to be waived on the same basis.

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<sup>128</sup> Including Queensland, Victoria and the Australian Capital Territory: See section 82(3) of the Victims of Crime Assistance Act 2009 (Queensland); State Government of Victoria, *Financial Assistance Scheme Guidelines* (Victims of Crime Financial Assistance Scheme 2025) at pages 22 – 24; section 45(2) of the Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory).

[7.113] The Commission therefore recommends that the statutory body may waive the requirement to provide reasonable assistance to the Gardaí, Fiosrú, or the DPP in special circumstances such that it would not be in the interests of justice to deny or reduce a payment for this reason. Special circumstances in this context may include cases where the statutory body considers that the victim has a good reason for refusing to cooperate, for example out of fear of retaliation by the offender or fear of re-traumatisation. When considering how to assess the requirement to cooperate with law enforcement, the statutory body should have particular regard to victims of domestic abuse, sexual violence and other specific categories of victims who may suffer very deep levels of trauma, such as victims of trafficking.

[7.114] Therefore, when exercising the discretion to waive the requirement to provide reasonable assistance to the Gardaí, Fiosrú, or the DPP, the Commission considers that decision-makers should have due regard to the same factors as when considering whether a failure to report the crime or failure to cooperate with the statutory body was reasonable. These factors are outlined above.

- R. 7.19 The Commission recommends** that applicants should in general be required to provide reasonable assistance to An Garda Síochána, or Fiosrú, the Office of the Police Ombudsman, with the investigation of the crime that gave rise to the harm for which the applicant is applying for compensation.
- R. 7.20 The Commission recommends** that applicants should in general be required to provide reasonable assistance to the Office of the Director of Public Prosecutions where a prosecution is planned or proceeding for the crime that gave rise to the harm for which the applicant is applying for compensation.
- R. 7.21 The Commission recommends** that the statutory body should have a discretion to waive the requirement to provide reasonable assistance to An Garda Síochána or Fiosrú, the Office of the Police Ombudsman, and to the Office of the Director of Public Prosecutions in special circumstances such that it would not be in the interests of justice to deny or reduce a payment for this reason.
- R. 7.22 The Commission recommends** that in deciding whether to waive this requirement, the decision maker should have regard to:
- (1) the age and capacity of the applicant;
  - (2) the nature of the harm and its effect on the applicant;
  - (3) the nature of the crime of violence giving rise to the harm and its effect on the applicant;
  - (4) whether the crime of violence occurred in the context of domestic abuse or sexual violence;
  - (5) the relationship between the applicant and the alleged offender, including any history of coercion, abuse, or threatening behaviour;
  - (6) any fear the applicant may have of retribution from the offender;

- (7) whether the applicant is from a minority community and may fear discrimination from a state actor on reasonable grounds;
- (8) whether the applicant is a victim of trafficking.



# CHAPTER 8

## WELL-MEANING INTERVENORS

### Table of Contents

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|    |                                                                  |     |
|----|------------------------------------------------------------------|-----|
| 1. | <i>Introduction</i> .....                                        | 271 |
| 2. | <i>Current scheme and law</i> .....                              | 271 |
|    | (a) Intervening in a crime and/or assisting law enforcement..... | 273 |
|    | (b) Saving or attempting to save a life.....                     | 275 |
| 3. | <i>Comparative jurisdictions</i> .....                           | 276 |
| 4. | <i>Proposals for reform</i> .....                                | 277 |



## 1. Introduction

- [8.1] This Chapter addresses the eligibility of potential applicants to the statutory scheme who are not claiming compensation as a result of a crime of violence but have been harmed in other circumstances that may warrant state-funded compensation.
- [8.2] The Criminal Injuries Compensation Scheme ("the current scheme") allows individuals who have been injured while intervening in the commission of a crime, assisting law enforcement or saving the life of another to make a claim for compensation.
- [8.3] In this Chapter, the Commission considers whether a similar provision should be included in the statutory scheme.<sup>1</sup>

## 2. Current scheme and law

- [8.4] Paragraph 4 of the current scheme provides that the Criminal Injuries Compensation Tribunal ("the Tribunal") will consider claims for compensation for injuries received in the following circumstances:
- (a) because of, or in the course of, the victim's coming to the assistance of a member of An 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;

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<sup>1</sup> In its 2009 report, the Commission addressed the separate issue of civil liability of Good Samaritans and recommended that Good Samaritans should not be held liable in any civil proceedings for damage caused to another person in circumstances where they provide assistance, advice or care to another person who has been injured in an accident or in an emergency or other circumstance of serious and imminent danger, unless the damage is caused by the gross negligence of the Good Samaritan: Law Reform Commission, *Report on Civil Liability of Good Samaritans and Volunteers* (LRC 93-2009).

(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.

[8.5] A common factor in most of these scenarios is that a crime is being committed or attempted, as described in (a), (b) and (c) above. However, where Paragraph 4(d) applies, a person who is injured while saving or attempting to save a human life is eligible for compensation regardless of whether any crime has been committed.

[8.6] The Commission understands from the Tribunal Secretariat that no applications have been received under this paragraph within its institutional memory. The Commission considers that the absence of applications under this eligibility factor may be due to the low number of instances of such occurrences, or, perhaps, to a lack of awareness around the possibility of applying to the scheme where a person has been harmed in such circumstances, or the absence of provision for compensation in respect of pain and suffering. In addition, it may be that individuals who could apply under this paragraph could also apply as victims of crime if it was the offender who caused them harm.

[8.7] The Tribunal has referred to the potential relevance of this paragraph in relation to a particular application.<sup>2</sup> However, it ultimately decided that the applicant could be compensated as a victim of crime, and that an applicant could not claim compensation under two eligibility criteria for the same harm.<sup>3</sup> Therefore, no payment was made under paragraph 4 of the scheme.

[8.8] Individuals who intervene to assist others in the circumstances outlined above might typically be known as “Good Samaritans”. The Commission considered whether the statutory scheme could refer to Good Samaritans in its eligibility criteria. However, a “Good Samaritan” is defined in Irish law by section 51A of the Civil Liability Act 1961 in the context of liability in negligence.<sup>4</sup> The Civil Liability Act provides that a Good Samaritan is anyone who, without expectation of payment or other reward, provides assistance, advice or care to another person in an emergency. The circumstances in which a person is eligible for compensation under Paragraph 4 of the current scheme are significantly different, as outlined

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<sup>2</sup> See Criminal Injuries Compensation Tribunal, Case Reference 54011 (26 January 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/54011-26-january-2023/>> accessed 23 March 2026.

<sup>3</sup> Criminal Injuries Compensation Tribunal, Case Reference 54011 (26 January 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/54011-26-january-2023/>> accessed 23 March 2026.

<sup>4</sup> Section 51A of the Civil Liability Act 1961 defines a Good Samaritan as “a person who, without expectation of payment or other reward, provides assistance, advice or care to another person in an emergency, but does not include a person who does so as a volunteer”.

above. To avoid unnecessary confusion, the Commission does not use the term “Good Samaritan” in this Chapter and in its recommendations. Instead, the Commission uses the term “well-meaning intervenor” when referring to such individuals.

### **(a) Intervening in a crime and/or assisting law enforcement**

- [8.9] As set out above, the current scheme provides that applications for compensation may be considered in various circumstances where a person is injured in the course of intervening in a crime, or in coming to the assistance of An Garda Síochána.
- [8.10] The international instruments addressing the compensation of victims of crime do not impose any obligation to provide compensation to such individuals. However, the Commission considers that there is a strong public interest in a policy which encourages individuals to provide assistance that benefits society. Morris argues that, as crime is endemic in society, those who take a personal risk in preventing crime should be rewarded, and that the financial losses they suffered for the common good should be compensated.<sup>5</sup> The Commission agrees with this view and considers that individuals who are harmed trying to prevent an offence should be eligible to apply for compensation.
- [8.11] The current scheme provides that an applicant will be considered for compensation where their injuries were sustained “because of” any of the scenarios in paragraph 4, as laid out above. In circumstances where the injury is not directly related to a criminal offence, an applicant’s claim under sub-paragraphs (a) – (c) could be refused. However, the Commission considers that causation should be understood broadly in this context to capture the well-meaning intervenor who held a reasonable belief that a crime was about to occur.
- [8.12] The courts in England and Wales have addressed this issue persuasively. For example, in *R v Criminal Injuries Compensation Board, ex parte Ince*,<sup>6</sup> a constable had died on duty when responding to a call that a local army depot was being broken into. The constable drove his vehicle at speed through a red light and died in a head-on collision with another vehicle. It ultimately transpired that the army depot was not being broken into, and the alarm was false. The Compensation Board refused his widow’s application for compensation on the basis that there was no actual arrest or attempted arrest, nor was there an actual prevention or an actual attempted prevention of an offence that was in fact about

<sup>5</sup> Morris, “Compensation and the Good Samaritan” in Ratcliffe (ed), *The Good Samaritan and the Law* (Anchor Books 1966) at page 137.

<sup>6</sup> *R v Criminal Injuries Compensation Board, ex parte Ince* [1973] 3 All ER 808.

to take place, so the injury was not “directly attributable” to the prevention of an offence.<sup>7</sup>

- [8.13] The Court held that the compensation scheme should not be interpreted so narrowly. The claim to compensation should be tested in the light of the situation as it appeared to the applicant at the time.<sup>8</sup> The Court found that PC Ince’s state of mind was sufficient to bring him within the scheme, as he had good reason to believe that an attack was happening.<sup>9</sup> The Court held that on the facts of the case, it was open to the Board to find that PC Ince’s death was directly attributable to the call over the radio for help, despite the fact that no actual offence was taking place. The call about an offence was the reason for his being where he was, and for his attempt to get to the depot as quickly as possible.
- [8.14] The Commission notes that, in Ireland, claims made by Gardaí for injuries sustained by them in the course of performing their duty would come under the Garda Síochána (Compensation) Act 2022. However, the Commission finds the general approach in the case of *Ince* persuasive and believes that causation should be understood broadly in this context, taking into account the reasonable belief of the individual at the time of the incident.
- [8.15] The Commission notes that there may be scenarios where a person is both a victim of a crime and also a well-meaning intervenor. Take for example the Albertan case of *Willier v Crimes Compensation Board*,<sup>10</sup> where the applicant was one of four occupants of a house when they came under gunfire from two attackers. As soon as the firing began, three of the group dropped to the floor, but the fourth person, apparently panic-stricken, remained standing. The applicant, considering that the woman was in danger, stood up himself to pull her to the floor and was then shot. The Board originally refused the applicant’s claim for compensation on the basis that he was not “preserving the peace”, which was required to claim compensation under the relevant legislation.<sup>11</sup> The Board found that “if violence is directed at one or more individuals at one time, the individuals are not endeavouring to preserve the peace when one or all of

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<sup>7</sup> The Court of Appeal was considering paragraph 5 of the Criminal Injuries Compensation Scheme, which at the time provided that the Board would entertain applications for compensation where the deceased sustained personal injury directly attributable to: a crime of violence; an arrest or attempted arrest of an offender or suspected offender; the prevention or attempted prevention of an offence; or to the giving of help to any constable who was engaged in carrying out such functions. See *R v Criminal Injuries Compensation Board, ex parte Ince* [1973] 3 All ER 808 at page 3.

<sup>8</sup> *R v Criminal Injuries Compensation Board, ex parte Ince* [1973] 3 All ER 808 at page 6.

<sup>9</sup> *R v Criminal Injuries Compensation Board, ex parte Ince* [1973] 3 All ER 808 page 6.

<sup>10</sup> *Willier v Alberta (Crimes Compensation Board)* (1977) AltaSCAD 6.

<sup>11</sup> Section 7(1)(b)(i) of the Criminal Injuries Compensation Act 1970 (Alberta), since repealed.

them resist it; they or any of them are acting to defend themselves singly or collectively".<sup>12</sup>

- [8.16] However, the Supreme Court of Alberta Appellate Division considered that the applicant's act was not an act of self-defence, because no benefit could accrue from him taking that act; it was a selfless act that prevented the crime that was about to be committed, which was the death or wounding of the woman.<sup>13</sup> Thus, the applicant was not only a victim of the shooting attack, but was also "endeavouring to preserve the peace"<sup>14</sup> and so was eligible for compensation in both regards.
- [8.17] The Commission acknowledges that such unusual cases may arise under the proposed scheme. However, it considers that double compensation for the same harm should be avoided. The Commission therefore proposes that where a person is eligible for compensation as a victim of crime, that person will not be eligible for compensation as a well-meaning intervenor for the same harm.

### **(b) Saving or attempting to save a life**

- [8.18] Paragraph 4(d) of the current scheme provides that the Tribunal will consider claims for compensation for injuries sustained "because of, or in the course of, attempting to save a human life." Where paragraph 4(d) applies, there may not be any crime to report. This provision constitutes an exception to the scheme's general eligibility requirements, as it does not require that a crime of violence must have occurred.
- [8.19] This provision was applied by the Supreme Court in *State (Creedon) v Criminal Injuries Compensation Tribunal*.<sup>15</sup> In that case, the applicant's husband died while attempting to stop a van containing his infant son from rolling backwards down a steep hill. In rolling down the hill, the van would have crossed another road on which children were likely to be playing. The Tribunal rejected the applicant's claim for compensation as it was not satisfied that his death arose because of or in the course of attempting to save human life. This decision was overturned by the Supreme Court, which held that the only rational explanation of the obviously risky actions of the deceased was that he was engaged in an attempt to save the life of his young child.
- [8.20] In reaching this conclusion, Finlay J highlighted that paragraph 4(d) only required that the actions of the deceased had been an attempt to save a life believed by him (or her) to have been in danger, and did not require a life to have been

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<sup>12</sup> *Willier v Alberta (Crimes Compensation Board)* (1977) AltaSCAD 6 at para 7.

<sup>13</sup> *Willier v Alberta (Crimes Compensation Board)* (1977) AltaSCAD 6 at para 21.

<sup>14</sup> *Willier v Alberta (Crimes Compensation Board)* (1977) AltaSCAD 6 at para 22.

<sup>15</sup> *The State (Creedon) v The Criminal Injuries Compensation Tribunal* [1988] IR 51.

actually in danger or actually saved.<sup>16</sup> The court in *Creedon* also confirmed that an individual may claim compensation under paragraph 4(d) even where there may not be any crime involved.

### 3. Comparative jurisdictions

#### *England, Scotland and Wales*

[8.21] In England, Scotland and Wales, the Criminal Injuries Compensation Scheme 2012 (the “2012 Scheme”) takes an approach which is similar to the current scheme in Ireland. The 2012 Scheme provides that a person may be eligible for an award if they sustain a criminal injury which is directly attributable to their taking an exceptional and justified risk for the purpose, in a relevant place, of

- (a) apprehending an offender or suspected offender;
- (b) preventing a crime;
- (c) containing or remedying the consequences of a crime; or
- (d) assisting a constable who is acting for one or more of the purposes described in paragraphs (a) to (c).<sup>17</sup>

[8.22] The Commission notes that the threshold for meeting this eligibility criteria is higher than under the current Irish scheme, as it requires that the risk taken by the individual was “exceptional and justified”.<sup>18</sup>

[8.23] The 2012 Scheme is also more restrictive than the current Irish scheme in that it does not allow for claims in respect of injuries sustained in the course of saving a human life in non-criminal contexts.

#### *California*

[8.24] In California, the Victim Compensation Board similarly provides compensation to persons who have sustained injury in preventing crime or assisting law

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<sup>16</sup> *The State (Creedon) v The Criminal Injuries Compensation Tribunal* [1988] IR 51 at page 54 (Finlay CJ).

<sup>17</sup> Paragraph 5(1) of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>18</sup> It should be noted that in the 2012 Scheme, the typical beneficiaries of this paragraph are first responders such as police or paramedics. Paragraph 5(2) provides that such persons will potentially be eligible for an award where they take an exceptional risk that would not normally be expected of them in the course of their work. In Ireland, injuries sustained by members of An Garda Síochána are compensable under the Garda Síochána (Compensation) Act 2022, which brings Garda compensation claims into the Injuries Resolution Board process and renders the use of the scheme by members of An Garda Síochána for such injuries a non-issue.



enforcement.<sup>19</sup> The California Government Code provides for the indemnification of individuals who suffered an injury or death while:

- preventing the commission of a crime against the person or property of another;
- apprehending a criminal; or,
- materially assisting a peace officer in prevention of a crime or apprehension of a criminal.<sup>20</sup>

[8.25] Similar to the approach in this jurisdiction, the Californian scheme also covers claims made by individuals who were injured while saving a life even where no crime was committed. The State may indemnify individuals for:

- any injury, death or damage sustained in the course of rescuing a person in immediate danger of injury; or,
- death as a result of fire, drowning, or other catastrophe.<sup>21</sup>

#### *Victoria*

[8.26] In the Australian state of Victoria, the Financial Assistance Scheme provides that a person will be considered a primary victim of an act of violence if they are injured or die as a direct result of trying to arrest someone whom they believe on reasonable grounds has committed an act of violence, prevent the commission of an act of violence, or aid or rescue someone whom the person believes on reasonable grounds is a victim of an act of violence.<sup>22</sup> Similar to the approach adopted in *Ince*, the Act provides that it is irrelevant whether or not an act of violence was actually committed, as long as the person believed on reasonable grounds that one had taken place.

## 4. Proposals for reform

[8.27] The Commission recommends including well-meaning intervenors in the statutory scheme. The Commission considers that compensating individuals who come to the aid of others to assist in the prevention of a crime, or the apprehension of a perpetrator, or in saving, or attempting to save, a life is of value to society in terms of both promoting and rewarding positive behaviour. The Commission therefore recommends that provisions on well-meaning intervenors, similar to the current scheme, should be included in the statutory scheme, with some amendments as discussed below.

<sup>19</sup> Sections 13970-13974 of the California Government Code.

<sup>20</sup> Section 13972(a) of the California Government Code.

<sup>21</sup> Section 13972(a) of the California Government Code.

<sup>22</sup> Section 9(2) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

[8.28] The Commission considers that applicants under this provision should have to comply with other relevant eligibility criteria for the scheme, for example time limits and jurisdiction, as laid out in the Chapter on Other Eligibility Requirements. This includes the general requirement to report the incident to An Garda Síochána or Fiosrú, the Office of the Police Ombudsman. The Commission recommends that a well-meaning intervenor should be eligible for the same types of compensation payment as a victim of a crime of violence under the statutory scheme, as outlined in the Chapter on Types of Compensation. Decisions on amounts of payment for well-meaning intervenors should be in line with the other terms of the scheme, as outlined in the Chapter on Determining Fair and Appropriate Compensation.

[8.29] The Commission considers that, drawing on the case law above, it should be made explicitly clear that if harm is caused to a person who took action to prevent a crime of violence where they had a reasonable belief that a crime of violence is being committed, that person should be eligible for compensation under the proposed statutory scheme, even where no such crime was committed. The Commission therefore recommends that the element of “reasonable belief” should be included in the relevant statutory provisions. A requirement to report the facts of the incident to the Gardaí will apply in such cases.

[8.30] The Commission also notes that the current scheme is limited to people who prevent a crime or prevent the escape of an offender “in a public place”. It considers that the scope of the well-meaning intervenor eligibility criteria should be wider than the current scheme in order to include the prevention of crimes or the escape of someone who has committed a crime on private property. The Commission sees a value in compensating a person who has prevented a crime in a domestic setting, in line with the extensive discussion in the Chapter on Defining Eligible Applicants and Crimes of Violence in relation to the national and international imperative to appropriately address domestic, sexual, and gender-based violence in particular.

[8.31] The Commission therefore recommends that:

(1) A person is eligible for compensation if the person—

- (a) suffers harm
- (b) in the course of acting as a well-meaning intervenor, and
- (c) has acted reasonably in the circumstances.

(2) A “well-meaning intervenor” means a person who—

- (a) acts in the reasonable belief that they are coming to the assistance of a member of An Garda Síochána
  - (i) because of an unlawful attack upon the member,

- (ii) because the member was attempting to prevent the commission of an offence, or to take a person into lawful custody,
  - (iii) in the course of a riot, or a disturbance or threatened disturbance of the peace,
  - (iv) in the course of preventing the escape of a person in lawful custody,
  - (v) because the member was saving, or attempting to save, an individual whose life was in danger;
- (b) acts in the reasonable belief that they are attempting to prevent an offence, which was, or which the person reasonably believed to be, in the course of being committed or about to be committed; or
- (c) acts in the reasonable belief that they are preventing the escape of a person who has committed a crime, or the escape of a person in lawful custody.
- (3) A person is eligible for compensation as a well-meaning intervenor if the person suffers harm while acting in the reasonable belief that they are saving, or attempting to save, an individual whose life was in danger.

[8.32] The Commission recommends that where a person is eligible for compensation as a victim of crime, that person should not be eligible for compensation as a well-meaning intervenor for the same incident. The Commission also recommends that where a person is eligible for compensation as part of their employer insurance scheme, that person should not be eligible for compensation as a well-meaning intervenor for the same incident.

**R. 8.1 The Commission recommends** that a person should be eligible for compensation if the person:

- (1) suffers harm,
- (2) in the course of acting as a well-meaning intervenor, and
- (3) has acted reasonably in the circumstances.

**R. 8.2 The Commission recommends** that for the purposes of the proposed statute, a “well-meaning intervenor” should mean a person who:

- (1) acts in the reasonable belief that they are coming to the assistance of a member of An Garda Síochána:
  - (a) because of an unlawful attack upon the member,

- (b) because the member was attempting to prevent the commission of an offence or to take a person into lawful custody,
  - (c) in the course of a riot, or a disturbance or threatened disturbance of the peace,
  - (d) in the course of preventing the escape of a person in lawful custody, or
  - (e) because the member was saving, or attempting to save, an individual whose life was in danger;
- (2) acts in the reasonable belief that they are attempting to prevent an offence, which was, or which the person reasonably believed to be, in the course of being committed or about to be committed; or
  - (3) acts in the reasonable belief that they are preventing the escape of a person who has committed a crime, or the escape of a person in lawful custody.

- R. 8.3    The Commission recommends** that a person should be eligible for compensation as a well-meaning intervenor if the person suffers harm while acting in the reasonable belief that they are saving, or attempting to save, an individual whose life was in danger.
- R. 8.4    The Commission recommends** that a well-meaning intervenor should be eligible for the same types of compensation payment as a victim of a crime of violence under the statutory scheme.
- R. 8.5    The Commission recommends** that well-meaning intervenors should have to comply with all other relevant eligibility criteria for the statutory scheme, including reporting the incident to An Garda Síochána.
- R. 8.6    The Commission recommends** that where a person is eligible for compensation as a victim of crime, that person should not be eligible for compensation as a well-meaning intervenor for the same incident.
- R. 8.7    The Commission recommends** that where a person is eligible for compensation as part of their employer insurance scheme, that person should not be eligible for compensation as a well-meaning intervenor for the same incident.

# CHAPTER 9 EXCLUSIONARY CRITERIA

## Table of Contents

|    |                                                                                |     |
|----|--------------------------------------------------------------------------------|-----|
| 1. | <i>Introduction</i> .....                                                      | 283 |
| 2. | <i>The rationale for, and background to, exclusions</i> .....                  | 283 |
|    | (a) The need for reform .....                                                  | 283 |
|    | (b) International instruments: Relevant developments .....                     | 284 |
|    | (c) Civil law principles.....                                                  | 286 |
|    | (d) The concept of the 'deserving' victim and a rights-based approach .....    | 286 |
| 3. | <i>Current scheme: Conduct, character, or "way of life"</i> .....              | 289 |
|    | (a) Introduction.....                                                          | 289 |
|    | (b) Current scheme and law.....                                                | 289 |
|    | (c) Comparative jurisdictions .....                                            | 293 |
|    | (i) United Kingdom .....                                                       | 293 |
|    | (ii) EU Member States.....                                                     | 296 |
|    | (iii) Australia .....                                                          | 297 |
|    | (d) Submissions .....                                                          | 300 |
|    | (e) Proposals for reform.....                                                  | 302 |
|    | (i) No broad discretion.....                                                   | 302 |
|    | (ii) Unconnected criminal convictions.....                                     | 304 |
| 4. | <i>Contributory misconduct</i> .....                                           | 305 |
|    | (a) Introduction .....                                                         | 305 |
|    | (b) Current scheme and law.....                                                | 306 |
|    | (c) Comparative jurisdictions .....                                            | 307 |
|    | (i) EU Member States.....                                                      | 307 |
|    | (ii) United Kingdom .....                                                      | 308 |
|    | (iii) Australia .....                                                          | 310 |
|    | (d) Submissions .....                                                          | 312 |
|    | (e) Proposals for reform.....                                                  | 313 |
|    | (i) The context of sexual offences and domestic violence .....                 | 315 |
|    | (ii) Intoxication .....                                                        | 316 |
|    | (iii) Contributory misconduct (including unspent criminal convictions)         |     |
|    |                                                                                | 317 |
|    | (iv) Participating in, assisting or encouraging the crime of violence .....    | 317 |
|    | (v) Failure to mitigate the consequences .....                                 | 319 |
|    | (vi) Failure to avoid a violent situation.....                                 | 320 |
|    | (vii) Conclusion.....                                                          | 320 |
| 5. | <i>Exceptional public interest discretion to reduce or refuse compensation</i> |     |
|    | .....                                                                          | 322 |
|    | (a) Introduction.....                                                          | 322 |

|       |                                                       |     |
|-------|-------------------------------------------------------|-----|
| (b)   | Current scheme and law.....                           | 322 |
| (c)   | Comparative jurisdictions .....                       | 324 |
| (i)   | <i>EU Member States</i> .....                         | 324 |
| (ii)  | <i>United Kingdom</i> .....                           | 325 |
| (iii) | <i>Australia</i> .....                                | 325 |
| (d)   | Submissions .....                                     | 327 |
| (e)   | Proposals for reform.....                             | 327 |
| 6.    | <i>Fraud, collusion and perpetrator benefit</i> ..... | 329 |
| (a)   | Fraudulent applications.....                          | 329 |
| (b)   | Collusion .....                                       | 331 |
| (c)   | Benefit to the perpetrator.....                       | 332 |

## 1. Introduction

- [9.1] This Chapter considers the circumstances in which the proposed statutory body should reduce or refuse payments of compensation. Exclusionary criteria are a common feature of compensation schemes. Exclusions aim to maintain the integrity of schemes and to balance available financial resources in favour of applicants who have not engaged in some form of relevant misconduct. Such misconduct may involve actions that contributed to the crime of violence, or may involve illegal conduct such as fraud. However, in the context of the right to fair and appropriate compensation, it is important that any exclusionary criteria are not overly broad, arbitrary, or discriminatory. There should be some compelling underlying public interest or public policy objective to justify excluding any victim from applying for, or receiving, compensation under the statutory scheme.
- [9.2] In this Chapter, the Commission first outlines the rationale for exclusionary criteria. It then examines the provisions in the Criminal Injuries Compensation Scheme ("the current scheme") and how they have been applied by the Criminal Injuries Compensation Tribunal ("the Tribunal"). It analyses these provisions in light of general rule of law principles and applicable European Union ("EU") and Irish law. It examines different types of exclusionary criteria in comparative jurisdictions. It concludes that the exclusions in the current scheme are too broad, and makes recommendations for more precise exclusionary criteria for the proposed statutory scheme.
- [9.3] Section 4 of this Chapter discusses the Commission's proposals for exclusions that are underpinned by the requirement that the victim's conduct or behaviour must have directly or indirectly contributed to the harm suffered by them. In section 5, the Commission considers whether the statutory body should have an exceptional discretion to reduce or refuse compensation for conduct not related to the crime of violence, where such conduct might meet a different threshold of concern. In section 6, the Commission discusses exclusions based on wrongdoing in relation to an application for compensation (such as collusion or fraud).

## 2. The rationale for, and background to, exclusions

### (a) The need for reform

- [9.4] In the current scheme, there are three main provisions that permit an award of compensation to be reduced or refused. One of these provisions, the obligation to provide reasonable assistance,<sup>1</sup> is discussed in the Chapter on Other Eligibility

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<sup>1</sup> Paragraph 10 of the Criminal Injuries Compensation Scheme provides that: "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."

Requirements. This Chapter focuses on the remaining two exclusionary provisions in paragraphs 12 and 13 of the current scheme, which set out that a victim may be excluded from the scheme where:

- the victim was responsible for the offence because of provocation or other contributory conduct,<sup>2</sup> or
- the victim's conduct, character, or way of life make it inappropriate to grant them compensation.<sup>3</sup>

- [9.5] Many submissions made to the Commission during the consultation process expressed concerns that these exclusionary criteria are too broad, do not comply with a rights-based approach, and may exclude genuine victims from accessing compensation.
- [9.6] The Commission considers that some limitations on eligibility should be built into the statutory scheme. However, in light of the recent developments in the law on victims' rights, including the recognition of a right to fair and appropriate compensation,<sup>4</sup> the Commission considers that it is necessary to examine the exclusionary criteria in the current scheme through a victim-centred lens and make recommendations for the statutory body that conform to a rights-based approach.

#### **(b) International instruments: Relevant developments**

- [9.7] The EU Directive relating to compensation to crime victims ("the Compensation Directive") enshrines the right to fair and appropriate compensation into EU law, and sets out minimum standards for the protection of victims of crime.<sup>5</sup> The Compensation Directive is silent on the issue of exclusions; it does not provide for any exclusionary criteria, nor does it prohibit Member States from including them in their state compensation schemes.
- [9.8] In the initial proposal for the Compensation Directive, the EU Commission suggested that the Directive should contain requirements in respect of eligibility and exclusion as minimum standards, as well as rules on access to compensation in cross-border cases.<sup>6</sup> Article 7 of the proposed draft Directive allowed for the reduction or refusal of compensation where the behaviour of the applicant

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<sup>2</sup> Paragraph 12 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>3</sup> Paragraph 13 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>4</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 55.

<sup>5</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims [2004] OJ L 261/15 ("Compensation Directive").

<sup>6</sup> Council of the European Union, *Note from the Presidency of the Council on the Proposal for a Council Directive on Compensation to Crime Victims dated the 26 March 2004* 7752/04 JUSTCIV 49 at para 8.



directly related to the event that caused injury or death.<sup>7</sup> This would have given Member States the right to exclude victims in cases of contributory negligence.<sup>8</sup> However, these proposals were not adopted because certain Member States were concerned about the potential “budgetary consequences” of outlining specific eligibility criteria and called for a reconsideration of the draft Directive.<sup>9</sup> While there was broad agreement to have a compensation scheme in place and to adopt rules on access to compensation in cross-border cases, there was ultimately insufficient support among Member States to address issues around the level of compensation and conditions of eligibility.<sup>10</sup> As a result, there is no mention of exclusions in the Compensation Directive, and significant discretion is left to each Member State.

- [9.9] However, the general approach adopted in other international instruments in the 1970s and 1980s was to include exclusions based on certain kinds of misconduct. The 1977 Committee of Ministers of the Council of Europe Resolution, for example, provided that compensation may be reduced or refused on account of the victim’s conduct, their relationship with the offender, and their “milieu”; in other words, the social environment in which the individual places themselves.<sup>11</sup>
- [9.10] The 1983 Council of Europe Convention on the Compensation of Victims of Violent Crimes (“the 1983 Convention”) essentially allows compensation to be withheld “where the victim is at fault”.<sup>12</sup> Article 8 states that compensation may be reduced or refused on three grounds, including the applicant’s conduct,<sup>13</sup>

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<sup>7</sup> Proposal for a Council Directive on Compensation to Crime Victims COM(2002) 562 final – 2002/0247(CNS) [2003] OJ C 45E/69 at page 85.

<sup>8</sup> Proposal for a Council Directive on Compensation to Crime Victims COM(2002) 562 final – 2002/0247(CNS) [2003] OJ C 45E/69 at page 78.

<sup>9</sup> Council of the European Union, *Note from the Presidency of the Council to the Council on the Proposal for a Council Directive on Compensation to Crime Victims dated the 26 March 2004* 7752/04 JUSTCIV 49 at para 4.

<sup>10</sup> Council of the European Union, *Note from the Presidency of the Council to the Council on the Proposal for a Council Directive on Compensation to Crime Victims dated the 26 March 2004* 7752/04 JUSTCIV 49 at para 10: “the Commission’s proposal does not provide a basis for unanimous agreement, as required under Article 308 of the EC Treaty.”

<sup>11</sup> Article 11 of the Council of Europe Resolution (77) 27 on the Compensation of Victims of Crime (Adopted by the Committee of Ministers on 28 September 1977, at the 275th meeting of the Ministers’ Deputies).

<sup>12</sup> Council of Europe, *Explanatory Report to the European Convention on the Compensation of Victims of Violent Crimes* (1983) at para 33.

<sup>13</sup> Article 8(1) of the Council of Europe, European Convention on the Compensation of Victims of Violent Crimes 1983 (ETS No 116).

involvement in organised crime,<sup>14</sup> or where the compensation would be contrary to a sense of justice or public policy.<sup>15</sup>

- [9.11] Although Ireland has not ratified the 1983 Convention, the Commission notes that the Convention had a significant influence on later instruments, including the 2004 Compensation Directive.
- [9.12] The United Nations Office for Drug Control and Crime Prevention released a Handbook on Justice for Victims to assist in the interpretation and implementation of the recommendations in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985.<sup>16</sup> In its review of state compensation, it notes that exclusionary requirements are typically characterised by a requirement that “victims must be innocent of criminal activity and contributory misconduct”.<sup>17</sup>
- [9.13] The Commission notes that, although the Compensation Directive itself is silent on the issue of exclusions, it does not prohibit Member States from including them, and the other international instruments outlined above indicate that exclusions can be considered a standard aspect of victim compensation schemes. Other EU Member States and common law jurisdictions generally include exclusionary criteria in their compensation schemes. The rules on exclusions in such comparative jurisdictions are considered in detail throughout this Chapter.

### **(c) Civil law principles**

- [9.14] Including limitations in the proposed statutory scheme on the basis of some contributory conduct of the applicant would be in line with general civil law principles. Under the tort law concept of contributory negligence, where the plaintiff is partly at fault, damages will be reduced in proportion to their fault.<sup>18</sup>

### **(d) The concept of the ‘deserving’ victim and a rights-based approach**

- [9.15] The Commission is conscious that the exclusion of certain victims from state-funded compensation has been considered to reflect a preference for the “ideal”,

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<sup>14</sup> Article 8(2) of the Council of Europe, European Convention on the Compensation of Victims of Violent Crimes 1983 (ETS No 116).

<sup>15</sup> Article 8(3) of the Council of Europe, European Convention on the Compensation of Victims of Violent Crimes 1983 (ETS No 116).

<sup>16</sup> UN Office for Drug Control and Crime Prevention and UN Centre for International Crime Prevention, *Handbook on Justice for Victims: on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1999).

<sup>17</sup> UN Office for Drug Control and Crime Prevention and UN Centre for International Crime Prevention, *Handbook on Justice for Victims: on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1999) at page 45.

<sup>18</sup> Section 34 of the Civil Liability Act 1961.

“deserving”, “worthy”, “innocent” or “blameless” victim – in other words, those victims deemed worthy of state compensation. The language of victimology often contains distinctions influenced by hidden social and class notions of who is a “deserving” victim.<sup>19</sup> When victims are not faultless, “[t]hey become much more problematic, both as an object of public empathy, but also in terms of their entitlement to formal compensation on the part of the state”.<sup>20</sup>

- [9.16] The concept of the ‘deserving victim’ has influenced who is deemed eligible for state-funded compensation in some jurisdictions. In the state compensation scheme in England, Scotland and Wales, it has become an “article of faith” that the scheme exists to compensate those who are, and have been, law-abiding citizens.<sup>21</sup> The UK government has justified this position by stating that:

“The Scheme is a taxpayer-funded expression of public sympathy and it is reasonable that there should be strict criteria around who is deemed ‘blameless’ for the purpose of determining who should receive a share of its limited funds. We consider that, in principle, awards should only be made to those who have themselves obeyed the law and not cost society money through their offending behaviour.”<sup>22</sup>

- [9.17] However, the drawing of distinctions between ideal and non-ideal victims can be highly contentious, particularly where it may lead to victims being unfairly or arbitrarily refused compensation. In her report to the European Commission President on Strengthening Victims’ Rights, Special Advisor Milquet has commented that neither overly restrictive criteria nor discriminatory exclusions should be included in state compensation schemes.<sup>23</sup> Any exclusions contained in the proposed statutory scheme must be consistent with a rights-based approach. Now that the Court of Justice of the European Union (“CJEU”) has confirmed that state compensation is a right for victims of intentional violent crime,<sup>24</sup> the well-established frameworks for justifying interferences with rights are relevant. Different rights instruments provide slightly different frameworks for how these

<sup>19</sup> McCullagh, “Respectable Victims and Safe Solutions: The Hidden Politics of Victimology” (2017) 68 Northern Ireland Legal Quarterly 539 at page 542.

<sup>20</sup> McEvoy and McConnachie, “Victimhood and Transitional Justice” in Spencer and Walklate (eds), *Reconceptualising Critical Victimology* (Lexington Books 2016) at page 115.

<sup>21</sup> Miers, “Offender and State Compensation for Victims of Crime: Two Decades of Development and Change” (2014) 20(1) International Review of Victimology 145 at page 158.

<sup>22</sup> Ministry of Justice, *Getting it Right for Victims and Witnesses* (Cm 8288, 2012) at para 207.

<sup>23</sup> Milquet, *Strengthening Victims’ Rights: From Compensation to Reparation for a New EU Victims’ Rights Strategy 2020-2025* (European Commission 2019) at page 51.

<sup>24</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566.

interferences can be made in a permissible manner. In general, however, all limitations must be necessary and proportionate to achieve a legitimate aim.

[9.18] In *Heaney v Ireland*,<sup>25</sup> the High Court set out that there must be a sufficiently important objective to justify any restrictions on constitutional rights. The objective must relate to concerns “pressing and substantial in a free and democratic society”, and:

“The means chosen must pass a proportionality test. They must:

- (a) be rationally connected to the objective and not be arbitrary, unfair or based on irrational considerations,
- (b) impair the right as little as possible, and
- (c) be such that their effects on rights are proportional to the objective.”<sup>26</sup>

[9.19] Similarly, under the case law of the European Court of Human Rights (“ECtHR”), any restrictions on rights must be proportionate to the legitimate aim pursued,<sup>27</sup> necessary in a democratic society, and must be the least restrictive means of achieving the relevant aim in the public interest.<sup>28</sup>

[9.20] The Commission considers that the inclusion of certain exclusionary criteria in the statutory scheme would pursue a legitimate aim. They would ensure the proper use of state resources and would ensure that the proposed statutory body can respond to circumstances where an applicant has engaged in contributory misconduct, including relevant criminal behaviour, or actions contrary to the public interest. However, in order to be proportionate, any exclusions must restrict the right to state compensation as minimally as possible to achieve those aims.

[9.21] The Commission examines the exclusions contained in the current scheme in light of these developments and ultimately recommends that more precise exclusionary criteria are required for the statutory scheme. This would ensure minimal interference with the right to compensation and only when such interference would be considered by the statutory body to be appropriate. Exclusionary criteria, like eligibility requirements, should be capable of being applied in a manner that is clear, predictable and consistent.

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<sup>25</sup> *Heaney v Ireland* [1944] 3 IR 593.

<sup>26</sup> *Heaney v Ireland* [1944] 3 IR 593 at page 607 (Costello J).

<sup>27</sup> *Handyside v UK* App no 5493/72 (ECtHR 7 December 1976) at para 49.

<sup>28</sup> *Mouvement Raelien Suisse v Switzerland* App no 16354/06 (ECtHR 13 July 2012) at para 75.

### 3. Current scheme: Conduct, character, or “way of life”

#### (a) Introduction

- [9.22] The most expansive and least clearly defined exclusion in the current scheme is arguably the exclusion based on the victim’s conduct, character, and “way of life” set out in paragraph 13. This exclusion is a public policy measure which requires the Tribunal to assess the appropriateness of making an award having regard to either the applicant’s conduct, their character, or their “way of life”. It appears to be underpinned by the idea that state compensation should only be provided to blameless victims of crime. It gives the Tribunal a broad discretion to refuse compensation because of factors which may not have any causative or contributory link with the crime of violence at issue or the harm suffered by the victim.
- [9.23] This section examines how the Tribunal has interpreted this provision in practice, and what elements of a person’s conduct, character, or way of life have been considered sufficiently objectionable to warrant blocking an applicant from compensation. It discusses how the exclusion has mainly been applied where victims have a past record of criminal behaviour or involvement in gangland activity. It considers the approach to “character” exclusions and criminality adopted in other jurisdictions, and sets out consultee views about this exclusion.
- [9.24] The Commission concludes that the conduct, character and “way of life” exclusion is too broad, and that past criminal convictions should only be taken into account where there is a link between the convictions and the crime of violence that is the subject of the application.

#### (b) Current scheme and law

- [9.25] Paragraph 13 of the current scheme provides that:

“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.”<sup>29</sup>

- [9.26] The precise scope of this exclusion, and what kind of conduct, character, or “way of life” is deemed such as to make it inappropriate to grant compensation, is not clear from the wording of the provision. Tribunal decisions tend to discuss paragraph 13 interchangeably with paragraph 12, which provides that victims may be excluded where they were “responsible, either because of provocation or

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<sup>29</sup> Paragraph 13 of the Criminal Injuries Compensation Scheme (31 January 2025).

otherwise, for the offence". In *Cunningham v Criminal Injuries Compensation Tribunal*, Gearty J suggested that paragraph 12 seems to be "directed towards the victim who makes a more direct contribution to the circumstances in which he is injured, such as would be analogous with contributory negligence cases in civil liability claims".<sup>30</sup> It therefore seems that paragraph 13 permits the Tribunal to take a broader range of circumstances into account. It grants the Tribunal a discretion to refuse compensation because of factors which may not have any causative or contributory link with the crime of violence at issue or the harm suffered by the victim.

- [9.27] It appears from a survey of Tribunal decisions made under this provision that prior criminal convictions are a key factor taken into account by the Tribunal when exercising this discretion. The Tribunal generally excludes victims from the compensation scheme where they have multiple criminal convictions, even where those offences are not causally linked with the crime of violence at issue.
- [9.28] It appears to the Commission that the application of this exclusion has been inconsistent. It is unclear what type of convictions disqualify an applicant from receiving compensation or how reductions are determined under this heading. For example, in one case the Tribunal made a reduction of €5,000 to a payment of €17,628.34 to pay for funeral expenses of a victim who had a substantial criminal record, including seven charges of unauthorised taking of a vehicle without consent, several charges relating to drink driving, dangerous driving, assault causing serious harm, and a number of other assault charges.<sup>31</sup>
- [9.29] This can be contrasted with a case where the mother of a deceased victim made an application on her own behalf and on behalf of the victim's dependants. Although the deceased victim himself did not have any prior convictions, the Tribunal still refused to make any award – to either the mother or the victim's dependants – on the basis that the mother had a small number of convictions for road traffic matters.<sup>32</sup> In another case, where an applicant had one conviction under the Road Traffic Acts, the Tribunal allowed the claim for compensation.<sup>33</sup>

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<sup>30</sup> *Cunningham v Criminal Injuries Compensation Tribunal* [2024] IEHC 143 at para 5.6 (Gearty J).

<sup>31</sup> Criminal Injuries Compensation Tribunal, Case Reference F/53965 (19 April 2022) <<https://www.gov.ie/en/publication/5fa5e-f53965-19-april-2022/>> accessed 23 March 2026.

<sup>32</sup> Criminal Injuries Compensation Tribunal, Case Reference F/51407 (23 August 2022) <<https://www.gov.ie/en/publication/a3afd-f51407-23-august-2022/>> accessed 23 March 2026.

<sup>33</sup> Criminal Injuries Compensation Tribunal, Case Reference F/53220 (11 April 2022) <<https://www.gov.ie/en/publication/8e4c4-f53220-11-april-2022/>> accessed 23 March 2026.

- [9.30] In many cases where an applicant had a history of significant criminal activity, the Tribunal has refused to grant compensation.<sup>34</sup> The Tribunal has also generally refused claims where the applicant was involved in gangland activity.<sup>35</sup> In a number of cases, the Tribunal decided not to apply the exclusion even though the victims had extensive criminal records on the basis that their convictions were not violent by nature.<sup>36</sup> However, in one case, the Tribunal refused to grant compensation on the basis of past convictions even though the crimes in question were not of a violent nature.<sup>37</sup> The Commission considers that it is likely that the broad formulation of paragraph 13 has contributed to the significant inconsistency in the Tribunal's application of this exclusion.
- [9.31] This exclusionary provision has been considered by the Irish courts on a number of occasions. In the Court of Appeal case of *Kelly and Doyle v Criminal Injuries Tribunal*, the joint appellants challenged the conduct, character, and way of life exclusion as being contrary to EU law and the Compensation Directive. They argued that the provision was vague, imprecise, and lacked the certainty required by the obligation to provide effective protection to victims of crime.<sup>38</sup> They also claimed that excluding victims of crime for their "way of life" was discriminatory and prohibited under Article 21 of the EU Charter of Fundamental Rights.<sup>39</sup>
- [9.32] The Court of Appeal considered the exclusion and held that it was "inconceivable that the [Compensation] Directive does not give discretion to Member States to provide a general clause in their schemes of compensation giving the decision-maker a discretion to reduce or refuse an award on the basis of the matters referred to in paragraph [13]".<sup>40</sup> However, Ní Raifeartaigh J acknowledged that the principles of proportionality, non-discrimination and consistency were

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<sup>34</sup> For example, see Criminal Injuries Compensation Tribunal, Case References F/52730 (18 September 2023); 51030F (12 July 2023); 52774 (12 August 2022); F-51075 (23 January 2023); 50850 (31 May 2022); F/53579 (28 April 2022); 53389 (28 December 2020); 53427 (20 December 2020); F/52553 (13 May 2020); F/53161 (16 July 2015); and F/51980 (18 November 2014).

<sup>35</sup> For example, see Criminal Injuries Compensation Tribunal, Case References F/53258 (27 October 2022); 52473 (21 November 2019); F/51999 (3 December 2018); and F/50665 (11 March 2011).

<sup>36</sup> See Criminal Injuries Compensation Tribunal, Case References F54535 (16 December 2023), 52284 (31 March 2023) and 51954 (17 April 2015).

<sup>37</sup> Criminal Injuries Compensation Tribunal, Decision F/51349 (26 August 2022) <<https://www.gov.ie/en/publication/b8ad8-f51349-26-august-2022/>> accessed 23 March 2026.

<sup>38</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 134 (Ní Raifeartaigh J).

<sup>39</sup> Article 21(1) of the Charter of Fundamental Rights of the European Union provides: "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."

<sup>40</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 140 (Ní Raifeartaigh J).

relevant when determining when it is suitable to refuse or reduce an award on the basis on prior criminality.<sup>41</sup> The Commission notes that the Court of Appeal considered it was not discriminatory to deny an award to a claimant on the basis of the victim's conduct, character and way of life, so long as the decision to do so was not disproportionate, arbitrary, or inconsistent.<sup>42</sup> As the appellants' case was taken to the Court of Appeal prior to a Tribunal decision, the Court held that it could not decide on the substance of the claim.<sup>43</sup>

- [9.33] More recently, the High Court has provided guidance as to when it would be proportionate to deny an award on the basis of a victim's conduct, character or way of life. In *Cunningham v Criminal Injuries Compensation Tribunal*,<sup>44</sup> the applicants were the children of a man who was shot dead in what appeared to be a drug-related shooting. They were challenging the Tribunal's decision to exclude them from the compensation scheme due to their father's criminal conduct. The victim had numerous criminal convictions for drug dealing, crimes of violence, burglaries, and possession of weapons.
- [9.34] The High Court acknowledged that "it is, obviously, sound public policy to discourage criminality" and to "minimise the benefits of living a life of crime."<sup>45</sup> The Court explained that the same policy reasons lie behind common law rules in the law of tort, complicity, and certain defences to criminal offences. In particular, it noted that a person who joins a criminal gang cannot later rely upon the defence of duress in seeking to justify his conduct during a criminal enterprise. However, throughout the judgment, Gearty J stressed that it would be wrong to take a blanket approach or find that a person who had any previous convictions would not receive compensation. Gearty J stated that:

"Insofar as every decision must be proportionate, a central tenet of EU law, paragraph 13 does not mean that if a person with 11 Road Traffic Act convictions was shot to death in entirely unrelated circumstances his family could not recover compensation. The Tribunal must consider all the relevant facts and apply the provisions fairly."<sup>46</sup>

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<sup>41</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 140 (Ní Raifeartaigh J).

<sup>42</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 140 (Ní Raifeartaigh J).

<sup>43</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 140 (Ní Raifeartaigh J).

<sup>44</sup> *Cunningham v Criminal Injuries Compensation Tribunal* [2024] IEHC 143.

<sup>45</sup> *Cunningham v Criminal Injuries Compensation Tribunal* [2024] IEHC 143 at para 6.7 (Gearty J).

<sup>46</sup> *Cunningham v Criminal Injuries Compensation Tribunal* [2024] IEHC 143 at para 6.3 (Gearty J).



- [9.35] Having regard to the fact that the scheme is aligned with the Civil Liability Acts,<sup>47</sup> the Court went on to highlight section 57(1) of the Civil Liability Act 1961, which provides that “it shall not be a defence in an action of tort merely to show that the plaintiff is in breach of the civil or criminal law.” The Court held that it would similarly “be disproportionate if the Tribunal was to refuse a claim for compensation on the sole basis that the victim had breached the criminal law”.<sup>48</sup>
- [9.36] However, that was not the sole basis for the refusal in the case at hand. The Tribunal decision referred to the circumstances of the victim’s death and accepted the opinion of An Garda Síochána that the shooting was drug-related. The Court held that it was not disproportionate or discriminatory to refuse compensation where the victim died as a result of his criminality.
- [9.37] It appears that the causal connection between the victim’s criminality and the crime of violence was a major factor in this decision. It is clear from *Cunningham* that the proposed statutory body should not refuse claims for compensation solely because the victim has prior criminal convictions, particularly where those convictions are not related in any way to the crime of violence at issue.

### (c) Comparative jurisdictions

#### (i) *United Kingdom*

##### *England, Scotland and Wales*

- [9.38] In England, Scotland and Wales, the Criminal Injuries Compensation Scheme 2012 (“the 2012 Scheme”) considers the character and previous criminal convictions of the victim separately. Paragraph 26 notes that Annex D of the Scheme sets out the circumstances in which an award will be withheld or reduced because the applicant to whom an award would otherwise be made has unspent convictions:

“An award will not be made to an applicant who on the date of their application has a conviction for an offence which resulted in:

- (a) a sentence excluded from rehabilitation;<sup>49</sup>
- (b) a custodial sentence;

<sup>47</sup> Paragraph 6 of the Criminal Injuries Compensation Scheme provides: “[T]he compensation to be awarded by the Tribunal will be on the basis of damages awarded under the Civil Liability Acts”.

<sup>48</sup> *Cunningham v Criminal Injuries Compensation Tribunal* [2024] IEHC 143 at para 6.14 (Gearty J).

<sup>49</sup> This means that previous convictions that were unspent at the time of the sentence would never be spent. See: Government of the United Kingdom, “Guidance: Rehabilitation Periods” (Disclosure and Barring Service, 28 October 2023) <<https://www.gov.uk/guidance/rehabilitation-periods>> accessed 23 March 2026.

- (c) a sentence of service detention;<sup>50</sup>
- (d) removal from Her Majesty's service;
- (e) a community order;
- (f) a youth rehabilitation order; or
- (g) a sentence equivalent to a sentence under sub-paragraphs (a) to (f) imposed under the law of Northern Ireland or a member state of the European Union, or such a sentence properly imposed in a country outside the European Union.”<sup>51</sup>

[9.39] This establishes a scheme which has been criticised by Miers as being “both radical and highly restrictive”.<sup>52</sup> Broadly speaking, the scheme provides an absolute bar to compensation where the applicant has an unspent conviction from the UK or any EU State which has resulted in the imposition of either a custodial sentence or a community order.

[9.40] The exclusionary rule was challenged in the case of *A and B v Criminal Injuries Compensation Authority*.<sup>53</sup> The UK Supreme Court in that case considered whether the exclusion of victims of human trafficking from compensation as they had prior convictions for burglary and theft, respectively, was unjustifiably discriminatory in breach of Article 14 taken with Article 4 of the European Convention on Human Rights. The UK Supreme Court held that the appellants' exclusion for a criminal conviction was not an unlawful discrimination. The differential treatment was justified in terms of pursuing a legitimate objective of “limiting eligibility to compensation to those deserving of it”.<sup>54</sup> The Court held that it was proportionate as it was no more intrusive than it needed to be, striking a fair balance between competing interests.

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<sup>50</sup> This applies to members of the Armed Forces who may be sentenced to a period of service detention after being found guilty offences under the Armed Forces Act 2006 (United Kingdom). During this period, they will be detained in service custody (but not in a prison) for the duration of their sentence.. They are not held in prison but at the Military Corrective Training Centre (MCTC) at Colchester in Essex or in licensed unit facilities. See further Part 12 of the Armed Forces Act 2006 (United Kingdom)  
<<https://www.legislation.gov.uk/ukpga/2006/52/notes/division/5/1/12/4>> accessed 23 March 2026.

<sup>51</sup> Paragraph 26, and Annex D paragraph 3 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>52</sup> Miers, *Criminal Injuries Compensation: State and Offender Compensation for Violent Crime* (Oxford University Press 2018) at para 4.48.

<sup>53</sup> *A and B v Criminal Injuries Compensation Authority and another* [2021] UKSC 27.

<sup>54</sup> *A and B v Criminal Injuries Compensation Authority and another* [2021] UKSC 27 at para 92.

- [9.41] This decision was referred to in *KM v First-tier Tribunal (Social Entitlement Chamber)*, where the applicant was a victim of child sexual abuse in the 1990s.<sup>55</sup> Her claim for compensation was refused on the basis that she had an unspent conviction for the offence of using threatening and abusive words or behaviour, causing alarm, harm, or distress in 2017. The First-Tier Tribunal dismissed the applicant's appeal against the decision to refuse her application for compensation.
- [9.42] In the Commission's opinion, the judgments in *A and B* and *KM* highlight the hardline nature of this exclusionary rule. Even though there was no causal link between the appellants' prior convictions and the very serious crimes of violence committed against them, the blanket ban meant that their applications were automatically refused.
- [9.43] Paragraph 27 of the 2012 Scheme sets out that an award may also be withheld or reduced because the applicant's character, other than in relation to an unspent conviction, makes it inappropriate to make an award or a full award.<sup>56</sup> This provision confers a wide discretionary power on the Criminal Injuries Compensation Authority.<sup>57</sup>
- [9.44] The word 'character' is unqualified, and the scheme does not specify what particular aspects of the victim's character might be relevant. The Guide to the scheme indicates that:
- "We will consider any evidence available about your character, other than in relation to unspent convictions, which makes it inappropriate for us to make a full or reduced payment. This includes evidence of involvement or association in illegal drugs, crime, tax evasion and benefit fraud."<sup>58</sup>
- [9.45] As the scheme takes into account conduct such as tax evasion, there is clearly no requirement that the aspect of the applicant's character making it inappropriate to grant compensation must be in any way connected with the incident giving rise to the application.
- [9.46] The Commission observes that the CJEU's 2020 decision that EU residents are entitled to fair and appropriate compensation as a right in the case of *Presidenza*

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<sup>55</sup> *KM v First-tier Tribunal (Social Entitlement Chamber) and Criminal Injuries Compensation Authority and Secretary of State for Justice* [2023] UKUT 239 (AAC).

<sup>56</sup> Paragraph 27 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>57</sup> Miers, *Criminal Injuries Compensation* (Oxford University Press 2018) at para 4.48.

<sup>58</sup> Criminal Injuries Compensation Authority, "Criminal injuries compensation: a guide" (updated 1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#character>> accessed 23 March 2026.

*del Consiglio dei Ministri v BV* was made after the UK left the EU.<sup>59</sup> Therefore, the compensation scheme in England, Scotland and Wales (last updated in 2019) does not have to comply with the same rights-based approach which is applicable in Ireland.

#### *Northern Ireland*

- [9.47] In Northern Ireland, an award may be withheld or reduced on account of a victim's character as shown by their unspent criminal convictions. The Northern Ireland Criminal Injuries Compensation Scheme provides that awards may be withheld or reduced where:

"[T]he applicant's character as shown by his or her criminal convictions [excluding spent convictions] or by evidence available to the Secretary of State makes it inappropriate that a full award or any award at all be made."<sup>60</sup>

- [9.48] The impact of unspent criminal convictions must be reflected in the assessment of character:

"In considering the issue of character under paragraph 14(1)(e) above, the Secretary of State must withhold or reduce an award to reflect unspent criminal convictions."<sup>61</sup>

- [9.49] This exclusion is guided by a penalty points system that considers the seriousness of the conviction, and the time elapsed between the conviction and the victim's injury. While this system is non-binding on the decision-maker, it serves as a guideline for exercising their discretion.<sup>62</sup>

#### *(ii) EU Member States*

- [9.50] Member States of the European Union, who like Ireland are bound by the Compensation Directive, adopt varied approaches to the issue of excluding victims who have criminal records from state compensation schemes. The

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<sup>59</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566.

<sup>60</sup> Paragraph 14(1)(e) of the Northern Ireland Criminal Injuries (Amendment 2020) Compensation Scheme 2009.

<sup>61</sup> Paragraph 15(2) of the Northern Ireland Criminal Injuries (Amendment 2020) Compensation Scheme 2009.

<sup>62</sup> Department of Justice, *A Guide to the Northern Ireland Criminal Injuries Compensation Scheme* (2009) at para 8.16 <<https://www.nidirect.gov.uk/publications/guide-criminal-injuries-compensation-scheme-2009>> accessed 23 March 2026 .

- (iii) *Australia*

[9.52] In the Australian Capital Territory, the Victims of Crime (Financial Assistance) Act 2016 provides that financial assistance must not be granted to an applicant

<sup>73</sup> Article 15(1).1 of the Law on Assistance and Financial Compensation to Victims of Crime 2006 (Bulgaria).

where a 'disqualifying circumstance' applies to them.<sup>74</sup> One such disqualifying circumstance arises where the decision-maker<sup>75</sup> reasonably believes that:

- (i) the applicant was involved in a serious crime when the act of violence that is the subject of the application occurred, and
- (ii) the serious crime was the main reason that the act of violence occurred.<sup>76</sup>

[9.53] Section 45(5) defines 'serious crime' as including offences against the person, sexual offences, offences relating to property, serious drug offences, and offences involving dishonesty.<sup>77</sup>

[9.54] There are two significant elements qualifying the scope of this exclusion; it has to be a serious crime, and there must be a causal relationship between that crime and the crime of violence giving rise to the application.

#### *New South Wales*

[9.55] The Victims Rights and Support Act 2013 of New South Wales provides that when the decision-maker is determining whether or not to make an award, they must have regard to a number of factors. These factors are listed in section 44(1) and include "any behaviour (including past criminal activity), attitude, or disposition of the victim that directly or indirectly contributed to the injury or death sustained by the victim".<sup>78</sup> The decision-maker must also have regard to such other matters as they consider relevant.<sup>79</sup> Although this provision is relatively broad, it is qualified by the requirement that the behaviour, attitude or disposition must have contributed to the victim's injury.

#### *Victoria*

[9.56] In Victoria, the recently enacted Victims of Crime (Financial Assistance Scheme) Act 2022 provides that in deciding whether to pay assistance or refuse an application, and in determining the amount of assistance to be paid, the

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<sup>74</sup> Section 45(4) of the Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory).

<sup>75</sup> 'Commissioner' is defined by reference to the dictionary of the Victims of Crime Act 1994 as "the Victims of Crime Commissioner appointed under the Human Rights Commission Act 2005, section 18D."

<sup>76</sup> Section 45(1)(c) of the Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory).

<sup>77</sup> Section 45(5) of the Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory).

<sup>78</sup> Section 44(1)(a) of the Victims Rights and Supports Act 2013 (New South Wales).

<sup>79</sup> Section 44(1)(g) of the Victims Rights and Supports Act 2013 (New South Wales).

decision-maker must take into account a broad range of factors. They must consider:

“the character, behaviour (including past criminal activity, and the number and nature of any findings of guilt or convictions, that the scheme decision maker considers relevant) or attitude of the applicant at any time, whether before, during or after the commission of the act of violence.”<sup>80</sup>

[9.57] The decision-maker must also take into account any other circumstances they consider relevant.<sup>81</sup> On its face, this provision seems to give decision-makers a broad discretion to exclude applicants from the scheme. However, the Financial Assistance Scheme (“FAS”) Guidelines provide detailed guidance as to when an applicant’s character, behaviour, or attitude may impact the outcome of an application:

- (1) when their character, behaviour, attitude, or criminal history is connected to the violent act that their application is based on, or
- (2) when they have a serious criminal history, and the decision-maker considers this relevant.<sup>82</sup>

[9.58] The Guidelines explain that the FAS will usually decide that there is a connection between the applicant or victim’s character, behaviour, attitude, or criminal history and the violent act when they:

- are involved in the violent act but may not be responsible for it;
- were involved in other connected criminal behaviour when the violent act was committed;
- have been associated with the offender through other or previous criminal activity; or,
- were involved in past criminal events that led to retaliation or retribution against them in the form of the violent act.<sup>83</sup>

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<sup>80</sup> Section 33(a) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>81</sup> Section 33(c) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>82</sup> Victoria State Government, “Financial Assistance Scheme Guidelines” (30 June 2025) at page 94 <<https://www.victimsofcrime.vic.gov.au/financial-assistance-scheme-guidelines>> accessed 23 March 2026.

<sup>83</sup> Victoria State Government, “Financial Assistance Scheme Guidelines” (30 June 2025) at pages 94 – 95 <<https://www.victimsofcrime.vic.gov.au/financial-assistance-scheme-guidelines>> accessed 23 March 2026.

- [9.59] The Guidelines also give specific examples of factors which will not be taken into account by the FAS, including drug and alcohol use which is not connected to the violent act, or involvement in sex work before or at the time of the violent act.<sup>84</sup>
- [9.60] The scheme decision-maker has the discretion to consider the relevance or non-relevance of an applicant's criminal history.<sup>85</sup> When considering this, they will look at the applicant's past criminal history and their circumstances, and the impact their criminal history has had on the community. A victim will generally be considered to have a serious criminal history when they have been sentenced to a term of imprisonment for five years or longer.<sup>86</sup>
- [9.61] The Commission observes that, although the exclusion as set out in the statute appears to be very broad, its application is subject to very detailed guidance provided by the Victoria State Government.<sup>87</sup>

#### **(d) Submissions**

- [9.62] The Commission, in its Consultation Paper, expressed the preliminary view that the 'conduct, character, and way of life' exclusion is overly broad and disproportionate, and sought consultee views on how to reform this limitation on eligibility. It asked consultees the following questions:
- (1) What criteria should justify refusal or reduction of an award of compensation for criminal injuries? For example, should a history of criminality justify refusal or reduction, or only criminality of a particular level or seriousness?
  - (2) Should a similar limitation be retained but restricted to conduct that is causally linked to the injuries inflicted?
  - (3) Should the decision-maker retain discretion to consider an applicant's personal conduct or circumstances in relation to the injuries inflicted but

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<sup>84</sup> Victoria State Government, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 94 <<https://www.victimsofcrime.vic.gov.au/financial-assistance-scheme-guidelines>> accessed 23 March 2026.

<sup>85</sup> Explanatory Memorandum to the Victims of Crime (Financial Assistance) Bill 2022 (Victoria) at page 20.

<sup>86</sup> Victoria State Government, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 95 <<https://www.victimsofcrime.vic.gov.au/financial-assistance-scheme-guidelines>> accessed 23 March 2026.

<sup>87</sup> Victoria State Government, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 95 <<https://www.victimsofcrime.vic.gov.au/financial-assistance-scheme-guidelines>> accessed 23 March 2026.



be required to conduct a proportionality assessment in the exercise of this discretion?<sup>88</sup>

- [9.63] Submissions received in response to the Consultation Paper opposed placing undue emphasis on applicants' criminal records. Submissions argued that the exclusion, as currently drawn, is overbroad and disproportionate, and that the Irish scheme is restrictive when compared to the comparable regimes in other EU Member States. No submissions supported a strict exclusionary rule based on criminal history.
- [9.64] Consultees expressed the view that the Commission should take account of the EU Directive establishing minimum standards on the rights, support and protection of victims of crime ("Victims' Rights Directive")<sup>89</sup> and the Victims of Crime Act 2017,<sup>90</sup> arguing that victims of crime are entitled to the rights set out in the Victims' Rights Directive regardless of their involvement in an unrelated criminal offence. Some pointed out that a blanket exclusion of applicants with past criminal convictions could lead to unfair situations; for example, people who have accumulated convictions for minor offences when they were young could find themselves excluded from compensation if they are later a victim of an unrelated criminal act. Consultees suggested that the dependent children of a victim of a fatal injury who had a criminal record should not be automatically excluded from compensation.
- [9.65] A number of consultees stated that if an exclusion on the basis of criminal convictions is retained, the prior conviction must be linked with the incident causing the injury. Another submission suggested that crimes committed long before the application should not be considered. Some consultees stated that a reformed statutory scheme should explicitly state that spent convictions should never be considered when assessing eligibility.
- [9.66] A number of consultees stated that it would not be appropriate to retain a discretion to consider an applicant's personal conduct or circumstances, subject to a proportionality assessment, in the context of domestic violence or sexual offences. It was suggested that payments to victims of domestic violence or sexual offences should never be reduced or refused on the basis of their conduct, character or way of life.

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<sup>88</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 227, question 5.6(2).

<sup>89</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L 315/57 ("Victims' Rights Directive").

<sup>90</sup> Criminal Justice (Victims of Crime) Act 2017.

**(e) Proposals for reform***(i) No broad discretion*

- [9.67] The Commission considers that the conduct, character, and way of life exclusion permits an overly broad discretion to decision-makers, and it is overly flexible and too unpredictable. It is not clear what factors Tribunal members consider in the interpretation and application of this discretion, and it is not clear what character or “way of life” mean in this context. It is also not clear from the terms of the scheme what impact criminal convictions should have on the Tribunal’s decision to reduce or refuse compensation.
- [9.68] The Commission considers that the discussion by the Victorian Law Reform Commission (“VLRC”), in its report on the Victims of Crime Assistance Act 1996, on the decision-makers’ discretion to have regard to the character, behaviour, and attitude of the applicant “at any time” in that Act,<sup>91</sup> is of particular interest to its examination of the equivalent exclusion in the current Irish scheme. Stakeholder submissions to the VLRC report expressed significant concerns with this broad provision, describing it as imposing a ‘barrier’ to compensation, requiring victims to be the ‘perfect victim’ and deeming some victims as ‘undeserving’.<sup>92</sup> The VLRC noted that the provision offered no guidance as to what might be a relevant consideration, what weight should be given to relevant considerations in deciding whether or not to make an award, and how those considerations impact on decisions about the type or size of an award to make. As a result, decision-makers had considerable scope for determining what is both relevant and problematic.<sup>93</sup>
- [9.69] The VLRC ultimately found that the broad consideration of an applicant’s character, behaviour, and attitude at any time can unfairly prejudice vulnerable, disadvantaged, and diverse victims who may fall short of the notion of the ‘perfect victim’.<sup>94</sup> It stated that the making of moral judgments about deserving and undeserving victims was inconsistent with the objective of assisting victims in their recovery,<sup>95</sup> and recommended that such a broad provision was no longer

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<sup>91</sup> Section 54(a) of the Victims of Crime Assistance Act 1996 (Victoria). This has now been replaced by the Victims of Crime (Financial Assistance Scheme) Act 2022.

<sup>92</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.67.

<sup>93</sup> Seear and Fraser, “The Addict as Victim: Producing the “Problem” of Addiction in Australian Victims of Crime Compensation Laws” (2014) 25 International Journal of Drug Policy 826 at page 830, cited by: Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.104.

<sup>94</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.109.

<sup>95</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.110.

appropriate. The Commission notes that the Victorian legislature ultimately did not adopt the VLRC's recommendations on the character, behaviour, and attitude exclusion. However, it considers that the points made by the VLRC are relevant to the conduct, character, and way of life exclusion in the current Irish scheme.

- [9.70] The Commission acknowledges that, on one hand, the broad formulation of the conduct, character, and way of life exclusion allows decision-makers flexibility to examine complex situations. However, it considers that the exclusion is overly broad, giving the Tribunal a wide discretion to consider any factors that it deems relevant, which can lead to inconsistent and potentially arbitrary decision-making.
- [9.71] This exclusion may also raise issues concerning discrimination. Exclusionary criteria require consideration of the rights to equality and non-discrimination,<sup>96</sup> as they involve drawing distinctions between otherwise eligible applicants. To comply with these rights, it is important to ensure that exclusions under the statutory scheme are not arbitrary, vague, or based on any status that may be rooted in social, political, and cultural norms. The exclusion of applicants on the basis of their "way of life" in particular may potentially give rise to instances of discrimination, if a decision-maker is consciously, or even unconsciously, biased.
- [9.72] Because there is a right to state compensation for victims of crimes of violence, any restriction on accessing compensation must be a necessary and proportionate interference with that right in order to meet a legitimate aim. There must also be some underlying, and sufficiently compelling, public interest or public policy objective to justify any exclusion of or reduction in compensation that would otherwise arise under the statutory scheme. The Commission considers that ensuring public funds are used in a way that benefits society can be considered a legitimate aim or public policy objective, as are the aims of maintaining the financial viability of, and public trust in, the scheme. Some exclusions will be required in the statutory scheme to achieve these aims but any such exclusions must be expressed narrowly and be capable of being applied equitably and consistently.
- [9.73] Taking into account the law, provisions from other jurisdictions, the views expressed by consultees, and, in particular, Ireland's obligation to provide "fair and appropriate" compensation, the Commission does not recommend including a broad discretion in the statutory scheme, as provided by the language in paragraph 13 of the current scheme.

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<sup>96</sup> Article 40.1° of the Constitution of Ireland; Articles 20 and 21 of the Charter of Fundamental Rights of the European Union; Article 14 of the European Convention on Human Rights.

**R. 9.1 The Commission recommends** that the statutory scheme should not contain a broad exclusion based simply on an applicant's conduct, character, or "way of life".

*(ii) Unconnected criminal convictions*

- [9.74] The Commission considered whether it would be appropriate to include a rule excluding applicants who have criminal convictions in the proposed statutory scheme, similar to the rule in place in England, Scotland and Wales. The UK Government has justified this position by stating, "[w]e consider that, in principle, awards should only be made to those who have themselves obeyed the law and not cost society money through their offending behaviour".<sup>97</sup> It has made it clear that the victim compensation scheme exists to compensate those who are and have been law-abiding citizens.<sup>98</sup> However, as outlined above, this restrictive provision has led to harsh outcomes.
- [9.75] The VLRC was of the view that a broad consideration of an applicant's past criminal activity raises issues of unfairness for victims of crime, particularly given the connection between past victimisation and future offending.<sup>99</sup> They stated that denying victims financial assistance based on past criminal activity can potentially further disadvantage marginalised victims who are more likely to have had intersections with the criminal justice system.<sup>100</sup> The VLRC found that a beneficial, victim-centred scheme necessarily places victims' needs at the centre and a victim's past, unrelated criminal behaviour does not negate a victim's current assistance needs.<sup>101</sup> It accordingly recommended that, in order to be taken into account in the making of an award, a victim's criminal behaviour should be either temporally or causally connected in some way to the act of violence the subject of the application.<sup>102</sup>
- [9.76] The Commission finds the reasoning of the VLRC persuasive. It considers that a blanket rule excluding all applications where the victim has prior criminal convictions would be inappropriate for the statutory scheme. It would be unfair

<sup>97</sup> Ministry of Justice, *Getting it Right for Victims and Witnesses* (Cm 8288, 2012) at para 207.

<sup>98</sup> Miers, "Offender and State Compensation for Victims of Crime: Two Decades of Development and Change" (2014) 20(1) *International Review of Victimology* 145 at page 158.

<sup>99</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.121.

<sup>100</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.127.

<sup>101</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.126.

<sup>102</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.122.

to exclude victims who, for example, have a small number of minor convictions, or whose convictions are historical.

- [9.77] The Commission notes that the High Court in *Cunningham v Criminal Injuries Compensation Tribunal* held that it would be disproportionate to refuse a claim for compensation on the sole basis that the victim had breached the criminal law.<sup>103</sup> However, in that case, the Court upheld the exclusion because the victim's death was related to his criminal activity. The Commission is of the view that a victim's criminal record should only be taken into account if the criminal behaviour giving rise to their conviction is connected to the crime of violence which is the subject of the application.
- [9.78] The Commission therefore recommends that any prior criminal record unconnected to the incident giving rise to the harm should not preclude an applicant from obtaining compensation under the statutory scheme if they are otherwise eligible.
- [9.79] It recommends that the statutory body should only reduce or refuse a payment on the basis of a prior criminal record if it is satisfied that the past criminal behaviour of the victim directly or indirectly contributed to the harm they suffered. Criminal behaviour may directly contribute to the harm where, for example, the applicant was involved in other connected criminal behaviour when the crime of violence was committed. Criminal behaviour may indirectly contribute to the harm where, for example, the applicant had been involved in organised crime in the past and was injured or killed in a related criminal attack.

**R. 9.2 The Commission recommends** that any prior criminal record unconnected to the incident giving rise to the harm should not preclude an applicant from obtaining compensation under the proposed statutory scheme, if they are otherwise eligible and no other exclusions apply.

## 4. Contributory misconduct

### (a) Introduction

- [9.80] The current scheme, and many comparable jurisdictions, provide that a person who contributed to the crime of violence giving rise to their application may have their payments reduced or refused. This is similar to the concept of contributory negligence in civil law. The Commission makes recommendations in this section on what type of contributory conduct it considers should lead to a reduction or refusal of a compensation award by the statutory body.

<sup>103</sup> *Cunningham v Criminal Injuries Compensation Tribunal* [2024] IEHC 143.

**(b) Current scheme and law**

[9.81] Paragraph 12 of the current scheme provides that:

“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 or her injuries, and the Tribunal may reduce the amount of an award where, in its opinion, the victim has been partially responsible for the offence.”<sup>104</sup>

[9.82] In *Cunningham v Criminal Injuries Compensation Tribunal*, Gearty J suggested that paragraph 12 seems to be “directed towards the victim who makes a more direct contribution to the circumstances in which he is injured, such as would be analogous with contributory negligence cases in civil liability claims.”<sup>105</sup>

[9.83] An example of the application of this provision can be found in a decision made by the Tribunal in August 2022,<sup>106</sup> where the applicant was attacked with a glass bottle. The Tribunal found, having regard to the Garda Report, that the applicant was an active participant in the incident. The Tribunal took into account that all parties involved in the incident were to be prosecuted for affray and concluded that the conduct of the applicant made it inappropriate to grant an award.<sup>107</sup> In another case, an application was refused partly on the basis that the deceased was an “active participant in the fracas” when he was killed. The Tribunal found that the deceased shared significant responsibility for the incident that led to his death.<sup>108</sup>

[9.84] In a Tribunal decision from March 2023, an application for compensation was refused due to the applicant’s “unnecessarily aggressive” behaviour. Following a minor road traffic accident, the applicant exited the vehicle and confronted the other driver. During the argument, the applicant acted in an “aggressive” and “abusive” manner (albeit in the context of the accused behaving similarly) and spat on the ground, at which point the accused became “physically involved” with

<sup>104</sup> Paragraph 12 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>105</sup> *Cunningham v Criminal Injuries Compensation Tribunal* [2024] IEHC 143 at para 5.6 (Gearty J).

<sup>106</sup> Criminal Injuries Compensation Tribunal, Case Reference 51020 (12 August 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/51020-12-august-2022/>> accessed 23 March 2026.

<sup>107</sup> Criminal Injuries Compensation Tribunal, Case Reference 51020 (12 August 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/51020-12-august-2022/>> accessed 23 March 2026.

<sup>108</sup> Criminal Injuries Compensation Tribunal, Case Reference F/586 (4 July 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/f586-4-july-2022/>> accessed 23 March 2026.

the applicant. The Tribunal was satisfied that the applicant was responsible for what occurred and accordingly refused the application.<sup>109</sup>

### (c) Comparative jurisdictions

#### (i) EU Member States

##### *France*

- [9.85] In France, the Code of Criminal Procedure provides that: “[c]ompensation may be refused or its amount reduced because of the fault of the victim.”<sup>110</sup>

##### *Germany*

- [9.86] In Germany, Book 14 of the Social Code provides that compensation may be denied in full or in part:

- where the applicant caused the crime of violence,<sup>111</sup> or
- where the applicant’s conduct means it would be inequitable to grant compensation.<sup>112</sup>

- [9.87] The Social Code also specifies that “[b]enefits and services are to be provided in such a manner that they do not economically benefit the person who occasioned the event causing damage.”<sup>113</sup>

##### *The Netherlands*

- [9.88] In the Netherlands, section 5 of the Violent Crimes Compensation Fund Act provides that compensation may be withheld or reduced if the damage caused is partly the result of the circumstances attributable to the victim.<sup>114</sup> The Policy Manual for the scheme describes a number of situations where compensation may be reduced or refused. For example, if the victim was the first one who used violence, and the perpetrator reacted to this in a similar manner, then the

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<sup>109</sup> Criminal Injuries Compensation Tribunal, Case Reference 54175 (6 March 2023) <<https://www.gov.uk/criminal-injuries-compensation-scheme/publications/54175-6-march-2023/>> accessed 23 March 2026.

<sup>110</sup> Article 706-3 of the Code of Criminal Procedure (France).

<sup>111</sup> Section 16(1) of the Social Code Book XIV (Social Compensation) (Germany): “Anyone who occasioned the event causing damage has no claims under this Book.”

<sup>112</sup> Section 17(1) of the Social Code Book XIV (Social Compensation) (Germany): “Benefits and services are to be denied where it would be inequitable to provide benefits and services under the social compensation scheme for reasons which are down to the applicant’s own conduct.”

<sup>113</sup> Section 16(2) of the Social Code Book XIV (Social Compensation) (Germany).

<sup>114</sup> Section 5 of the Violent Crimes Compensation Fund Act (Wet schadefonds geweldsmisdrijven) (Netherlands).

application will be refused. However, if the violence used by the perpetrator is not in proportion to the violence used by the victim, then the victim may receive 50% of the compensation. Another example is where the victim sought confrontation with the perpetrator or contributed to escalation of the situation, without using violence, the scheme can set the compensation at a lower amount.<sup>115</sup> It is also specified that if “nightlife violence” was involved where the victim was under the influence of alcohol/drugs and behaved in a provocative and/or insulting manner, then the victim will be awarded 50% of the compensation if this behaviour was the reason for the violence.<sup>116</sup> The scheme will also reject an application when the victim was involved in the “soft or hard drugs environment” including by intentionally providing services and/or goods to people in this environment, and the violent crime was a result of this involvement.<sup>117</sup> Where a victim was involved in other illegal activities and this involvement then resulted in the violent crime against the victim, the scheme will assess the share the victim had in the incident before determining whether to reduce the compensation or reject the application in full.<sup>118</sup>

## *(ii) United Kingdom*

### *Northern Ireland*

- [9.89] The Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme 2009 allows for the reduction or refusal of compensation on the basis of the applicant’s conduct. Paragraph 14 provides that the Secretary of State may withhold or reduce an award where he or she considers that:

“the conduct of the applicant before, during or after the incident giving rise to the application makes it inappropriate that a full award or any award at all be made”.<sup>119</sup>

<sup>115</sup> Schadefonds Geweldsmisdrijven, “Policy Manual” (1 January 2026) at page 19 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>116</sup> Schadefonds Geweldsmisdrijven, “Policy Manual” (1 January 2026) at page 19 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>117</sup> Schadefonds Geweldsmisdrijven, “Policy Manual” (1 January 2026) at page 19 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>118</sup> Schadefonds Geweldsmisdrijven, “Policy Manual” (1 January 2026) at page 19 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>119</sup> Paragraph 14(1)(d) of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).



[9.90] The Scheme expressly includes intoxication as a form of conduct that can lead to exclusion or reduction in compensation:

“In considering the issue of conduct under paragraph 14(1)(d) above, the Secretary of State may withhold or reduce an award where he or she considers that excessive consumption of alcohol or use of illicit drugs by the applicant contributed to the circumstances which gave rise to the injury in such a way as to make it inappropriate that a full award, or any award at all, be made.”<sup>120</sup>

*England, Scotland and Wales*

[9.91] In England, Scotland and Wales, the Criminal Injuries Compensation Scheme 2012 provides for a discretion to refuse or reduce compensation where “the conduct of the applicant before, during or after the incident giving rise to the criminal injury makes it inappropriate to make an award or a full award.”<sup>121</sup> The Guide to the scheme explains that this may be where the applicant’s conduct caused or contributed to the incident. For example, the decision-maker will consider:

- if the applicant was acting in an aggressive or threatening way and provoked the incident in which they were injured;
- if they intended to provoke an assault or fight;
- if there was a history of violence between them and their assailant;
- what happened at the time of the incident, such as whether they willingly took part in a fight; and
- whether they sought revenge against their assailant.<sup>122</sup>

[9.92] Previous victim compensation schemes in the UK provided that intoxication or consumption of illicit drugs may make an award of compensation inappropriate.<sup>123</sup> However, subsequent to a consultation period, the revised Criminal Injuries Compensation Scheme 2012 amended this to expressly state that the applicant’s conduct “does not include intoxication through alcohol or drugs to the extent that such intoxication made the applicant more vulnerable to

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<sup>120</sup> Paragraph 15(1) of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>121</sup> Paragraph 25 of the Criminal Injuries Compensation Scheme 2012 (England, Scotland and Wales).

<sup>122</sup> Criminal Injuries Compensation Authority, “Criminal injuries compensation: a guide” (1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#conduct>> accessed 23 March 2026.

<sup>123</sup> See the 2001 and 2008 UK Criminal Injuries Compensation Schemes.

becoming a victim of a crime of violence".<sup>124</sup> The Guide explains that the use of alcohol or drugs is only a conduct issue if it played a direct role in provoking the incident that led to the assault.<sup>125</sup>

### *(iii) Australia*

#### *Australian Capital Territory*

[9.93] In the Australian Capital Territory, the state compensation scheme provides that compensation must be reduced where the decision-maker believes on reasonable grounds that the applicant has been involved in contributory conduct.<sup>126</sup> The statute then goes on to define what is meant by 'contributory conduct':

"In this section: 'contributory conduct' means any of the following conduct by the applicant:

- (a) conduct that contributed to the injury suffered by the applicant as a result of the act of violence that is the subject of the application;
- (b) participating in or assisting in the act of violence that is the subject of the application;
- (c) encouraging someone else to participate in or assist in the act of violence that is the subject of the application;
- (d) failing to take reasonable steps to mitigate the extent of injury that arose from the act of violence."<sup>127</sup>

#### *New South Wales*

[9.94] In New South Wales, the Victims Rights and Support Act 2013 also provides that compensation may be reduced or refused based on the applicant's conduct. Similar to the Australian Capital Territory, the statute in New South Wales defines the type of conduct which will result in a reduction or refusal. Section 44 provides that in determining whether or not to approve the giving of victims' support, and in determining the amount of support to be given, the Commissioner must have regard to a number of factors, including:

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<sup>124</sup> Paragraph 25 of the Criminal Injuries Compensation Scheme 2012 (England Scotland and Wales).

<sup>125</sup> Criminal Injuries Compensation Authority, "Criminal injuries compensation: a guide" (1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#conduct>> accessed 23 March 2026.

<sup>126</sup> Section 47(1)(d) and 47(2)(c) of the Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory).

<sup>127</sup> Section 47(3) of the Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory).

- any behaviour (including past criminal activity), attitude or disposition of the primary victim concerned that directly or indirectly contributed to the injury or death sustained by the victim;<sup>128</sup>
- whether the victim participated in the commission of the act of violence, encouraged another person to commit the act of violence, or otherwise gave assistance to any person by whom the act of violence was committed; and<sup>129</sup>
- whether the victim failed to take reasonable steps to mitigate the extent of the injury sustained by the victim, such as seeking appropriate medical advice or treatment, as soon as practicable after the act of violence was committed.<sup>130</sup>

[9.95] In determining whether the victim failed to take reasonable steps to mitigate their injury in the case of a crime involving sexual assault or domestic violence, the scheme provides that the decision-maker must have regard to the nature of the relationship between the victim and the alleged perpetrator.<sup>131</sup>

#### *Victoria*

[9.96] As outlined in section 2 of this Chapter, the Victims of Crime (Financial Assistance Scheme) Act 2022 in Victoria provides that, in deciding whether to reduce or refuse an application, the scheme decision-maker must take into account the character, behaviour, or attitude of the applicant at any time whether before, during or after the commission of the act of violence.<sup>132</sup> This exclusion was not in line with the recommendations of the VLRC, discussed above, and is broader than the equivalent provisions in New South Wales or the Australian Capital Territory, which set out narrower, more precise conduct-based exclusions.

[9.97] Of note, however, and as outlined above, the Financial Assistance Guidelines provide detailed guidance as to how the exclusion will be applied by decision-makers. The Guidelines state that the victim's behaviour will impact their application when it is connected to the violent act. The decision-makers will usually decide that there is a connection between the behaviour and the violent act when the victim is involved in the violent act, or when their past criminal activity is connected to the violent act in some way. The Guidelines state that drugs or alcohol use before or during the violent act will not be considered if

<sup>128</sup> Section 44(1)(a) of the Victims Rights and Support Act 2013 (New South Wales).

<sup>129</sup> Section 44(1)(d) of the Victims Rights and Support Act 2013 (New South Wales).

<sup>130</sup> Section 44(1)(f) of the Victims Rights and Support Act 2013 (New South Wales).

<sup>131</sup> Section 44(3) of the Victims Rights and Support Act 2013 (New South Wales).

<sup>132</sup> Section 33(a) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

such use is not connected to the violent act. They also provide that a victim's involvement in sex work will not be regarded as connected to the violent act.<sup>133</sup>

#### (d) Submissions

[9.98] In its Consultation Paper, the Commission asked consultees:

"How should reference to an applicant's contribution to their injuries be defined for the purpose of limiting eligibility?"<sup>134</sup>

[9.99] Many submissions to the Commission expressed caution regarding exclusionary factors based on conduct, in particular in relation to situations of domestic violence and sexual violence. Submissions were strongly opposed to this kind of limitation being used in respect of domestic violence, with one submission noting that any assessment of someone's "responsibility" for their own victimisation can be subject to unconscious bias and may be impossible to conduct without prejudice. This limitation is particularly problematic for victims of domestic violence given the complex, cyclical violence that can occur in intimate relationships. It was submitted that this concept of provocation under the scheme could be used to justify refusing awards on the basis of rape myths (such myths are discussed in the Commission's Report on Knowledge or Belief Concerning Consent in Rape Law).<sup>135</sup> The "contribution to injury" limitation on eligibility was raised as a concern for victims of sexual offences in the submissions received by the Commission which influenced the decision to include this project in the Commission's Fifth Programme of Law Reform.<sup>136</sup>

[9.100] The Commission in its Consultation Paper also posed the question:

"Should intoxication of the victim form part of an assessment of 'contribution to their injuries'?"<sup>137</sup>

<sup>133</sup> Victoria State Government, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 94 <<https://www.victimsofcrime.vic.gov.au/financial-assistance-scheme-guidelines>> accessed 23 March 2026.

<sup>134</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 226, question 5.5(1).

<sup>135</sup> Law Reform Commission, *Report on Knowledge or Belief Concerning Consent in Rape Law* (LRC 122-2019) pages 12 – 21.

<sup>136</sup> Law Reform Commission, *Report on Fifth Programme of Law Reform* (LRC 120-2019) Project 7.

<sup>137</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 227, question 5.5(2).

- [9.101] Submissions in response to the Consultation Paper stated that intoxication makes a person more vulnerable to becoming a victim of crime and should not affect an applicant's ability to apply for compensation under the scheme.
- [9.102] Some submissions stated that it may be legitimate for the Tribunal to take into account the applicant's prior conduct where it is causally linked to the injuries inflicted.

### **(e) Proposals for reform**

- [9.103] The Commission recognises the importance of avoiding unhelpful comparisons between 'deserving' and 'non-deserving' victims. However, the concept of reducing compensation for contributory misconduct is well established in law. The operation of contributory negligence in civil proceedings is particularly relevant. Where a person's own action has led to their injury, a decision-maker should be capable of reducing or refusing an award where that is reasonable in all of the circumstances.
- [9.104] The Commission considers that it is appropriate to build similar limitations into the statutory scheme, for a number of reasons. The extent of compensation from a state-funded scheme would generally not equal the level of damages that a victim would be awarded from the offender in civil law. This approach was confirmed in *LD v Criminal Injuries Compensation Scheme*, where the CJEU observed that, having regard to the need to ensure the financial viability of national schemes, compensation does not need to correspond to the damages which may be awarded by a court against the offender.<sup>138</sup> However, the CJEU went on to hold that Member States should still take the tortious liability of the offender into account when determining the amount of compensation to grant:

"Notwithstanding the need to ensure the financial viability of national compensation schemes, such that the Member States are not necessarily obliged to provide complete reparation of the material and non-material loss suffered by those victims, fair and appropriate compensation ... requires, when determining such compensation, that account be taken of ... the reparation that such victims may obtain on the basis of the tortious liability of the offender."<sup>139</sup>

- [9.105] As tortious liability includes the concept of contributory negligence, the Commission considers that it is appropriate to include a similar principle in the

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<sup>138</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal and Others* ECLI:EU:C:2025:741 at para 24.

<sup>139</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal and Others* ECLI:EU:C:2025:741 at para 39.

statutory scheme. In addition, in circumstances where a victim's damages would be reduced in civil law due to contributory negligence on their part, the Commission considers that it would be inappropriate to have a situation where that same victim could obtain a higher amount of compensation from the State.

- [9.106] The Commission has examined equivalent provisions from other jurisdictions, submissions from consultees and the scope of Ireland's obligation to provide "fair and appropriate" compensation,<sup>140</sup> in its recommendations on exclusions for the statutory scheme.
- [9.107] The Commission considers that the statutory scheme should provide for the refusal or reduction of compensation where the victim's conduct contributed to the crime of violence that caused the harm, for which they are seeking compensation.
- [9.108] However, the Commission considers that the wording of paragraph 12 of the current scheme, which provides that compensation can be refused where "the victim was responsible, either because of provocation or otherwise", is too broad and overly vague. Instead, the Commission recommends that the statutory scheme should provide for an exclusion where the conduct of the victim directly or indirectly contributed to the harm they suffered. That conduct should be sufficiently problematic or improper so as to make it appropriate to reduce or refuse to make the payment. The requirement of appropriateness should permit the statutory body to exercise discretion in relation to the circumstances of a particular case, and to take into account the scheme's objectives and guiding principles.
- [9.109] In summary, the Commission recommends that the statutory body may reduce or refuse to make a payment, if it is satisfied that:
- (1) the conduct of the victim directly or indirectly contributed to the harm they suffered or consequences arising from the crime of violence, and
  - (2) that conduct makes it appropriate to reduce or refuse to make the payment.
- [9.110] However, for the purpose of ensuring clarity about the type of conduct that can be taken into account, the Commission recommends that conduct contributing to the harm suffered should be defined in the statutory scheme in a non-exhaustive list, similar to the approach adopted in New South Wales and the Australian Capital Territory.
- [9.111] The Commission proposes five sub-categories of contributory misconduct for the statutory scheme as set out below, namely:

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<sup>140</sup> See further the Chapter on Types of Compensation and the Chapter on Determining Fair and Appropriate Compensation.

- (a) past conduct (including unspent criminal convictions) that contributed to the harm suffered by the victim,
- (b) participating or assisting in the crime of violence that is the subject of the application,
- (c) encouraging any person to participate in or assist in the violent crime that is the subject of the application,
- (d) failing to take reasonable steps to mitigate the consequences arising from the crime of violence,
- (e) failing to take reasonable steps to avoid a violent situation.

[9.112] Before explaining what each sub-category means, the Commission addresses a contributory misconduct exclusion in the context of sexual offences and domestic violence, as well as the issue of intoxication.

*(i) The context of sexual offences and domestic violence*

[9.113] The Commission notes consultee concerns that an exclusion based on contributory conduct may be problematic in the context of sexual offences and domestic violence. These concerns were also present in stakeholder submissions to the VLRC's 2018 report, which argued that an exclusion incorporating provocation may perpetuate victim blaming, particularly in family violence and sexual assault matters.<sup>141</sup>

[9.114] Taking into account the need to counter rape myths and the nature of sexual offences, the Commission considers that contributory conduct should never be used as a reason in such cases to reduce or refuse compensation. It therefore recommends carving out a clear statutory exception for victims of sexual offences to three of the proposed sub-categories, namely past conduct, failing to take reasonable steps to mitigate the consequences arising from the crime of violence, and failing to take reasonable steps to avoid a violent situation.

[9.115] The Commission recommends adopting a distinct approach for victims of domestic violence by providing for a clear statutory exception to two of the proposed sub-categories outlined above. The Commission recommends that compensation must not be refused or reduced for victims of domestic violence on the basis of failing to take reasonable steps to mitigate the consequences arising from the crime of violence or failing to take reasonable steps to avoid a violent situation.

[9.116] However, in relation to the past conduct exception, the Commission acknowledges that exclusions based simply on contributory 'conduct' can be problematic in the context of domestic violence, given the cyclical violence that can occur in intimate relationships. The Commission considers that a blanket

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<sup>141</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.141.

exception for domestic violence cases may not always be appropriate. There may be situations where the victim applying for compensation has in fact been the perpetrator for many years in the domestic violence context. For example, a person who has been the victim of coercive control for years may attack a partner in an attempt to liberate themselves from a particular situation and the person attacked may be the person applying for compensation. Or, a person might engage in violence against a partner who has been habitually abusive to them, and it is the habitual abuser who seeks compensation.

- [9.117] In such circumstances, the Commission considers that it would be inappropriate to require the statutory body to make a compensation payment to the abusive partner without permitting the statutory body to have a discretion to take their historic abusive behaviour into account. The Commission therefore recommends that a payment may be reduced or refused for a victim of domestic violence where the statutory body believes that past acts of domestic violence by the applicant contributed to the harm suffered by them.

*(ii) Intoxication*

- [9.118] In considering whether the use of drugs or alcohol by the victim should form part of an assessment of contribution to their injuries, the Commission noted that in Northern Ireland, an award may be withheld where “excessive consumption or alcohol” or “use of illicit drugs” by the victim contributed to circumstances leading to the crime of violence. A similar provision was contained in the previous scheme in England, Scotland and Wales, but has now been removed. The scheme now explicitly states that the applicant’s conduct does not include intoxication through alcohol or drugs to the extent that such intoxication made the applicant more vulnerable to becoming a victim of a crime of violence.<sup>142</sup> Intoxication is only relevant if it played a direct role in provoking the incident that led to the assault.<sup>143</sup> The Netherlands also takes a similar position. If the victim’s provocative or insulting behaviour while intoxicated was the reason for the violence against them then the award will be reduced by half.<sup>144</sup>
- [9.119] The VLRC was of the view that consideration of a victim’s use of drugs or alcohol is problematic because some victims may use drugs and alcohol to cope with the effects of victimisation, and such use does not diminish the victim’s need for

<sup>142</sup> Paragraph 25 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>143</sup> Criminal Injuries Compensation Authority, “Criminal injuries compensation: a guide” (1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#conduct>> accessed 23 March 2026.

<sup>144</sup> Schadefonds Geweldsmisdrijven, “Policy Manual” (1 January 2026) at page 19 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.



financial assistance as a result of victimisation.<sup>145</sup> It also stated that consideration of an applicant's drug and alcohol use may further entrench inequality and stigma,<sup>146</sup> and would contradict the objective of assisting victims in their recovery.<sup>147</sup>

[9.120] The Commission considers that excluding victims from the scheme because they were intoxicated at the time the crime of violence occurred would not be in line with a victim-centred approach. The Commission recommends that a payment should not be reduced or refused solely on the basis that the applicant was intoxicated through alcohol or drugs at the time of the circumstances giving rise to the harm.

[9.121] The Commission examines sub-categories for the contributory misconduct exclusion below.

*(iii) Contributory misconduct (including unspent criminal convictions)*

[9.122] The Commission considers that the statutory body should have a discretion to reduce or refuse compensation where the applicant's past conduct contributed to the harm suffered by them.

[9.123] This will include unspent criminal convictions that may be connected directly or indirectly to the crime of violence. However, as discussed in section 2 of this Chapter, any other criminal record that is not directly or indirectly connected to the incident giving rise to the harm should not preclude an applicant from obtaining compensation under the scheme if they are otherwise eligible.

[9.124] This sub-category may also include cases where the victim has attacked the perpetrator first or behaved exceptionally aggressively, or where the victim contributed to the escalation of the situation.

[9.125] An exception for sexual offences and domestic violence will apply to this sub-category, except that an award may be reduced or refused for a victim of domestic violence where the statutory body believes that past acts of domestic violence by the applicant contributed to the harm suffered by them.

*(iv) Participating in, assisting or encouraging the crime of violence*

[9.126] The Commission considers that a distinction can be drawn between contributory conduct that may have led to a crime of violence against the applicant, and the

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<sup>145</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.136.

<sup>146</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.136.

<sup>147</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.146.

participation of, assistance in, or encouragement by, the applicant in a crime that may have involved other victims that also resulted in harm to the applicant.

- [9.127] As noted above, the scheme in New South Wales provides that, in determining whether to give an applicant financial support, decision-makers must have regard to whether the victim participated in the commission of the act of violence, encouraged another person to commit the act of violence, or otherwise gave assistance to any person by whom the act of violence was committed.<sup>148</sup> Participation in, assistance of or encouragement of an act of violence are also classed as 'contributory conduct' in the Australian Capital Territory compensation scheme.<sup>149</sup>
- [9.128] The Commission envisages that a victim can be considered to have participated in the crime of violence where, for example, they are involved in a fight involving many people, such as a brawl, or affray<sup>150</sup> and they suffer harm at the hands of one of the other participants. Although the person may be considered a victim of assault in such a case, their participation in the crime of violence may mean it is appropriate for the statutory body to refuse or reduce their compensation payment. Therefore, the Commission recommends that the statutory body should have a discretion to reduce or refuse a payment where the applicant is found to have participated in the crime of violence.
- [9.129] A victim may have assisted in a crime of violence where, for example, they assist in the preparation and planning of a large-scale attack and are injured as a result of the attack. For example, a person may assist in the planning of a terrorist bombing and end up being injured in the blast themselves. Although they suffered harm as a result of the crime of violence, it would clearly be appropriate to refuse compensation to such an applicant, given their role in the offence.
- [9.130] The Commission therefore recommends that conduct contributing to the harm should include assisting in the crime of violence that is the subject of the application.
- [9.131] The Commission also recommends that encouraging any person to participate in or assist in the crime of violence that is the subject of the application should be included as conduct contributing to the harm. In such a situation, it is likely to be clear that the victim will have engaged in conduct that contributed to the harm they suffered.

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<sup>148</sup> Section 44(1)(d) of the Victims Rights and Support Act 2013 (New South Wales).

<sup>149</sup> Section 47(3) of the Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory).

<sup>150</sup> Section 16 of the Criminal Justice (Public Order) Act 1994 provides for the offence of affray, which involves the use or threat of unlawful violence by two or more persons, causing a person of reasonable firmness present at the scene to fear for their safety.

*(v) Failure to mitigate the consequences*

- [9.132] In civil law, the mitigation of damages refers to the reasonable steps that an injured party takes to minimise or reduce the damage caused to them. The Civil Liability Act 1961 provides that a negligent or careless failure to mitigate damage shall be treated as contributory negligence on the part of a plaintiff.<sup>151</sup> As a result, their award will be reduced in proportion to their failure to prevent or reduce the losses suffered.<sup>152</sup> For example, the courts have held that, if a plaintiff who has been injured unreasonably refuses to undergo necessary medical treatment, damages should be computed on the basis that the treatment was carried out.<sup>153</sup> Another example is if a plaintiff unreasonably declines to take up an offer of employment that is within their capacity to undertake.<sup>154</sup>
- [9.133] The Commission notes that the victim compensation schemes in both New South Wales and the Australian Capital Territory provide that compensation may be reduced or refused where the victim failed to take reasonable steps to mitigate the extent of their injury that arose from the violent crime.<sup>155</sup> In New South Wales, in the case of an act of violence involving sexual assault or domestic violence, the decision-maker must have regard to the nature of the relationship between the victim and the alleged perpetrator when determining whether the victim failed to take reasonable steps to mitigate their injury.<sup>156</sup>
- [9.134] The Commission considers that in line with general civil law principles, it is reasonable to expect victims to take reasonable steps to mitigate the extent of the consequences arising from the crime of violence. An example would be where the victim failed to take reasonable steps to seek appropriate medical attention, as a result of which their injury became significantly more serious.
- [9.135] Another example of a failure to mitigate the consequences could be where a victim lost their job because of the harm inflicted by the crime of violence, but they did not seek or avail of alternative employment in circumstances where it would have been reasonable for them to do so. In such a situation, the statutory body may reduce or refuse a compensation payment for loss of earnings, which

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<sup>151</sup> Section 34(2)(a) of the Civil Liability Act 1961.

<sup>152</sup> Section 34(1) of the Civil Liability Act 1961.

<sup>153</sup> McMahon and Binchy, *Law of Torts* 4th ed (Bloomsbury Professional 2013) at para 20.31. See *Bohan v Finn* DPIJ: Trinity and Michaelmas Terms 1994 at page 61 (HC, Murphy J) as cited in McMahon and Binchy, *Law of Torts* 4th ed (Bloomsbury Professional 2013) at para 20.32.

<sup>154</sup> McMahon and Binchy, *Law of Torts* 4th ed (Bloomsbury Professional 2013) at para 20.35.

<sup>155</sup> Section 47(3)(d) of the Victims of Crime (Financial Assistance) Act 2016 (Australian Capital Territory) and section 44(1)(f) of the Victims Rights and Support Act 2013 (New South Wales).

<sup>156</sup> Section 44(3) of the Victims Rights and Support Act 2013 (New South Wales).

might otherwise have been paid, where appropriate, in order to maintain the sustainability of the scheme and ensure the proper use of State resources.

[9.136] The Commission therefore recommends that conduct contributing to the harm should include failing to take reasonable steps to mitigate the consequences arising from the crime of violence.

[9.137] The exceptions for sexual offences and domestic violence will apply to this sub-category.

*(vi) Failure to avoid a violent situation*

[9.138] Finally, the Commission also considers that a payment may be reduced or refused in circumstances where there is an obviously dangerous situation which the applicant could readily have avoided, but they did not take reasonable steps to do so. This may arise, for example, where a person is present at the scene of a riot, and the applicant has no good reason not to attempt to leave the riot. An applicant should not be entitled to full compensation for harm suffered where they unreasonably failed to avoid an obviously dangerous situation.

[9.139] The Commission therefore recommends that conduct contributing to the harm should include failing to take reasonable steps to avoid a violent situation. The exceptions for sexual offences and domestic violence will apply to this sub-category.

*(vii) Conclusion*

[9.140] In summary, the Commission recommends that the statutory body may reduce a payment, or refuse to make a payment, if it is satisfied that:

- (1) the conduct of the victim directly or indirectly contributed to the harm they suffered, and
- (2) that conduct makes it appropriate to reduce or refuse to make the payment.

[9.141] The Commission recommends that conduct contributing to the harm includes but is not limited to the following conduct by the victim:

- (a) past conduct (including unspent criminal convictions) that contributed to the harm suffered by the victim,
- (b) participating or assisting in the crime of violence that is the subject of the application,
- (c) encouraging any person to participate in or assist in the crime of violence that is the subject of the application,
- (d) failing to take reasonable steps to mitigate the consequences arising from the crime of violence, and
- (e) failing to take reasonable steps to avoid a violent situation.

[9.142] As explained above, the Commission recommends that the conduct described in subsections (a), (d) and (e) should not be considered conduct that contributed to the harm where the crime of violence involves sexual violence or domestic violence. Save however in relation to subsection (a), where a payment may be reduced or refused for a victim of domestic violence where the statutory body believes that past acts of domestic violence by the applicant contributed to the harm suffered by them.

[9.143] The Commission also recommends that a payment should not be reduced or refused solely on the basis that the applicant was intoxicated through alcohol or drugs at the time of the circumstances giving rise to the harm.

**R. 9.3 The Commission recommends** that the statute should provide for the following exclusions:

- (1) The statutory body may reduce a payment, or refuse to make a payment, if it is satisfied that:
  - (a) the conduct of the victim directly or indirectly contributed to the harm they suffered, or to the consequences arising from the crime of violence, and
  - (b) that conduct makes it appropriate to reduce or refuse to make the payment.
- (2) For the purposes of subsection (1), conduct contributing to the harm suffered or to the consequences arising from the crime of violence includes but is not limited the following conduct by the victim:
  - (a) past conduct (including unspent criminal convictions) that contributed to the harm suffered by the victim,
  - (b) participating or assisting in the crime of violence that is the subject of the application,
  - (c) encouraging any person to participate in or assist in the crime of violence that is the subject of the application,
  - (d) failing to take reasonable steps to mitigate the consequences arising from the crime of violence,
  - (e) failing to take reasonable steps to avoid a violent situation.
- (3) The conduct described in subsections (2)(a), (2)(d) and (2)(e) should not be considered conduct that contributed to the harm under section 1(1)(a) where the crime of violence involves sexual violence or domestic violence. Save however in relation to subsection (2)(a), where a payment may be reduced or refused for a victim of domestic violence where the statutory body believes that past acts of domestic violence by the applicant contributed to the harm suffered by them.

**R. 9.4 The Commission recommends** that a payment should not be reduced or refused solely on the basis that the applicant was intoxicated through alcohol or drugs at the time of the circumstances giving rise to the harm.

## 5. Exceptional public interest discretion to reduce or refuse compensation

### (a) Introduction

[9.144] In this section, the Commission considers whether the statutory body should have an exceptional discretion to reduce or refuse compensation for conduct not related to the crime of violence, or for wrongdoing in relation specifically to the application, where such conduct might meet a different threshold of concern.

[9.145] Whether a decision-maker should retain some discretion to consider an applicant's conduct in circumstances where such conduct is not related specifically to the injury is contentious. As discussed throughout this Report, victims of crimes of violence now have a right to state compensation and the State can only interfere with that right where such an interference is necessary and as minimal as possible to achieve a legitimate aim. However, the Commission recognises that because the compensation scheme is funded by the taxpayer, there may be a view that general principles of justice suggest that individuals who have acted in a way that is fundamentally opposed to the public interest should be excluded from a publicly-funded compensation scheme.

### (b) Current scheme and law

[9.146] There is no general public interest exclusion in the current scheme. However, as noted above, paragraph 13 of the current scheme grants the Tribunal a discretion to refuse or reduce an award of compensation where the conduct of the victim, their character, or "way of life" make it inappropriate that they should be granted an award. The Tribunal has appeared to interpret this paragraph as applying to general criminality, even where the applicant's criminal convictions are unconnected to the crime of violence giving rise to their injuries. Because none of the three criteria is defined by the scheme, the discretion afforded to the Tribunal to apply these criteria is extremely broad. As noted above, this exclusionary criteria provision has been criticised by stakeholders as being overly vague and potentially disproportionate. The Commission recommends in section 2 of this Chapter that such a broad general exclusion based on the victim's conduct, character or "way of life" should not be included in the proposed statutory scheme.

[9.147] In considering the exclusions in the current scheme in the case of *Kelly and Doyle v Criminal Injuries Tribunal*,<sup>157</sup> Ní Raifeartaigh J highlighted that Article 8 of the European Convention on the Compensation of Victims of Violent Crimes 1983 permits the refusal of a compensation award on the basis of involvement in organised crime, membership in organisations engaging in violent crimes, and where a compensation payment might be contrary to a sense of justice or public policy. Ní Raifeartaigh J noted that this Convention is not binding as Ireland has not ratified it but observed that it is useful for “constructing hypothetical examples” of instances where a particular exclusion may be appropriate.<sup>158</sup> She gives the example of a person with a lengthy criminal record, stating:

“Suppose a man who has a lengthy record of drug-dealing and murder receives injuries in the course of an assault by one of the many enemies he has generated in the course of his criminal lifestyle. I am absolutely persuaded that the Directive does not require that all member states are *mandated* to give an award of compensation which completely disregards his criminal history and lifestyle, particularly when the Directive in its recitals refers to the 1983 Convention, Article 8 of which suggests a number of situations in which a refusal of compensation might be considered appropriate. The refusal of an award to such a man would not, in my view, constitute a form of discrimination.”<sup>159</sup>

[9.148] However, Ní Raifeartaigh J also confirms that the application of any exclusion under the scheme must be proportionate, non-discriminatory, fair, and consistent.<sup>160</sup> She stated that “it could not be said that the right to fair and appropriate compensation under EU law could be said to be adequately vindicated if the Irish system of compensation allowed room for arbitrary and inconsistent awards”.<sup>161</sup> Therefore, the Commission has sought in the wording of its recommendation below to strike a balance between an exclusion that permits the statutory body to exercise some discretion where there is a persuasive public interest in reducing or refusing an application for compensation, but in a manner that cannot be said to be arbitrary or inconsistent.

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<sup>157</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342.

<sup>158</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 140 (Ní Raifeartaigh J).

<sup>159</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 140 (Ní Raifeartaigh J).

<sup>160</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 162 (Ní Raifeartaigh J).

<sup>161</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 162 (Ní Raifeartaigh J).

### (c) Comparative jurisdictions

#### (i) EU Member States

- [9.149] The Commission is aware of five EU countries with a broad exclusionary factor which is unconnected either to criminal convictions or to conduct with a direct, causal link to the injury. In Portugal, an award can be refused if the victim's conduct is contrary to a sense of justice or public order.<sup>162</sup> In Germany, the law provides that awards may be reduced or refused where it would be inequitable to provide compensation for reasons related to the applicant's "own conduct."<sup>163</sup> In Croatia, compensation can be refused or reduced on the basis that granting full compensation would be contrary to "the principle of justice, morality or public order".<sup>164</sup> Malta provides for a similar exclusion to the current Irish scheme; compensation can be reduced as a result of the "conduct of the victim, his character or his way of life".<sup>165</sup> In Greece, a person will not be entitled to compensation if it would constitute an "abuse of rights".<sup>166</sup>
- [9.150] Two jurisdictions specifically provide for exclusion on the basis of involvement with organised crime. Cyprus provides that no compensation shall be payable where "the victim is involved in organised crime".<sup>167</sup> Croatia provides that compensation can be reduced or refused "if it is established that the victim is involved in organised crime".<sup>168</sup>
- [9.151] The Commission notes that there is no equivalent general exclusion in most other EU countries. These include Austria,<sup>169</sup> Belgium,<sup>170</sup> Bulgaria,<sup>171</sup> the Czech

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<sup>162</sup> Article 3, paragraph 1 of the Scheme for the Award of Compensation to Victims of Violent Crime and Domestic Violence (2009) (Portugal).

<sup>163</sup> Section 17 of the Social Code Book XIV (Social Compensation) (Germany).

<sup>164</sup> Section 14(4) of the Act on Financial Compensation to Victims of Crime (Official Gazette of the Republic of Croatia Nos 80/08 and 27/11).

<sup>165</sup> Regulation 10(e) and (g) of the Criminal Injuries Compensation Scheme Regulations (Subsidiary Legislation 9.12) 2012 (Malta).

<sup>166</sup> Article 9(d) of Law 3811/2009 'Compensation to violent crime victims and other provisions' (Greece).

<sup>167</sup> Section 4(2)(b) of the Compensation of Victims of Violent Crimes Laws of 1997 and 2006 (Cyprus).

<sup>168</sup> Section 14(3) of the Act on Financial Compensation to Victims of Crime (Official Gazette of the Republic of Croatia Nos 80/08 and 27/11).

<sup>169</sup> Federal Act of 9 July 1972 on the Provision of Assistance to Victims of Crime (as amended) (Austria).

<sup>170</sup> Articles 28 – 41 of the Law of 1 August 1985 on Fiscal and Other Measures (Belgium).

<sup>171</sup> Law on Assistance and Financial Compensation to Victims of Crime 2006 (Bulgaria).



Republic,<sup>172</sup> Estonia,<sup>173</sup> Finland,<sup>174</sup> France,<sup>175</sup> Sweden,<sup>176</sup> Hungary,<sup>177</sup> Italy,<sup>178</sup> Latvia,<sup>179</sup> Lithuania,<sup>180</sup> Luxembourg,<sup>181</sup> Netherlands,<sup>182</sup> Poland,<sup>183</sup> Romania,<sup>184</sup> and Slovenia.<sup>185</sup>

*(ii) United Kingdom*

*England, Scotland and Wales*

[9.152] In England, Scotland and Wales, in addition to considering the presence of convictions as set out in Annex D of the Criminal Injuries Compensation Scheme 2012, section 27 provides for an exclusion based on the applicant's character. It states that:

"an award may be withheld or reduced because the applicant's character, other than in relation to an unspent conviction referred to in paragraph 3 or 4 of Annex D, makes it inappropriate to make an award or a full award."<sup>186</sup>

*(iii) Australia*

*Queensland*

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<sup>172</sup> Act No 45/2013 Coll. Victims of Crime Act and Amendment of Certain Acts (Victims of Crime Act) (Czech Republic).

<sup>173</sup> Victim Support Act 2022 (Estonia).

<sup>174</sup> Criminal Injuries Act 2005 (1204/2005) (Finland).

<sup>175</sup> Articles 706-3 – 706-15 of the Code of Criminal Procedure (France).

<sup>176</sup> Criminal Injuries Act 2014:322 (Sweden).

<sup>177</sup> Act 135 of 2005 on the Support of Victims of Crime and State Compensation (Hungary).

<sup>178</sup> Law No 122/2016 laying down provisions to comply with the obligations arising from Italy's membership of the European Union – European Law 2015-2016 (Italy).

<sup>179</sup> Law on State Compensation to Victims (2006) (Latvia).

<sup>180</sup> Compensation for Damage Caused by Crime (2005) (Lithuania).

<sup>181</sup> Law of March 12, 1984 relating to the compensation of certain victims of bodily injury resulting from an offense and the repression of fraudulent insolvency (Luxembourg).

<sup>182</sup> Violent Crimes Compensation Fund Act (Wet schadefonds geweldsmisdrijven) (Netherlands).

<sup>183</sup> Act of 7 July 2005 on State Compensation of Victims of Certain Forbidden Acts (Poland).

<sup>184</sup> Law 211/2004 regarding certain measures providing for information, support and protection of victims of crimes (Romania).

<sup>185</sup> Law on Compensation to Victims of Crime (2005) (Slovenia).

<sup>186</sup> Section 27 of the Criminal Injuries Compensation Scheme 2012 (England, Scotland and Wales).

[9.153] The Victims of Crime Assistance Act 2009 (Queensland) at section 80 provides that no grant will be made if:

“[T]he government assessor is satisfied, on the balance of probabilities, the only reason, or the main reason, the act of violence was committed against the primary victim was—

- (a) because the victim was involved in a criminal activity when the act of violence happened; or
- (b) because of the victim’s previous involvement in a criminal activity, whether or not the victim is currently involved in the criminal activity.”<sup>187</sup>

#### *Victoria*

[9.154] In Victoria, a decision-maker has a broad discretion to refuse or reduce an award on the basis of character, behaviour, attitude and “any other circumstances the scheme decision maker considers relevant.”<sup>188</sup> This was not in line with the VLRC’s recommendation, which recommended no broad exclusionary criteria, saying: “[i]n the Commission’s view, the broad consideration of an applicant’s character, behaviour and attitude ‘at any time’ can unfairly prejudice vulnerable, disadvantaged and diverse victims who may fall short of the notion of the ‘perfect victim’”.<sup>189</sup> However, as noted above, the application of this provision is subject to detailed guidance provided by the Financial Assistance Scheme Guidelines, published by the Victoria State Government.<sup>190</sup> These Guidelines provide that this exclusion can only be applied in two situations:

- (1) when their character, behaviour, attitude or criminal history is connected to the violent act that their application is based on, or
- (2) they have a serious criminal history, and the decision-maker considers this relevant.<sup>191</sup>

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<sup>187</sup> Section 80 of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>188</sup> Section 33 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>189</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.109.

<sup>190</sup> Victoria State Government, “Financial Assistance Scheme Guidelines” (30 June 2025) at pages 94 – 97 <<https://www.victimsofcrime.vic.gov.au/financial-assistance-scheme-guidelines>> accessed 23 March 2026.

<sup>191</sup> Victoria State Government, “Financial Assistance Scheme Guidelines” (30 June 2025) at page 94 <<https://www.victimsofcrime.vic.gov.au/financial-assistance-scheme-guidelines>> accessed 23 March 2026.

**(d) Submissions**

[9.155] In its Consultation Paper, the Commission asked consultees:

“Should the decision-maker retain discretion to consider an applicant’s personal conduct or circumstances in relation to the injuries inflicted but be required to conduct a proportionality assessment in the exercise of this discretion?”<sup>192</sup>

[9.156] Most submissions to the Commission were against retaining a general discretion to reduce or refuse compensation based on any factor beyond a causal contribution or criminal offence directly linked to the injury. Submissions cautioned that retaining a general discretion may be disproportionate and expose the Tribunal to accusations of conscious or unconscious bias.

[9.157] Submissions stated that in the context of domestic violence or sexual offences, consideration of a victim’s character or way of life should never play a part in decisions on whether to award or reduce compensation. Some submissions stated that if such a discretion is maintained, clear guidance must be issued regarding the exercise of such a discretion to ensure fairness and transparency. The Commission agrees that guidance would be useful for the statutory body.

**(e) Proposals for reform**

[9.158] As outlined above, taking into account the law, provisions from other jurisdictions, and the views expressed by consultees and, in particular, Ireland’s obligation to provide “fair and appropriate” compensation, the Commission does not recommend including the type of broad discretion provided by the language in paragraph 13 of the current scheme in the statutory scheme.

[9.159] The Commission has, however, come to the view that there may be highly unusual and very rare situations where to award compensation to a particular individual would so offend the interests of justice that public confidence in the compensation scheme would be undermined. On this basis, it is recommending that the statutory body should retain an exceptional discretion to reduce or refuse an application on such a basis. The Commission envisages that the use of such a discretion would be very rare due to the high bar created by a requirement that such an award would be so clearly contrary to the interests of justice that public confidence in the statutory scheme would be undermined.

[9.160] The Commission considers that the possibilities of human misconduct are so various that a watertight definition or list of situations is not possible. It is inherent in the nature of an exceptional discretion that not all circumstances

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<sup>192</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 227, question 5.6(3).

where it may apply can be defined in advance. It might involve a person convicted of an outrageous crime or crimes, or a person not convicted of a crime but shown on the basis of a Garda report or reliable public information to reach the very high bar. It is not however to be used as a convenient fallback to deny compensation when evidence is lacking.

- [9.161] The Commission considers that in the vast majority of cases any conduct which may make it inappropriate to make a compensation payment should be causally related to the relevant crime of violence giving rise to harm. If a person who has not committed a crime is to be excluded from compensation on the basis of some other assessment of their conduct, the Commission emphasises that that assessment must be made fairly on the basis of clear evidence and in line with the EU right to fair and appropriate compensation.
- [9.162] In keeping with a rights-based approach, such a discretion would have to be limited to situations where the statutory body has reasonable grounds to believe that limiting a person's right to compensation is necessary, proportionate, and as minimal as possible in pursuit of the legitimate public policy aim of maintaining public confidence in the compensation scheme.
- [9.163] The Commission recommends that there should be safeguards to ensure the consistent application of such a discretion. This includes that any exercise of such discretion should be approved by a three-person panel that contains the chairperson or, if the chairperson is unavailable, the next senior decision-maker.
- [9.164] The Commission recommends that in all cases where this residual discretion is used, there should be a heightened obligation on the decision-maker to clearly articulate the rationale for exercising any exceptional discretion. Additionally, the statutory body must publish clear reasons for exercising the discretion. The publication of these reasons should be subject to the statutory body's normal criteria for publishing decisions, including appropriate redactions to remove personal data, and the power to delay publication where the interests of justice so require. These criteria are outlined in the Chapter on Administration of the Statutory Body and the Statutory Scheme and the Chapter on Preventing Double Compensation.
- [9.165] In addition, the Commission recommends that even when this exclusion is applied, some or all verifiable expenses arising from the crime of violence could still be paid to the applicant on a discretionary basis.

- R. 9.5 The Commission recommends** that the statutory body may refuse a payment, or make a reduced payment, where it considers that the making of a payment, or of a full payment (as the case may) would be so contrary to the interests of justice that public confidence in the compensation scheme would be undermined.
- R. 9.6 The Commission recommends** that any use of the public interest discretion should be unanimously approved by a three-person panel of the statutory body, that contains the chairperson of the statutory body, or the next most senior decision-maker if the chairperson is unavailable. If unanimity is not possible, the majority should contain the chairperson of the statutory body or the next most senior decision-maker if the chairperson is unavailable.
- R. 9.7 The Commission recommends** that in all cases where this public interest discretion is used, the statutory body must publish reasons for exercising the discretion. The publication of these reasons should be subject to the statutory body's normal criteria for publishing decisions, including appropriate redactions to remove personal data, and the power to delay publication where the interests of justice so require.
- R. 9.8 The Commission recommends** that even when this exclusion is applied, some or all verifiable expenses arising from the crime of violence could still be paid to the applicant on a discretionary basis.

## 6. Fraud, collusion and perpetrator benefit

### (a) Fraudulent applications

- [9.166] The Commission considers that there should be an explicit exclusion in the statutory scheme for fraudulent applications. An exclusion for fraudulent applications would be principally concerned with situations where a person makes a claim to the statutory scheme for their own or others' benefit when they do not have an entitlement to that claim and a person may provide false information to the statutory body in support of that fraudulent claim, such as false evidence of medical expenses or loss of earnings.
- [9.167] There are a number of criminal law provisions under which applicants who intentionally provide false information to the statutory body could potentially be prosecuted. The Criminal Justice (Perjury and Related Offences) Act 2021 ("the Perjury Act") provides that it is an offence to give a material statement that is false, and the person knows it to be false, while lawfully sworn as a witness, on

affidavit, or in a statement of truth<sup>193</sup> during a judicial or other proceeding.<sup>194</sup> 'Judicial or other proceeding' means a proceeding before any court, tribunal, including a tribunal or inquiry or a commission of investigation, or person having by law power to hear, receive and examine evidence on oath.<sup>195</sup> A person can be prosecuted under section 6 of the Perjury Act for giving a statement that is false in a declaration required by statute.<sup>196</sup> Section 7 of the Perjury Act also criminalises the fabrication of evidence or use of fabricated evidence in any judicial or other proceeding.<sup>197</sup> Section 8 of the same Act criminalises incitement to commit an offence under the Perjury Act.<sup>198</sup>

[9.168] In addition, section 6 of the Criminal Justice (Theft and Fraud Offences) Act 2001 criminalises dishonest deception with the intention of making a gain.<sup>199</sup> Anyone who uses deception to try to obtain compensation dishonestly can be prosecuted under this Act.

[9.169] These statutory provisions should deter those who might be motivated or incentivised to exploit the compensation scheme. However, the Commission considers that it should be made clear in the terms of the proposed statutory scheme that any person who makes a fraudulent application will be barred from receiving compensation. The Commission therefore recommends that any person found to have provided information on an application form or otherwise to the statutory body, knowing it to be false or having no reasonable basis for believing it to be true, should be disentitled to a compensation payment by the statutory body.

[9.170] The Commission recommends that where staff at the assistive tier reasonably believe that any information in, or document accompanying, an application is fraudulent, they must report this to An Garda Síochána for investigation.<sup>200</sup>

[9.171] The Commission also recommends that any payment received on foot of a successful application which later turns out to be fraudulent may be recovered by the State. The mechanism suggested in the Chapter on Preventing Double

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<sup>193</sup> Section 2(1)(c) of the Criminal Justice (Perjury and Related Offences) Act 2021. Statements of truth in place of affidavits are set out in section 21 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020.

<sup>194</sup> Section 2(1) of the Criminal Justice (Perjury and Related Offences) Act 2021.

<sup>195</sup> Section 1(1) of the Criminal Justice (Perjury and Related Offences) Act 2021.

<sup>196</sup> Section 6(1)(c) of the Criminal Justice (Perjury and Related Offences) Act 2021.

<sup>197</sup> Section 7 of the Criminal Justice (Perjury and Related Offences) Act 2021.

<sup>198</sup> Section 8 of the Criminal Justice (Perjury and Related Offences) Act 2021.

<sup>199</sup> Section 6 of the Criminal Justice (Theft and Fraud Offences) Act 2001.

<sup>200</sup> See similar language in section 29(2)(b) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

Compensation may be a suitable mechanism for the purpose of recovering monies paid on foot of a fraudulent claim.

- R. 9.9 The Commission recommends** that any person found to have provided information on an application form or otherwise to the statutory body, knowing it to be false or having no reasonable basis for believing it to be true, should be disentitled to a compensation payment by the statutory body.
- R. 9.10 The Commission recommends** that where staff at the assistive tier reasonably believe that any information provided in, or document accompanying, an application is fraudulent, they must report this to An Garda Síochána for investigation.
- R. 9.11 The Commission recommends** that any payment received on foot of an application which turns out to be fraudulent may be recovered by the State.

### (b) Collusion

- [9.172] The Commission considers that decision-makers should be able to reject an application where it appears that the applicant colluded with the person who committed the crime of violence in order to make a gain from the compensation payment. Such a scenario may arise where, for example, an applicant voluntarily allowed the alleged offender to commit an act of violence against them with the intention of making an application to the scheme and then sharing the money received. The Commission considers that the scheme should exclude the sharing of compensation with the offender as a matter of principle. It notes that collusion would only arise where the applicant voluntarily consented to the act of violence.
- [9.173] A number of compensation schemes in Australia include provisions explicitly excluding collusive applications. The scheme in Queensland provides that decision-makers “can not grant assistance to a person if [they are] satisfied, on the balance of probabilities, the person conspired with the person who committed the act of violence in relation to which assistance is sought”.<sup>201</sup> In Victoria, the scheme sets out that the decision-maker must refuse an application if it is “made in collusion with the person who is committed or is alleged to have committed the act of violence”.<sup>202</sup>
- [9.174] The Commission recommends that a payment should be refused where the decision-maker has reasonable grounds to believe that the applicant has colluded with the offender of the crime of violence, the act of violence was planned, and the applicant voluntarily consented to the act, in order to obtain compensation.

<sup>201</sup> Section 79 of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>202</sup> Section 31(1)(b) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

- [9.175] The Commission recommends that, as with fraudulent applications, any payment received on foot of a successful application where the applicant is found to have colluded with the perpetrator may be recovered by the State.

**R. 9.12 The Commission recommends** that a payment will be refused where the decision-maker has reasonable grounds to believe that the applicant has:

- (1) colluded with the perpetrator for the purposes of receiving compensation,
- (2) the act of violence was planned, and
- (3) the applicant voluntarily consented to the act.

**R. 9.13 The Commission recommends** that any payment received on foot of a successful application where the applicant turns out to have colluded with the offender may be recovered by the State.

### (c) Benefit to the perpetrator

- [9.176] The Commission considers that compensation should be provided in such a manner that it does not economically benefit the person who committed the crime of violence. There may be circumstances where abusive parents take a compensation payment from their children, so that the children do not receive the benefit of the payment. There may also be instances where, when an adult victim receives a compensation payment from the statutory body, they will be forced into sharing the money with the alleged perpetrator. Collusion is not at issue in such circumstances because the victim may be operating under duress or intimidation, and it is not fraud as the victim concerned may not be benefitting from the payment at all.
- [9.177] The Commission considers that it would not be appropriate for the statutory body to grant a full compensation payment where it considers that the perpetrator would be likely to benefit from the payment. The Commission therefore recommends that the statutory body should be able to reduce or refuse a compensation payment if the perpetrator is likely to benefit from it.
- [9.178] This would be a discretionary provision, so the statutory body would have the flexibility to examine the individual circumstances of each case. It should only decide to reduce or refuse the payment if there is sufficient evidence that the perpetrator would access the compensation payment and the money was not going to benefit the victim. Such evidence may include, for example, a history of similar behaviour by the perpetrator. The victim, however, should always be given the opportunity to provide evidence to the contrary.
- [9.179] The Commission recognises that a perpetrator benefit provision may unfairly prejudice victims of domestic violence who are living in the same household as the perpetrator. The Commission is mindful that it does not want to reintroduce



the “same roof” rule, which was removed from the Criminal Injuries Compensation Scheme in 2021.<sup>203</sup> The same roof rule meant that compensation was not payable where the perpetrator and the victim were living together as members of the same household at the time the injuries were inflicted.<sup>204</sup> It effectively prevented many victims of domestic abuse perpetrated by family members in the home from accessing compensation in respect of injuries sustained.<sup>205</sup> In cases where the victim and the perpetrator live together, the perpetrator could almost always be said to be likely to benefit from any payment to the victim. The Commission considers that it would not be in line with a victim-centred approach to impose barriers to compensation where a victim is still living with a perpetrator but may wish to access financial assistance to deal with the effects of the crime of violence.<sup>206</sup>

[9.180] To avoid effectively reintroducing the “same roof” rule and unfairly excluding victims of domestic violence, the Commission considers that there should be an express exception to the discretion to reduce payments for the reason of ‘perpetrator benefit’ for victims who live with the perpetrator. The Commission therefore recommends that the statutory body should not reduce or refuse a payment under this provision where the perpetrator lives in the same household as the victim.

[9.181] In considering the possibility that a victim may not be able to access the medical or other support they require where this exclusion is applied, or otherwise, the Commission has also decided to recommend a bespoke power for the statutory body when dealing with such situations. Where the statutory body has reasonable concern that the compensation payment is likely to go to the perpetrator, and not to the victim, the statutory body would be able to pay third parties directly, such as medical providers. This would ensure that the victim gets the benefit of the payment of compensation. The statutory body should first consider whether the payment can be diverted in this way before making a decision to reduce or refuse the payment. The Commission envisages that it would be open to the statutory body to make a direct payment in this manner in situations where a victim lives with the perpetrator, notwithstanding the exception to the ‘perpetrator benefit’ exclusion outlined above.

[9.182] The Commission therefore recommends that where the statutory body has reasonable concerns that the victim of crime will not receive the benefit of the

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<sup>203</sup> The “same roof” rule was contained in paragraph 10 of the Criminal Injuries Compensation Scheme 1974.

<sup>204</sup> Paragraph 10 of the Criminal Injuries Compensation Scheme 1974 (removed).

<sup>205</sup> Grant, “The Criminal Injuries Compensation Scheme for Personal Injuries Criminally Inflicted: In Need of Reform” (2020) 30(4) Irish Criminal Law Journal 94 at pages 97 – 98.

<sup>206</sup> Victorian Law Reform Commission, *Report: Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.154.

compensation payment, the statutory body may direct that a payment of compensation be made directly to a person or body charging for reasonable, verifiable expenses, arising from the crime of violence in order to ensure the victim receives the medical or other support they require.

- R. 9.14 The Commission recommends** that where the statutory body has a reasonable concern that the victim of crime will not receive the benefit of a compensation payment, it may make a payment of compensation directly to the person or body charging for a verifiable expense, arising from the crime of violence, in order to ensure that the victim receives the medical or other support they require.
- R. 9.15 The Commission recommends** that the statutory body may make a reduced payment, or refuse to make a payment, if it is satisfied that the perpetrator will benefit from the compensation payment and it is not possible to divert such a payment directly to the person or body charging for a verifiable expense, arising from the crime of violence. However, the statutory body should not make a reduced payment or refuse a payment on the basis that the perpetrator lives in the same household as the victim.



# CHAPTER 10

## TYPES OF COMPENSATION

### Table of Contents

|                                                                                                         |     |
|---------------------------------------------------------------------------------------------------------|-----|
| <i>Introduction.....</i>                                                                                | 339 |
| <i>Terminology and types of compensation.....</i>                                                       | 339 |
| (b) Background.....                                                                                     | 339 |
| (c) Financial loss.....                                                                                 | 341 |
| <i>The current scheme.....</i>                                                                          | 342 |
| (ii) <i>Relevant EU terms.....</i>                                                                      | 343 |
| (iii) <i>Other jurisdictions.....</i>                                                                   | 343 |
| (iv) <i>Commission's preferred term: Verifiable expenses and loss of earnings</i>                       | 344 |
| (d) Non-financial loss.....                                                                             | 345 |
| <i>The current scheme.....</i>                                                                          | 345 |
| (ii) <i>Non-material loss.....</i>                                                                      | 346 |
| (iii) <i>Other jurisdictions.....</i>                                                                   | 347 |
| (iv) <i>The Commission's preferred terms: General compensation payment and bereavement payment.....</i> | 347 |
| <i>Fair and appropriate compensation.....</i>                                                           | 348 |
| Introduction.....                                                                                       | 348 |
| (e) Current scheme.....                                                                                 | 348 |
| (f) Relevant law.....                                                                                   | 349 |
| (i) <i>The Compensation Directive.....</i>                                                              | 349 |
| (ii) <i>Blanco and LD.....</i>                                                                          | 350 |
| (g) Submissions.....                                                                                    | 352 |
| (h) Proposals for reform.....                                                                           | 353 |
| <i>Compensating property loss.....</i>                                                                  | 355 |
| Current scheme.....                                                                                     | 355 |
| (i) Comparative jurisdictions.....                                                                      | 357 |
| (j) Proposals for reform.....                                                                           | 358 |
| 5. <i>Interim payments.....</i>                                                                         | 359 |
| Introduction.....                                                                                       | 359 |
| Current scheme.....                                                                                     | 359 |
| (k) Relevant law.....                                                                                   | 360 |
| (l) Comparative jurisdictions.....                                                                      | 360 |
| Submissions.....                                                                                        | 361 |
| (m) Proposals for reform.....                                                                           | 362 |

|                                                          |     |
|----------------------------------------------------------|-----|
| <i>Periodic payments</i> .....                           | 365 |
| (a) Introduction.....                                    | 365 |
| Current scheme.....                                      | 366 |
| (n) Relevant law.....                                    | 366 |
| (o) Submissions.....                                     | 367 |
| (p) Proposals for reform.....                            | 368 |
| <i>Types of compensation payments not included</i> ..... | 368 |
| Current scheme.....                                      | 368 |
| (q) Proposals for reform.....                            | 369 |



# 1. Introduction

- [10.1] This Chapter examines the types of payments that can be made under state-funded compensation schemes. It analyses the types of compensation payments available under the current Criminal Injuries Compensation Scheme<sup>1</sup> (“the current scheme”), identifies the approach in other jurisdictions, and examines the views of consultees on this issue.
- [10.2] The Commission then engages in an in-depth examination of the implications for the proposed statutory scheme of recent, significant developments at European Union (“EU”) level in relation to the scope of the right to fair and appropriate compensation contained in the Directive relating to compensation to crime victims (“Compensation Directive”).<sup>2</sup> The Commission makes proposals for reform in light of its analysis. Its most significant recommendation is that the statutory scheme should be capable of providing compensation for pain and suffering for victims of crimes of violence in both fatal and non-fatal cases.
- [10.3] This Chapter also addresses the issues of compensation for property, interim payments, and periodic payments.

# 2. Terminology and types of compensation

## (a) Background

- [10.4] Under the current scheme, the Criminal Injuries Compensation Tribunal (“the Tribunal”) pays compensation to victims for personal injuries they have suffered as a result of a crime of violence.<sup>3</sup>

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<sup>1</sup> The most recent iteration of the Criminal Injuries Compensation Scheme is effective from 31 January 2025. The terms and conditions of the scheme, last updated July 2025, are available here: <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/terms-and-conditions-of-the-criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

<sup>2</sup> In particular, the Commission has taken into account the recent case from the Court of Justice of the European Union called Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741, which further clarified the scope of the right to fair and appropriate compensation contained in the Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims [2004] OJ L 261/15 (“Compensation Directive”).

<sup>3</sup> Paragraph 1 of the Criminal Injuries Compensation Scheme (31 January 2025) states: “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

- [10.5] When the scheme was first established on a non-statutory basis in 1974, the Tribunal made payments of compensation to applicants without a specific legal requirement to do so (in legal terms these payments were made on an *ex gratia* basis).<sup>4</sup> At the time, victims of crimes of violence had no clear, enforceable right to compensation from the State.
- [10.6] As discussed in detail in the first Chapter of this Report, the EU Directive relating to compensation to crime victims (“Compensation Directive”)<sup>5</sup>, established a legal right to fair and appropriate compensation in respect of injuries criminally inflicted upon an individual.<sup>6</sup> The current scheme is, and the proposed statutory scheme would be, the means by which Ireland gives effect to its obligation under the Compensation Directive to provide fair and appropriate compensation to victims of intentional violent crime.<sup>7</sup>
- [10.7] The question as to what types of compensation payments are required to ensure that compensation is “fair and appropriate” is addressed in this Chapter. The question of how to determine what amount of compensation may be fair and appropriate is addressed in the next Chapter.
- [10.8] This section examines both the types of compensation payments available and the terminology used by the Tribunal and the courts to refer to such payments. The Commission then proposes what it considers is appropriate terminology for the types of compensation payments that the statutory body may make.
- [10.9] Under the current scheme, compensation is awarded on the basis of damages awarded under the Civil Liability Act 1961.<sup>8</sup> However, one clear distinction is that the Tribunal can only award general damages for pain and suffering to dependants of victims in fatal cases, and not to victims in non-fatal cases. The term ‘damages’ generally refers to a money payment which one party is directed

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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.”

<sup>4</sup> The history of the Criminal Injuries Compensation Scheme is outlined in detail in the Commission’s Consultation Paper. See Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 6 to 19.

<sup>5</sup> Compensation Directive (2004/80/EC).

<sup>6</sup> This was made clear by the Court of Justice of the European Union (“CJEU”) in its judgment in Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566.

<sup>7</sup> *Kelly and Doyle v Criminal Injuries Compensation Tribunal* [2020] IECA 342 at para 81 (Ní Raifeartaigh J).

<sup>8</sup> Paragraph 6 of the Criminal Injuries Compensation Scheme (31 January 2025).



by a court to pay to another as compensation for the consequences of a wrongful act.<sup>9</sup>

[10.10] There are multiple kinds of payments that can be awarded in court proceedings. For the purposes of compensating victims for harm suffered as a result of a crime of violence, the Commission considers that two categories of payment are most relevant:

- Compensation for financial loss, known in court proceedings under the broader heading ‘special damages’, and
- Compensation for non-financial loss, known in court proceedings under the broader heading ‘general damages’. Such payments can include compensation for pain and suffering.

[10.11] These two types of payments are examined below, including the different terminology used to refer to them.

### **(b) Financial loss**

[10.12] The first type of loss that can be compensated by both the courts and the Tribunal is financial loss. Financial loss can be verified through proof of payment or proof of future expense, like a receipt, an invoice, or a statement of fees.

[10.13] In legal terms, financial losses that are capable of exact calculation are generally known as ‘special damages’.<sup>10</sup> These payments require the calculation of actual financial losses,<sup>11</sup> and are also known as ‘pecuniary loss’. The Supreme Court has described special damages as payments that:

“...are intended to compensate a claimant for actual or anticipated pecuniary loss or expense resulting from the personal injuries sustained by them, such as loss of earnings, medical and related expenses and, in cases of serious injury, the cost of personal care”.<sup>12</sup>

<sup>9</sup> Damages are defined as “compensation in money for loss suffered by a person owing to the tort, breach of contract, or breach of statutory duty of another person” in *Murdoch and Hunt’s Encyclopedia of Irish Law* (Bloomsbury Professional 2021).

<sup>10</sup> “Special damages” in *Murdoch and Hunt’s Encyclopedia of Irish Law* (Bloomsbury Professional 2021).

<sup>11</sup> *Nolan v Wirenski* [2016] IECA 56 at para 34 (Irvine J), [2016] 1 IR 461 at para 36.

<sup>12</sup> In tort law, the term special damages or pecuniary losses are used within the personal injury context. In *Delaney v The Personal Injuries Board* [2024] IESC 10 at para 59, Collins J noted that special damages “are intended to compensate a claimant for actual or anticipated pecuniary loss or expense resulting from the personal injuries sustained by them, such as loss of earnings, medical and related expenses and, in cases of serious injury, the cost of personal care”. See also Order 19, rule 5(1) of the Rules of the Superior Courts 1986 which

*(i) The current scheme*

[10.14] The Tribunal can pay compensation for financial loss to applicants in both fatal and non-fatal cases. This has been the position since the scheme was established in 1974. The Tribunal's application forms outline in more detail the types of compensation that applicants can apply for under the current scheme.<sup>13</sup> According to the application forms, the compensation available under the scheme is intended to cover vouched out of pocket expenses incurred by the victim of crime, such as:

- medical treatment,
- dental treatment,
- prescriptions,
- spectacles replacement,
- travel expenses to avail of medical/dental/optical treatment and
- loss of earnings to date and into the future, incurred, if any, as a result of the criminal injuries sustained.<sup>14</sup>

[10.15] The Tribunal's application form outlines that "vouched expenses" mean expenses that are supported by receipts.<sup>15</sup>

[10.16] The Commission understands that the usual rule in the civil courts in relation to loss of earnings<sup>16</sup> is applied by the Tribunal. The Tribunal will make an assessment of compensation for past and future loss of earnings on the basis of

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provides that in every personal injuries action, any items of special damage shall be set out in the statement of claim.

<sup>13</sup> Criminal Injuries Compensation Scheme, "Application Forms" <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

<sup>14</sup> Criminal Injuries Compensation Scheme, "Your questions answered: What you can claim for" (8 September 2025) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/criminal-injuries-compensation-scheme-your-questions-answered/#what-you-can-claim-for>> accessed 23 March 2026.

<sup>15</sup> Criminal Injuries Compensation Scheme, "Application Forms" <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

<sup>16</sup> See for example *Antonio Casimiro Lopes v Minister for Justice, Equality and Law Reform* [2014] IESC 21.

evidence submitted by the applicant,<sup>17</sup> such as an actuarial report.<sup>18</sup> An actuarial report is a report prepared by a person qualified in analysing financial issues, including likely future loss or expense.

*(ii) Relevant EU terms*

[10.17] At the EU level, the terms ‘material’ and ‘non-material’ loss have been used by the CJEU when considering compensating victims of crime. For example, in *BV*, the CJEU stated that compensation to victims of crime should represent a “contribution to the reparation of material and non-material losses suffered by them”.<sup>19</sup> In the recent case of *LD*, the CJEU explained that the term ‘non-material loss’ refers to pain and suffering, which suggests that references made to ‘material loss’ by the CJEU in *BV* refer to financial loss.<sup>20</sup>

*(iii) Other jurisdictions*

[10.18] Compensation schemes for victims of crime in other jurisdictions also use different terms and categories to refer to the types of compensation applicants can receive, which essentially translate to compensation for financial loss, for example:

- compensation for loss of earnings,<sup>21</sup>
- economic loss,<sup>22</sup>
- medical expenses,<sup>23</sup> or
- special expenses.<sup>24</sup>

<sup>17</sup> See for example Criminal Injuries Compensation Tribunal, Case Reference 50053 (13 May 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/50053-13-may-2022/>> accessed 23 March 2026.

<sup>18</sup> See for example Criminal Injuries Compensation Tribunal, Case Reference 53742 (2 October 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/53742-2-october-2023/>> accessed 23 March 2026. An actuarial report is a report prepared by a person qualified in analysing financial issues, including likely future loss, using particular data.

<sup>19</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 64.

<sup>20</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741.

<sup>21</sup> For example: Part 2 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria); Paragraph 30 of the Criminal Injuries Compensation Scheme (2012) (England, Scotland and Wales); Paragraph 24 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>22</sup> For example: Part 4, Division 3 of the Victims Rights and Support Act 2013 (New South Wales).

<sup>23</sup> For example: Part 2 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>24</sup> For example: Paragraph 30 of the Criminal Injuries Compensation Scheme (2012) (England, Scotland and Wales); Paragraph 24 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

*(iv) Commission's preferred term: Verifiable expenses and loss of earnings*

- [10.19] In terms of compensating financial loss within the statutory scheme, the Commission's preferred term for expenses that can be verified by receipt, invoice or other proof of loss is 'verifiable expenses'. The Commission considers that loss of earnings should be categorised separately, as discussed in more detail later in this Chapter.
- [10.20] The Commission does not recommend the use of the term 'damages' within the proposed statutory scheme because the purpose of the compensation scheme for victims of crime is different to the purpose of awards made by the courts in civil proceedings in the personal injury context (also known as tort law). In such proceedings, the aim of compensation is to place the plaintiff in the position they would have been had the injury not occurred (this is known in legal terms as the principle of *restitutio in integrum*). In contrast, the compensation required under the Compensation Directive, which will be provided by the statutory scheme, is intended to be a contribution to the reparation (or recovery) of the losses suffered by victims.<sup>25</sup> It is not intended to provide the full level of compensation that an individual could recover from a defendant in civil proceedings.<sup>26</sup>
- [10.21] The Commission therefore believes that it is necessary to move away from the term 'damages', as used in tort law, to ensure that payments under the statutory scheme are adequately distinguished from awards in civil proceedings.
- [10.22] The Commission intends that the term 'verifiable expenses' should cover the type of expenses that are sometimes referred to as 'special damages', 'vouched out of pocket expenses', or 'material loss/damage'. The term is intended to encompass reasonable financial losses that are incurred, or that will be incurred, by an applicant, as a result of the crime of violence. Such losses should be independently verified, for example, by receipts, invoices or statements of fees and this evidence should accompany an application form. Verifiable expenses could include medical expenses, care needs, transport costs, funeral expenses, or other specific and direct costs or expenses.
- [10.23] The Commission considers that loss of earnings should be categorised separately to verifiable expenses because of the complex nature of such an assessment and because not all applicants will require such compensation. The Commission explains its proposals in relation to compensation for loss of earnings in more detail below.

<sup>25</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 64.

<sup>26</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 64.

- R. 10.1 The Commission recommends** that the term ‘verifiable expenses’ should be used in the statutory scheme to refer to reasonable, financial losses that the applicant has incurred, or that will be incurred, as a result of the crime of violence, which are verified by receipts, invoices or other proof of an expense.
- R. 10.2 The Commission recommends** that any potential payment of loss of earnings for the applicant should be referred to as a category of loss separate to ‘verifiable expenses’.

### (c) Non-financial loss

[10.24] The second type of loss that can be compensated by the courts and the Tribunal is non-financial loss. Non-financial loss includes losses that cannot be assessed precisely and are “difficult to quantify in exact monetary terms”.<sup>27</sup> In civil proceedings, non-financial losses are often referred to as ‘general damages’. In EU law, they are often called ‘non-material damages’.

[10.25] General damages include awards made for past and future pain and suffering. ‘Pain and suffering’ generally means the mental distress or trauma that individuals have experienced. In *Delaney v The Personal Injuries Board*, Collins J noted that “[g]eneral damages are over and above such indemnity for any proven financial loss and expense”.<sup>28</sup>

[10.26] In tort law, in the personal injury context, the terms ‘general damages’, ‘damages for pain and suffering’, and ‘non-pecuniary losses’ are often used interchangeably,<sup>29</sup> but non-pecuniary loss can be broader than pain and suffering. Dorgan and McKenna categorise non-pecuniary losses as “matters such as pain and suffering, loss of life expectancy, loss of amenities, physical inconvenience and discomfort” and “mental distress”.<sup>30</sup>

#### (i) The current scheme

[10.27] The current scheme does not compensate applicants for pain and suffering, with the exception of dependants in the case of a victim who has died.<sup>31</sup>

<sup>27</sup> Dorgan and McKenna, *Damages* 2<sup>nd</sup> ed (Round Hall 2021) at para 1-41.

<sup>28</sup> *Delaney v The Personal Injuries Assessment Board* [2024] IESC 10 at para 59 (Collins J).

<sup>29</sup> *Delaney v The Personal Injuries Assessment Board* [2024] IESC 10 at para 59 (Collins J).

<sup>30</sup> Dorgan and McKenna, *Damages* 2<sup>nd</sup> ed (Round Hall 2021) at para 1-53. See also *Sinnott v Quinnsworth Ltd* [1984] ILRM 523.

<sup>31</sup> Paragraph 6 of the Criminal Injuries Compensation Scheme (31 January 2025). The definition of dependant used by the current scheme is the definition of dependant in section 47 of the Civil Liability Act 1961. Compensation for family members is discussed in detail in the following Chapter.

- [10.28] When the scheme was first established in 1974, it allowed the Tribunal to award both special and general damages to all applicants regardless of the kind of injury suffered. However, the scheme was reviewed in the 1980s due to the economic climate at the time, because the scheme was proving “very costly for the Exchequer”.<sup>32</sup> In 1986, to reduce the scheme’s impact on public finances during a recession period, general damages were removed from the scheme completely.<sup>33</sup>
- [10.29] The terms of the current scheme do not use the term ‘general damages’, but refer to “pain and suffering”.<sup>34</sup> The Tribunal’s webpage appears to refer to general damages, pain and suffering, and mental distress interchangeably. It states:

“Please note that the Criminal Injuries Compensation Scheme does not pay compensation for general damages, that is, pain and suffering, which may have been incurred because of a crime of violence.”<sup>35</sup>

- [10.30] In 2021, the scheme was amended to provide for some general damages but only to dependants of fatally injured victims of crime.<sup>36</sup> Such payments can be made “in respect of the mental distress suffered by the dependants of the victim”.<sup>37</sup>

(ii) *Non-material loss*

- [10.31] As noted above, at the EU level, the CJEU has stated that compensation to crime victims should represent a “contribution to the reparation of material and non-material losses suffered by them”.<sup>38</sup> The term ‘non-material loss’ was subject to

<sup>32</sup> The Government of Ireland, *Building on Reality, 1985-1987* (The Stationery Office 1984) at page 137.

<sup>33</sup> Paragraph 6(e) of the 1986 version of the Criminal Injuries Compensation Scheme provided that “compensation will not be payable in so far as injuries sustained on or after 1st April, 1986 are concerned in respect of pain and suffering”.

<sup>34</sup> Paragraph 6 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>35</sup> Criminal Injuries Compensation Scheme, “Your questions answered: What you can claim for” (8 September 2025) <https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/criminal-injuries-compensation-scheme-your-questions-answered/> accessed 23 March 2026.

<sup>36</sup> See paragraph 6(e) of the Criminal Injuries Compensation Scheme (31 January 2025). See also Department of Justice, “Minister McEntee announces reforms to the Criminal Injuries Compensation Scheme” (20 April 2021) < <https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/press-releases/minister-mcentee-announces-reforms-to-the-criminal-injuries-compensation-scheme/> > accessed 23 March 2026.

<sup>37</sup> Criminal Injuries Compensation Scheme, “Your questions answered: What you can claim for” (8 September 2025) < <https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/criminal-injuries-compensation-scheme-your-questions-answered/#what-you-can-claim-for> > accessed 23 March 2026.

<sup>38</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 64.

discussion at both the EU and Irish level, because it was unclear what kind of losses the CJEU intended 'non-material' to include. The Irish Court of Appeal raised this issue in *Kelly and Doyle*<sup>39</sup> and, subsequently, in the case of *Blanco* the Irish High Court decided to make a referral to the CJEU, asking for clarity on the meaning of non-material loss.<sup>40</sup> Ultimately, deciding on the referral in *Blanco*, the CJEU confirmed in *LD* that the term non-material loss refers to pain and suffering.<sup>41</sup> This is discussed in more detail below.

### *(iii) Other jurisdictions*

[10.32] Compensation schemes for victims of crimes in other jurisdictions use a variety of terms to refer to compensation for general damages or non-financial loss. For example, terms used include special financial assistance,<sup>42</sup> compensation for immaterial damage,<sup>43</sup> and recognition payments.<sup>44</sup>

### *(iv) The Commission's preferred terms: General compensation payment and bereavement payment*

- [10.33] As noted previously, the Commission believes it is necessary to move away from the term damages to ensure that the compensation under the statutory scheme is not confused with awards in tort law for personal injury. The Commission considers that the term 'general compensation payment' should be used in the proposed statutory scheme when referring to what otherwise might be termed general damages, pain and suffering, non-financial loss, or non-material loss.
- [10.34] However, where an award for pain and suffering may be made to a family member of a victim in fatal cases, the Commission's preferred term is 'bereavement payment'. This is intended to reflect the purpose of the payments, which is to compensate for the loss of the victim as a result of the crime of violence. The Commission considers this term will assist family members to understand that the payment they may receive for pain and suffering is different to a payment that would be received by a victim. A bereavement payment will be similar to the payment that is received in civil proceedings known as 'solatium'.

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<sup>39</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342.

<sup>40</sup> *Blanco v Criminal Injuries Compensation Tribunal* [2024] IEHC 171.

<sup>41</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741. In this case, the CJEU responded to the questions referred to it by the Irish High Court in *Blanco*.

<sup>42</sup> Section 11 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>43</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) < <https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf> > accessed 23 March 2026.

<sup>44</sup> Part 4, Division 5 of the Victims Rights and Support Act 2013 (New South Wales).

- R. 10.3 The Commission recommends** that the term ‘general compensation payment’ should be used in the statutory scheme when referring to what otherwise might be known as payments for general damages, pain and suffering, non-financial loss or non-material loss.
- R. 10.4 The Commission recommends** that the term ‘bereavement payment’ should be used in the statutory scheme when referring to payments for family members in fatal cases, as might otherwise be known as the ‘solatium’.

### 3. Fair and appropriate compensation

#### (a) Introduction

[10.35] In this section, the Commission examines what types of compensation payments the statutory body should make, with particular reference to the requirements under the Compensation Directive, in light of recent judgments from the CJEU.

#### (b) Current scheme

[10.36] As noted above, the current scheme can provide compensation for verifiable expenses and loss of earnings in all cases. However, it can only award general compensation for pain and suffering to dependants of those who have been fatally injured. The Commission notes that the current approach that prohibits compensation for general damages in non-fatal cases has resulted in some applicants being refused any payment by the Tribunal, even where they suffered significant injuries because of a crime of violence. For example, in *Decision 54758* (24 January 2023), the applicant had been badly injured by a crime of violence and the Tribunal agreed she was the victim of an assault. She applied for general damages as a result of her injuries. The applicant was not working at the time of this incident, and her medical expenses were covered by another source. She therefore did not claim any loss of earnings or medical expenses, but only “fair and adequate” compensation for pain and suffering. In these circumstances, the Tribunal refused her application for a compensation payment on the basis of the rule that no compensation for pain and suffering could be paid to victims with non-fatal injuries.<sup>45</sup>

[10.37] Similarly, in *Decision 54960* (27 April 2023), the Tribunal was satisfied that the applicant had suffered personal injuries as a result of an assault which left her with significant injuries. However, the applicant did not submit any invoices for

<sup>45</sup> Criminal Injuries Compensation Tribunal, Case Reference 54758 (24 January 2023) <<https://www.gov.ie/en/publication/e8c9f-54758-24-january-2023/>> accessed 23 March 2026.



verifiable expenses or loss of earnings. She stated that her claim was in respect of her pain and suffering. The Tribunal concluded that no award could be made.<sup>46</sup>

- [10.38] As a result of the restriction on awards for pain and suffering, the Tribunal did not have any power to award compensation in the above cases, even though both applicants sustained injuries as a result of crimes of violence.

### (c) Relevant law

#### (i) *The Compensation Directive*

- [10.39] Article 12(2) of the Compensation Directive requires EU Member States to guarantee victims in both domestic and certain cross-border cases access to “fair and appropriate compensation” in the following terms:

“All Member States shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims.”

- [10.40] However, the Directive does not specify what kinds of compensation should be available to victims, beyond that which is fair and appropriate. There is no definition of fair and appropriate in the Directive and Member States have interpreted the Directive’s obligations differently, particularly in relation to whether victims should be compensated for pain and suffering.

- [10.41] In the CJEU case of *BV*, the referring court asked whether a fixed rate of compensation of €4,800 granted to a victim of sexual violence could be classified as fair and appropriate within the meaning of Article 12(2) of the Compensation Directive.<sup>47</sup> The CJEU held that compensation by the State represents “a contribution to the reparation of material and non-material losses suffered” by a victim of violent intentional crime.<sup>48</sup> Compensation may be regarded as fair and appropriate if it compensates, to an appropriate extent, the suffering to which those victims have been exposed.<sup>49</sup> However, the CJEU emphasised that the level of such payments should be connected to the seriousness of the consequences for the victim. It held that compensation payments must not be “purely symbolic

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<sup>46</sup> Criminal Injuries Compensation Tribunal, Case Reference 54960 (27 April 2023) <<https://www.gov.ie/en/publication/b29d5-54960-27-april-2023/>> accessed 23 March 2026.

<sup>47</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 17.

<sup>48</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 64.

<sup>49</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 64.

or manifestly insufficient having regard to the seriousness of the consequences, for those victims, of the crime committed”.<sup>50</sup>

[10.42] The CJEU had referred to material and non-material loss in a number of cases when discussing what fair and appropriate compensation includes. However, the meaning of those terms was not clarified until the case of *LD*, leaving uncertainty for a period, as to what kinds of compensation victims were entitled to under the Compensation Directive.<sup>51</sup> The Irish courts raised this issue in both *Kelly and Doyle*,<sup>52</sup> and *Blanco*.<sup>53</sup> Ultimately, the court in *Blanco* referred a question to the CJEU, asking what compensation should be provided to victims in light of the Compensation Directive, discussed below.

(ii) *Blanco and LD*

[10.43] *Blanco v Criminal Injuries Compensation Tribunal & Ors*<sup>54</sup> concerned an applicant who was awarded €645.65 by the Tribunal, following an assault which left him with a significant and permanent eye injury. This amount reflected his total entitlement to compensation because he was not eligible for general compensation and these were the only vouched expenses that he claimed.<sup>55</sup> The applicant challenged this decision in the High Court and sought a ruling that the scheme was incompatible with the State’s obligation under the Compensation Directive to provide for fair and appropriate compensation.<sup>56</sup>

[10.44] Following an examination of both EU and Irish case law, the High Court in *Blanco* considered it necessary to make a reference to the CJEU asking whether the concept of fair and appropriate compensation in the Compensation Directive includes general compensation for pain and suffering. The Court also noted that at the time, there were approximately 17 separate cases pending before the Irish High Court in which this same issue had been raised.<sup>57</sup> The questions referred to the CJEU were as follows:

a) Does the obligation imposed on Member States by Article 12(2) of the Compensation Directive to provide “fair and appropriate

<sup>50</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 63.

<sup>51</sup> Following *BV*, the terms material and non-material loss were mentioned again by the CJEU in Case C 126/23 *Burdene* EU:C:2024:937.

<sup>52</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342.

<sup>53</sup> *Blanco v Criminal Injuries Compensation Tribunal* [2024] IEHC 171.

<sup>54</sup> *Blanco v Criminal Injuries Compensation Tribunal* [2024] IEHC 171. This issue was previously raised in *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342.

<sup>55</sup> *Blanco v Criminal Injuries Compensation Tribunal* [2024] IEHC 171 at para 12 (Egan J).

<sup>56</sup> *Blanco v Criminal Injuries Compensation Tribunal* [2024] IEHC 171 at para 6 (Egan J).

<sup>57</sup> *Blanco v Criminal Injuries Compensation Tribunal* [2024] IEHC 171 at para 56 (Egan J).

compensation” to victims of violent intentional crimes, require that a victim be compensated for both material and non-material loss within the meaning of *BV*?

b) If the answer to Question (a) is yes, what forms of loss fall within the scope of “non-material loss”?

c) In particular, does a victim’s ‘pain and suffering’ fall within the scope of “non-material loss”?

d) If the answer to a) and c) is yes, bearing in mind that Member States are required to ensure that their schemes are financially viable, what relationship should the “fair and appropriate compensation” awarded to a victim pursuant to the Compensation Directive bear to the damages in tort that would be awarded to that victim as against the relevant perpetrator as tort-feasor.

e) Can the compensation established for victims of violent intentional crimes under the scheme be regarded as “fair and appropriate compensation to victims” within the meaning of Article 12(2) of the Compensation Directive if a victim is awarded the sum of €645.65 as compensation for a serious eye injury resulting in permanent sight impairment?<sup>58</sup>

[10.45] The CJEU handed down its judgment on 2 October 2025, in *LD*, responding to the Irish High Court’s referral in *Blanco*. The CJEU held that compensation under the Compensation Directive is not limited to material harm and that compensation payments must be capable of encompassing compensation for pain and suffering.<sup>59</sup> Therefore, according to the CJEU, the compensation awarded to the victim in *Blanco* was not fair and appropriate because it excluded compensation for pain and suffering. This meant that it covered “only part of the harm suffered by the victim of the crime in question and cannot, therefore, be regarded as taking into account the seriousness of the consequences, for that victim, of the crime”.<sup>60</sup>

[10.46] This was a very significant ruling for the current Irish scheme, which excludes compensation for pain and suffering in non-fatal cases, and the judgment has clear implications for the proposed statutory scheme. The CJEU made it clear in *LD* that compensation schemes for victims of crimes of violence must be capable of awarding compensation for both verifiable expenses and general

<sup>58</sup> *Blanco v Criminal Injuries Compensation Tribunal* [2024] IEHC 171 at para 57 (Egan J).

<sup>59</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 36.

<sup>60</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 38.

compensation for pain and suffering, in order to be considered fair and appropriate under Article 12(2) of the Compensation Directive. The Court held that:

“Notwithstanding the need to ensure the financial viability of national compensation schemes, such that the Member States are not necessarily obliged to provide complete reparation of the material and non-material loss suffered by those victims, fair and appropriate compensation, within the meaning of that provision, requires, when determining such compensation, that account be taken of the seriousness of the consequences, for the victims, of the crimes committed and of the reparation that such victims may obtain on the basis of the tortious liability of the offender”.<sup>61</sup>

[10.47] In light of this judgment, the Commission considers that the statutory scheme must make provision for compensating applicants for both financial and non-financial losses or harm.

#### **(d) Submissions**

[10.48] In its Consultation Paper, the Commission asked:

“Should provision be made for the awarding of damages for pain and suffering (or, in the language of the *BV* case, damages for “non-material loss”) in all claims (not limited to fatal claims)?”<sup>62</sup>

[10.49] All consultees who responded to this question expressed the view that applicants should be compensated for pain and suffering. One consultee highlighted that a victim of a road traffic accident, a Garda or prison officer injured in the course of their duties, and a worker injured in the course of their employment, would all be entitled to receive compensation for pain and suffering, in contrast with an applicant under the current scheme. It was argued that applicants in this jurisdiction are treated less compassionately by not being compensated for pain and suffering in comparison with Northern Ireland, where such payments can be made. It was further submitted that allowing damages in respect of pain and suffering would support a proper rights-based approach to compensation for applicants.

[10.50] Another consultee emphasised that where offences of domestic violence are concerned, physical injuries are only one aspect of their effects on survivors. Many survivors will endure psychological pain and suffering and on this basis, it

<sup>61</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 39.

<sup>62</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 136, question 4.1.

was submitted that survivors of domestic violence and sexual abuse should be able to claim compensation for pain and suffering arising from harm that is psychological in nature.

### **(e) Proposals for reform**

- [10.51] The judgment in *LD* has now further clarified Member States' obligations under the Compensation Directive. It has confirmed that compensation schemes for victims of violent crimes must be capable of responding to the seriousness of the consequences for individual victims and must be capable of including both compensation for verifiable expenses and general compensation for pain and suffering in order to be considered fair and appropriate.<sup>63</sup> The Commission also notes the strong views of consultees that the proposed statutory scheme should provide compensation to applicants for pain and suffering.
- [10.52] The Commission considers that it is necessary to permit the statutory body to make payments of general compensation under the statutory scheme to comply with the Compensation Directive, having regard to the judgment of the CJEU in *LD*. The Commission recommends that a victim of a crime of violence should be eligible for general compensation payments under the statutory scheme to compensate them for the pain and suffering they have experienced as a result of the crime of violence.
- [10.53] In addition, family members of a victim who has died as a result of a crime of violence should be eligible for a "bereavement payment" to compensate for their pain and suffering as a result of the loss of the victim. This would be similar to the payment made under the current scheme to dependants in fatal cases.<sup>64</sup> The Commission proposes a definition of 'family member', which is in line with the definition of 'family member' under the Criminal Justice (Victims of Crime) Act 2017 ("Victims' Rights Act")<sup>65</sup> in the Chapter on Defining Eligible Applicants and Crimes of Violence in this Report.
- [10.54] The Commission recommends that only victims of crimes of violence can apply for a general compensation payment and only their family members in fatal cases can apply for bereavement payments. The Commission's proposed definitions of 'victim' and 'crime of violence' are also discussed in the Chapter on Defining Eligible Applicants and Crimes of Violence. The Commission's proposals on how general compensation payments and bereavement payments could be assessed are discussed in detail in the Chapter on Determining Fair and Appropriate Compensation.

<sup>63</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 39.

<sup>64</sup> See paragraph 6(e) of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>65</sup> See Section 2(1)(a) – (g) of the Criminal Justice (Victims of Crime) Act 2017.

- [10.55] The Commission recommends that general compensation payments for victims should be in addition to the payment of compensation for reasonable, verifiable expenses. Verifiable expenses include any expense that can be verified by a receipt, an invoice, or other proof of loss, such as medical expenses, care needs, transport costs, funeral expenses, or other specific and direct costs or expenses. Evidence of these expenses should accompany an application form.
- [10.56] Certain other persons who incur reasonable, verifiable expenses, should also be permitted to apply for compensation under the statutory scheme. These persons are defined in the Chapter on Defining Eligible Applicants and Crimes of Violence and include persons responsible for the maintenance of a victim and any person who incurs reasonable, verifiable expenses as the result of the death of the victim, such as funeral expenses.
- [10.57] Regarding loss of earnings, the Commission recommends that a victim may be compensated for past loss of earnings and, potentially, future loss of earnings, once that loss is appropriately assessed and evidenced. The Commission considers that it should be made explicit in the scheme that loss of earnings should generally be paid on the basis of any actual loss of net income sustained, or, in the case of long term harm, likely to be sustained by the victim, where appropriate, taking into account likely career progression. Any compensation for future loss of earnings would need to be based on evidence provided by the victim, such as an actuarial report. Any other source of compensation for loss of earnings, such as income protection insurance, should be deducted from a payment of compensation by the statutory body. This issue is discussed in more detail in the Chapter on Preventing Double Compensation.
- [10.58] Finally, the Commission considers that, in line with the current scheme, dependants should be eligible for compensation under the statutory scheme. Such payments will be separate from the 'bereavement payment' and may only be made for 'loss of dependency' where a victim of a crime of violence dies. These payments will include loss of financial benefit and loss of service and this issue is explored in more detail in the Chapter on Defining Eligible Applicants and Crimes of Violence.

- R. 10.5 **The Commission recommends** that the statutory scheme should provide 'fair and appropriate' payments of compensation to victims of crimes of violence, and to family members of a victim of a crime of violence in fatal cases.
- R. 10.6 **The Commission recommends** that the statutory scheme should include provision for general compensation payments to victims of crimes of violence. Proposed definitions for 'victim' and 'crime of violence' can be found in the Chapter on Defining Eligible Applicants and Crimes of Violence.
- R. 10.7 **The Commission recommends** that the statutory scheme should include provision for bereavement payments to family members of a victim who dies as a result of a crime of violence. 'Family members' is defined in the Chapter on Defining Eligible Applicants and Crimes of Violence.
- R. 10.8 **The Commission recommends** that the statutory scheme should include provision for payments of compensation of reasonable, verifiable expenses for all eligible applicants.
- R. 10.9 **The Commission recommends** that the statutory scheme should include provision for compensation payments for loss of earnings for victims of crimes of violence. Loss of earnings should be on the basis of any actual loss of net income sustained, or, in the case of long term harm, likely to be sustained by the victim, taking into account likely career progression.
- R. 10.10 **The Commission recommends** that the statutory scheme should include provision for compensation for 'loss of dependency', to include loss of financial benefit and loss of service. This issue is explored in more detail in the Chapter on Defining Eligible Applicants and Crimes of Violence.

## 4. Compensating property loss

### (a) Current scheme

[10.59] As outlined in the application forms for the current scheme, compensation for verifiable expenses can include medical treatment, dental treatment, prescriptions, spectacles replacement, travel expenses to avail of medical, dental, or optical treatment, and loss of earnings to date and into the future.<sup>66</sup>

[10.60] However, although property could be considered a verifiable expense, the Tribunal, in general, does not compensate for stolen or damaged property (apart from providing compensation for "spectacles replacement" as mentioned above). The current scheme's webpage states that:

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<sup>66</sup> Criminal Injuries Compensation Scheme, "Application Forms" <<https://www.gov.uk/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

“The Scheme covers personal injury only and makes no provision for compensation in respect of stolen or damaged property, even if such property was stolen or damaged at the same time and by the same offender who caused or inflicted the injury the subject of an application.”<sup>67</sup>

[10.61] The Commission has examined how this exclusion has operated in practice. In *Decision 53727* (10 May 2023), in the course of an attack, the applicant’s property was stolen. In reference to this, the Tribunal stated the following:

“The Tribunal may make awards of compensation for expenses that are incurred as a consequence of the injury sustained by a crime of violence. This might cover the cost of treatment or loss of earnings. However [the Tribunal] cannot compensate for items of personal property which were stolen, as these are not covered by the terms of the Scheme.

In this case the incident clearly caused great distress and personal items were stolen from the applicant. The Tribunal wishes to acknowledge this. While it cannot make a monetary award for the distress or loss of property, it can extend its sincere sympathy to the applicant for having had to endure what was clearly a traumatic incident close in time to the significant event of his baby being born.”<sup>68</sup>

[10.62] The applicant was only compensated for medical expenses, amounting to a payment of €480.

[10.63] In *Decision 51653* (20 March 2023), the applicant suffered injuries when he was assaulted during a carjacking incident.<sup>69</sup> The applicant applied for compensation for the following verifiable expenses: medical expenses of €394.31; travel expenses (including the costs of an NCT and a new driver licence card, amounting

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<sup>67</sup> Criminal Injuries Compensation Scheme, “Your questions answered: Making a claim for stolen or damaged property” (8 September 2025) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/criminal-injuries-compensation-scheme-your-questions-answered/#who-is-eligible-to-make-an-application-to-the-criminal-injuries-compensation-tribunal>> accessed 23 March 2026.

<sup>68</sup> Criminal Injuries Compensation Tribunal, Case Reference 53727 (10 May 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/53727-10-may-2023/>> accessed 23 March 2026.

<sup>69</sup> Criminal Injuries Compensation Tribunal, Case Reference 51653 (20 March 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/51653-20-march-2023/>> accessed 23 March 2026.



to €1,400.75 in total); loss of earnings of €2,743; and miscellaneous expenses of €4,550. The Tribunal stated that:

“It is clear that the loss of property cannot be subject of an award of compensation by the Tribunal. The damages which can be assessed are the expenses arising from the injuries sustained, and the loss of earnings that flowed from those injuries. A difficulty in this case is disaggregating the loss occasioned by the theft and destruction of the applicant’s car from any losses occasioned by any injuries sustained on the date of the incident.”

[10.64] The applicant was awarded compensation for prescription expenses and GP visits only, amounting to an award of €121.31.

[10.65] In *Decision 53901* (23 January 2024), the Tribunal awarded the applicant compensation for the “depreciation of her phone”.<sup>70</sup> The applicant was required to hand in her phone to the Gardaí for evidential purposes, which was newly purchased at the time of the incident. Therefore, the Tribunal considered that the applicant would have “suffered some depreciation of the value of her phone”. The applicant ultimately received €260.01 from the Tribunal.

[10.66] The Tribunal’s current approach to the compensation of property means that applicants are not generally entitled to compensation for lost, stolen, or damaged property. However, the decision above highlights that the Tribunal has provided compensation for property in some circumstances, but the Commission understands that this is rare.

[10.67] The Commission considers below whether this restriction should be provided for in the proposed statutory scheme.

## **(b) Comparative jurisdictions**

[10.68] The Commission understands that compensation schemes in other jurisdictions vary in their approach to compensating property. For example, in Victoria, like in Ireland, victims of crime are not entitled to financial assistance for “expenses incurred through loss of or damage to property”.<sup>71</sup> However, in Queensland

<sup>70</sup> Criminal Injuries Compensation Tribunal, Case Reference 53901 (23 January 2024) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/53901-23-january-2024/>> accessed 23 March 2026.

<sup>71</sup> Part 2, Division 1 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

primary victims of crime<sup>72</sup> are entitled to compensation for loss of or damage to clothing the victim was wearing when the crime happened.<sup>73</sup>

- [10.69] In England, Scotland and Wales, victims can receive a special expenses payment in respect of their property or equipment “which was relied on by the applicant as a physical aid which was lost or damaged as a result of the incident giving rise to the injury”.<sup>74</sup> This could include walking sticks, spectacles and dentures. The Commission considers that this is a sensible provision, given that such property can be necessary for an individual to participate fully in their daily life.

### **(c) Proposals for reform**

- [10.70] The Commission considers that the approach to compensating lost, stolen or damaged property under the current scheme is excluding some applicants from being properly compensated for expenses incurred as a result of the crime. The Commission therefore believes that, in line with the scheme in England and Wales, the statutory scheme should make provision for compensating property in certain circumstances.

- [10.71] The Commission considers that, in general, property lost or destroyed in the course of the crime should not be compensated for, because the State is not the wrongdoer and such a provision may have significant financial implications for the scheme. It may also be that some property could be covered separately by insurance policies. However, the Commission considers that property that is used as a physical aid, such as a wheelchair, spectacles or a hearing aid should be compensated by the statutory scheme. The Commission believes that carving out this exception will ensure that applicants are able to receive compensation for items that they need for day-to-day functioning. It seems fair and appropriate to the Commission for the State to compensate an applicant for damage to a physical aid.

- [10.72] The Commission has also considered the approach in other jurisdictions, in particular in relation to compensating damaged clothing. The Commission considers that there may be exceptional cases where clothing is damaged in the course of the crime of violence, for example with a weapon. In such cases, the Commission considers that the statutory body should have a discretion to provide some level of compensation for such damage to property.

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<sup>72</sup> According to section 26(1) of the Victims of Crime Assistance Act 2009 (Queensland) a “primary victim of an act of violence is a person who dies or is injured as a direct result of the act being committed against the person.”

<sup>73</sup> Section 39 of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>74</sup> Paragraph 52(a) of the Criminal Injuries Compensation Scheme 2012 (England, Scotland and Wales).

**R. 10.11 The Commission recommends** that the statutory body should not compensate a victim for property or equipment lost or damaged as a result of the crime of violence unless:

- (1) the property is relied on by the victim as a physical aid such as a wheelchair, spectacles or a hearing aid, or
- (2) where it considers appropriate, the statutory body may compensate a victim for their clothing which was damaged in the course of the crime of violence.

## 5. Interim payments

### (a) Introduction

[10.73] An interim payment of compensation is a payment which is made before the final decision on an application is made. These types of payments are generally not made in civil proceedings except where there are catastrophic injuries. They are sometimes made in the context of compensating victims of crime but only in very exceptional circumstances.

[10.74] This section examines the approach to interim payments of the Tribunal under the current scheme, courts in Ireland, comparative jurisdictions, the views of consultees, and concludes with the Commission's recommendations.

### (b) Current scheme

[10.75] Under the current scheme, awards of compensation are generally paid in one lump sum, but the Tribunal can grant an interim award and postpone making a final award if the applicant is waiting for a final medical assessment of their injury.<sup>75</sup> The Tribunal has only published one decision on interim awards since 2021, and it would appear to apply quite a high threshold before making an interim award. In this decision, the Tribunal stated that "to preserve the fair allocation of resources and the proper functioning and administration of the Scheme, interim relief will only be granted in appropriate circumstances."<sup>76</sup>

[10.76] Although not published on the Tribunal's webpage, the Commission notes that in the case of *Byrne v Criminal Injuries Compensation Tribunal*, an interim award was made to the applicant by the Tribunal for loss of earnings and verifiable expenses, as per the following:

<sup>75</sup> Paragraph 8 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>76</sup> Criminal Injuries Compensation Tribunal, Case Reference 54644 (7 May 2022), <https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/54644-7-may-2022/> accessed 23 March 2026.

- loss of earnings: €73,764,<sup>77</sup>
- out of pocket expenses: €2,080.29,
- cost of further studies: €6,950.<sup>78</sup>

### (c) Relevant law

[10.77] The Commission notes that in ordinary civil cases, interim payments are not generally made. In catastrophic injury cases, they can sometimes arise where liability is clear, but a final award of damages cannot yet be settled because of uncertainty in relation to a plaintiff's need. In *Hegarty v HSE*, the High Court summarised the position at common law in relation to interim payments in catastrophic injuries cases. The Court referred to the situation where there is "real uncertainty as to the nature and cost of a plaintiff's future needs" and stated that in such cases an interim payment relating to "established needs" can be made. Such payments may include "payment of other ascertained items, such as losses already incurred, and a sum for general damages".<sup>79</sup> The Commission notes that interim awards arise in civil cases where the plaintiff has already been found to be entitled to an award of damages.

### (d) Comparative jurisdictions

[10.78] The granting of interim payments is a common feature of victim compensation schemes internationally.

[10.79] In the Netherlands, the compensation scheme provides advance payments to victims where it is certain that a general payment will be awarded but a final decision cannot be made without further investigation.<sup>80</sup> To qualify for an advance payment, victims (or their surviving relatives) must apply in writing to the compensation body outlining the reasons why an advance payment is requested, for example where urgent medical care is required. According to the scheme, "the mere fact that the victim is in an awkward financial situation is no reason for granting an advance".<sup>81</sup> Advance payments will only be awarded where it is clear that a victim has suffered serious injuries as a result of an intentionally committed

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<sup>77</sup> The compensation given for loss of earnings covered the period from the date of the crime (5 May 2002) to the date of the interim decision by the Tribunal (21 December 2009) and was calculated based on gross earnings for the year ended 5 April 2001.

<sup>78</sup> *Byrne v Criminal Injuries Compensation Tribunal* [2017] IEHC 28.

<sup>79</sup> *Hegarty v HSE* [2019] IEHC 788 at para 47 (Murphy J).

<sup>80</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 29 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>81</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 30 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

violent or sexual crime but the exact seriousness of the injuries has yet to be determined.<sup>82</sup>

- [10.80] In England, Scotland and Wales, the Criminal Injuries Compensation Authority may make interim payments ahead of a final decision on a compensation award, while waiting to determine the full extent and long-term impact of a victim's injuries.<sup>83</sup> Interim payments are only made once it has been established that a victim has a firm entitlement to compensation under the scheme and these payments will be deducted from final awards.<sup>84</sup>
- [10.81] In Queensland, victims can receive interim assistance of up to AUD 6,000 (approx. €3,459.64) to cover urgent or immediate expenses where the assessor believes it to be necessary.<sup>85</sup> The amount of a final award must be reduced by the amount of interim assistance granted, and where a final award is not granted, the interim award is refundable by the person to the state.<sup>86</sup> Likewise, in Victoria, interim payments are recoverable by the scheme decision-maker if the application is subsequently refused.<sup>87</sup> Further, where an interim payment is made, this amount will be deducted from the amount of the final award.<sup>88</sup>

### **(e) Submissions**

- [10.82] In the Consultation Paper, the Commission asked for views on whether a statutory body should provide for interim payments.<sup>89</sup> Consultees strongly supported the granting of interim payments. Submissions noted that failure to make interim awards may discriminate against those of lesser means who may need to access compensation quickly to meet specific financial needs. Consultees believed that interim payments can also combat the negative effects of potential delays in granting final payments of compensation. Broadly, consultees believed that interim payments are appropriate for applicants who need immediate

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<sup>82</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 30 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>83</sup> Criminal Injuries Compensation Authority, "Criminal injuries compensation: a guide" (updated 1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#special-expenses>> accessed 23 March 2026.

<sup>84</sup> Criminal Injuries Compensation Authority, "Criminal injuries compensation: a guide" (updated 1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#special-expenses>> accessed 23 March 2026.

<sup>85</sup> Section 98 of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>86</sup> Section 100 of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>87</sup> Section 37(2) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>88</sup> Section 37(3) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>89</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 136, question 4.2.

medical treatment or therapy, are not in a position to pay for medical expenses which are not covered by insurance or the public health system, or are in particular need given the nature of the crime, for example in cases of domestic violence, where they might not have ready access to financial support. Consultees also highlighted that where the applicant has suffered fatal injuries, family members may need access to financial assistance to cover immediate costs, such as funeral expenses.

- [10.83] Two consultees suggested that provision should be made for a fast-track process for interim payments where necessary. However, how this process could operate was not outlined. Another consultee believed that immediate financial assistance should be made available to applicants within 72 hours of a crime, which could be organised directly through the Garda Victim Services Office who have immediate knowledge of, and access to, victims of crime. The Commission considers that such an approach would require significant coordination and allocation of administrative resources, which may not be practical in the short term.

#### **(f) Proposals for reform**

- [10.84] The Commission has considered the position under the current scheme, Irish law, other jurisdictions, submissions from consultees, and the imperative of a victim-centred approach in relation to interim payments. The Commission considers that victims of crime will often have unique needs, requiring immediate and urgent assistance. The Commission intends that the statutory body should work in an efficient and effective manner and that all eligible applicants to the scheme will access fair and appropriate compensation in a timely manner to meet their needs. However, the Commission recognises that there may be exceptional situations where a victim has a particularly urgent need, arising from the impact of the crime of violence, and may not be able to access urgent and necessary assistance without an interim payment.
- [10.85] There may also be situations where the statutory body cannot make a final payment until prognosis of an injury has settled or where it exercises its power to delay its decision on compensation until a criminal trial is concluded because it considers that this is in the interests of justice, as discussed in the Chapter on Interaction with Court Proceedings. In such a situation, the victim may be waiting years for compensation.
- [10.86] Immediate financial assistance in the form of an interim payment can provide timely support to help with urgent costs that victims of crimes of violence may face after such a traumatic event. This may be of particular importance to victims from disadvantaged backgrounds or in vulnerable situations.
- [10.87] In light of these considerations, the Commission recommends that the statutory body should have a discretionary power to make interim payments, but only in exceptional cases, where strict criteria are met. Interim payments should only be

made by the statutory body where the decision-maker considers that the applicant is highly likely to be eligible for compensation under the statutory scheme and the statutory body considers that it is not practicable to make a final determination of compensation at that stage.

- [10.88] The Commission believes that interim payments should not be a regular feature of the application process and should only be made in cases where a payment is necessary to meet urgent or immediate established need arising from the harm suffered by the applicant as a result of the crime of violence.
- [10.89] The Commission considers that interim payments should only be made for reasonable, verifiable expenses, either those already incurred, or expenses that an applicant will need to incur before a final decision on their application can be made (for example necessary medical care). This loss must be directly attributable to the harm suffered as a result of the crime of violence. The Commission considers that interim payments may also be made for loss of earnings but only for loss up to the date of the decision of the interim payment, and only where not making such a payment would cause hardship for the applicant.
- [10.90] To ensure clarity and consistency in decision-making, the Commission considers that guidelines should be made by the statutory body about the making of interim payments. These guidelines should assist both applicants in understanding their entitlements and staff of the statutory body when deciding how much compensation to grant on an interim basis.
- [10.91] The Commission considers that, in exceptional cases, more than one interim payment can be made where necessary to cover further urgent or immediate expenses arising from the harm suffered.
- [10.92] The Commission recommends that a person would need to make a separate application for an interim payment. Staff of the information and assistive tier would assist with this application and a decision-maker at the assessment and adjudicative tier would make the decision. The full process for applying for an interim payment is outlined in the Chapter on the Structure of the Statutory Body and the Application Process.
- [10.93] The Commission recommends that a decision to refuse an interim payment can be appealed to the internal appeals tier of the statutory body. This appeal will be 'on the record', meaning the decision would be made on the same evidence. This decision would be final. A comprehensive outline of the structure of the proposed statutory body is given in the Chapter on the Structure of the Statutory Body and the Application Process.
- [10.94] The Commission emphasises that the granting of an interim payment would not represent a final decision in the application process. The assessment and adjudication tier would later conduct a full evaluation of the application for

compensation to determine eligibility, apply any relevant exclusionary criteria, and assess the final amount of compensation to be granted.

- [10.95] The Commission recommends that any interim payment granted to an applicant must be deducted from the final amount of compensation granted by the statutory body. If the value of the final payment is lower than the total value of any interim payments made, the applicant must repay to the State the difference between the final payment and the total of the interim payments.
- [10.96] Where an interim payment has been made but the applicant is ultimately unsuccessful in their case the Commission recommends that these interim payments should be repaid by the applicant to the State. In the Chapter on Preventing Double Compensation, the Commission recommends that the government consider creating a recovery mechanism to pursue the recovery of double compensation for other sources. The Commission considers that this recovery mechanism could also be used to recover interim payments should an unsuccessful applicant not repay the payment voluntarily.
- [10.97] The Commission also notes that interim payments should not be used to justify significant delays to the granting of a final payment of compensation. In *Byrne v Criminal Injuries Compensation Tribunal* the High Court held that a seven-year gap between the initial application and the grant of an interim award breached the applicant's right to constitutional justice.<sup>90</sup> Timely resolution of the full compensation claim is still necessary even where an interim payment is granted.

- R. 10.12 The Commission recommends** that the statutory body may grant interim payments of compensation in exceptional cases where particular criteria are met.
- R. 10.13 The Commission recommends** that the statutory body may grant interim payments of compensation to applicants for reasonable and verifiable expenses.
- R. 10.14 The Commission recommends** that the statutory body may also grant interim payments for verifiable loss of earnings to the date of the decision of the interim payment but only where not to make such a payment would cause hardship for the applicant.
- R. 10.15 The Commission recommends** an interim payment may be made when each of the following criteria is satisfied:
- (1) the decision-maker is satisfied that the applicant is highly likely to be granted compensation under the scheme;
  - (2) it is not practicable to make a final determination of the compensation payable at that stage;

<sup>90</sup> *Byrne v Criminal Injuries Compensation Tribunal* [2017] IEHC 28.



- (3) an interim payment is necessary to meet urgent or immediate established need arising from the harm suffered by the applicant as a result of the crime of violence.

- R. 10.16 **The Commission recommends** that an applicant can indicate that they wish to request an interim payment on their application form, and provide detailed reasons for making this request. (This recommendation is also in the Chapter on the Structure of the Statutory Body and the Application Process).
- R. 10.17 **The Commission recommends** that an applicant may apply for more than one interim payment where necessary to cover further urgent or immediate needs arising from the harm suffered by the applicant as a result of the crime of violence.
- R. 10.18 **The Commission recommends** that clear guidelines should be drafted by the statutory body about the making of interim payments.
- R. 10.19 **The Commission recommends** that a decision not to grant an interim payment can be appealed to the appeals tier of the statutory body on the record. The decision of the internal appeals tier will be final.
- R. 10.20 **The Commission recommends** that an interim payment must be deducted from the amount of the final compensation payment made by the statutory body.
- R. 10.21 **The Commission recommends** that if the value of the final payment is lower than the total value of any interim payments made, the applicant must repay to the State the difference between the final payment and the total of the interim payments.
- R. 10.22 **The Commission recommends** that the Government consider creating a recovery mechanism, adequately resourced, to pursue the recovery of double compensation from other sources, as recommended in the Chapter on Preventing Double Compensation. This body could also pursue the recovery of interim payments, if they are not repaid voluntarily.

## 6. Periodic payments

### (g) Introduction

- [10.98] A periodic payment is different to an interim payment. An interim payment is generally a lump-sum payment made in advance of a final decision. A periodic payment, in contrast, is a payment that is made after a clear decision on liability (or, in the context of the statutory scheme, eligibility), but in circumstances where a person may have ongoing, and potentially changing needs.

**(b) Current scheme**

[10.99] The current scheme makes awards of compensation in lump sum payments,<sup>91</sup> and there is no provision for the Tribunal to make periodic payments. The Commission considers that lump sum payments may not address large scale expenses over a long period, for example for ongoing medical costs. Therefore, the possibility of introducing periodic payments in the proposed statutory scheme is examined below.

**(c) Relevant law**

[10.100] As discussed in the Commission's Consultation Paper, the Civil Liability (Amendment) Act 2017,<sup>92</sup> inserted a provision into the Civil Liability Act 1961 on the granting of periodic payments in personal injury cases.

[10.101] The Civil Liability (Amendment) Act 2017 provided that the amount of a periodic payment order must be adjusted annually by reference to the Harmonised Index of Consumer Prices ("HICP") as published by the Central Statistics Office.<sup>93</sup> The HICP is a consumer price index and is not an index linked to wages.

[10.102] The indexation of periodic payments under this legislation was criticised in *Hegarty v HSE*,<sup>94</sup> where the Court stated that indexation of periodic payments by reference to the HICP would result in the plaintiff in this case being under-compensated for his injuries. Murphy J held that:

"It is clear, on the basis of the expert evidence before the court, that no competent financial expert would recommend a periodic payment order linked to the harmonised index of consumer prices to provide for the future care needs of a plaintiff. In its current form therefore, the legislation is regrettably, a dead letter. It is not in the best interests of a catastrophically injured plaintiff to apply for a PPO [periodic payment order] under the current legislative scheme."<sup>95</sup>

[10.103] Following this judgment, the Courts and Civil Law (Miscellaneous Provisions) Act 2023 was introduced, amending the original legislation to provide that the indexation rate for periodic payments could be set by Ministerial regulations.

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<sup>91</sup> Paragraph 8 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>92</sup> Part IVB of the Civil Liability Act 1961, inserted by the Civil Liability (Amendment) Act 2017, as commenced in 2018.

<sup>93</sup> Section 51L(1) of the Civil Liability Act 1961, inserted by section 2 of the Civil Liability (Amendment) Act 2017.

<sup>94</sup> *Hegarty v HSE* [2019] IEHC 788.

<sup>95</sup> *Hegarty v HSE* [2019] IEHC 788 at para 74 (Murphy J).

Then, in 2024, the Department of Justice published a report of the interdepartmental group on the indexation rate for periodic payment orders.<sup>96</sup> This report recommended that the index rate for periodic payments should be based on a combination of the HICP and the “annual rate of change in nominal hourly health earnings”.<sup>97</sup> This means that the amount of the periodic payment order will be adjusted each year to reflect both changes over time in the prices of consumer goods and services and changes in wages for workers in the health sector.

[10.104] The Commission understands that at the time of writing, the Department of Justice is drafting regulations to implement the proposals made by the interdepartmental working group.<sup>98</sup>

#### (d) Submissions

[10.105] In the Consultation Paper, the Commission asked the following:

“Should provision be made for compensation to be paid by periodical pension or periodical payment order? If so, in what circumstances?”<sup>99</sup>

[10.106] All consultees who responded to this question were in favour of the introduction of periodic payments in the statutory scheme. One consultee stated that the introduction of periodic payments may help reduce the delays in granting compensation, due to the nature of the cash-limited scheme.<sup>100</sup> This means that once the allocated budget for the current scheme is exhausted, any compensation claims that are still pending must be deferred to the next financial year.

[10.107] Submissions differed on the circumstances in which periodic payments could be made. One consultee suggested that periodic payments could be used where the life-expectancy of the victim is unclear, and could apply the same criteria that the courts apply in civil proceedings when granting periodic payments. Another consultee believed that periodic payments should only be used at the request of

<sup>96</sup> Department of Justice, *Periodic Payment Orders Indexation Rate - Report of the Inter Departmental Working Group* (2024).

<sup>97</sup> Department of Justice, *Periodic Payment Orders Indexation Rate - Report of the Inter Departmental Working Group* (2024) at page 47.

<sup>98</sup> Dáil Éireann, Written Answers – Personal Injury Claims (4 November 2025) <<https://www.oireachtas.ie/en/debates/question/2025-11-04/1268/#:~:text=As%20the%20Deputy%20will%20be%20aware%2C%20Periodic%20Payment%20is%20made%20annually%20on%20an%20agreed%20date>> accessed 23 March 2026.

<sup>99</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 136, question 4.3.

<sup>100</sup> The funding of the scheme is considered in detail in the Chapter on Funding the Statutory Scheme.

the applicant, and another view expressed was that these payments should only be used for catastrophic cases.

### (e) Proposals for reform

[10.108] The Commission agrees with consultees that periodic payments can have benefits for victims who have suffered long-lasting, severe injuries as a result of a crime. However, the Commission acknowledges that the system for the granting of periodic payments is currently under review in Ireland, and it is unclear how it will operate in practice once established.

[10.109] As noted above, the Department of Justice is in the process of drafting regulations which will impact how periodic payments are made in the future in civil cases. The Commission does not believe it is appropriate to propose an alternative approach. Rather, the Commission considers that the Department of Justice should give future consideration to extending the power to make periodic payments to the statutory body, once the system of periodic payments that has been established for court payments is in force.

**R. 10.23 The Commission recommends** that the Government should consider extending to the statutory body the power to make periodic payments when the system of periodic payments for court payments is established.

## 7. Types of compensation payments not included

### (a) Current scheme

[10.110] The current scheme provides for certain miscellaneous situations where a compensation payment will not be made. Under the scheme, the Tribunal will not award compensation for the following:

- (a) by way of exemplary,<sup>101</sup> vindictive<sup>102</sup> or aggravated<sup>103</sup> damages;

<sup>101</sup> Finlay CJ has defined exemplary damages as “damages arising from the nature of the wrong which has been committed and/or the manner of its commission which are intended to mark the court’s particular disapproval of the defendant’s conduct in all the circumstances of the case and its decision that it should publicly be seen to have punished the defendant for such conduct by awarding such damages, quite apart from its obligation, where it may exist in the same case, to compensate the plaintiff for the damage which he or she has suffered”. *Conway v Irish National Teachers Organisation* [1991] 2 IR 305 at page 317 (Finlay CJ).

<sup>102</sup> Murdoch and Hunt note that punitive or exemplary damages are synonymous with vindictive damages. “Vindictive damages” in *Murdoch and Hunt’s Encyclopedia of Irish Law* (Bloomsbury Professional 2021). These are damages which are given as a punishment.

<sup>103</sup> According to Dorgan and McKenna, “[a]ggravated damages are awarded to the plaintiff as additional compensation in recognition of exceptional features which exacerbated the wrong”. See Dorgan and McKenna, *Damages* 2<sup>nd</sup> ed (Round Hall 2021) at para 2-07.

- (b) in respect of the maintenance of any child born to any victim of a sexual offence;
- (c) in respect of loss or diminution of expectation of life;
- (d) where the victim has died, for the benefit of the victim's estate.<sup>104</sup>

[10.111] The Commission understands from the Tribunal secretariat that none of these exceptions have been used by the Tribunal to date as a reason to refuse compensation to an applicant to the scheme.

### **(b) Proposals for reform**

[10.112] The Commission has considered whether similar miscellaneous exceptions should be included in the statutory scheme. It considers that the provision related to "exemplary, vindictive or aggravated damages" should not be included in the statutory scheme because the Commission is recommending that the statutory body does not pay compensation by way of damages at all. The Commission is instead proposing that, as discussed above, compensation should be paid for reasonable, verifiable expenses, loss of earnings, pain and suffering, and loss of dependency and that the payment of compensation under the statutory scheme should not directly correlate to damages under the Civil Liability Act 1961. Taking into account that there is no question that such damages would be awarded under the statutory scheme, the Commission considers that the provision excluding "exemplary, vindictive or aggravated damages" is no longer relevant and is, therefore, not necessary to include in the statutory scheme.

[10.113] In relation to compensation "in respect of the maintenance of any child born to any victim of a sexual offence", the Commission considers that a similar exception should be provided for in the statutory scheme. However, the Commission suggests that the text should be changed slightly to make clear we are referring to a child born as a result of a sexual offence. The new exception would provide that compensation will not be payable by the statutory body "in respect of the maintenance of any child born to any victim as a result of a sexual offence". The Commission believes that this will provide clarity to applicants and this provision should be included in the statutory scheme in order to avoid the potentially very large burden on the Exchequer to provide financial support to any child born as a result of a sexual offence.

[10.114] The Commission considers that the term excluding compensation "in respect of loss or diminution of expectation of life" should not be included in the statutory scheme because the Commission is now recommending that applicants can be paid general compensation for pain and suffering. It recommends in the Chapter

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<sup>104</sup> Paragraph 6(a) to (d) of the Criminal Injuries Compensation Scheme (31 January 2025).

on Determining Fair and Appropriate Compensation that a victim's prognosis can be taken into account by the statutory body when determining what level of payment of general compensation is made.<sup>105</sup> Therefore, this exclusion would no longer be relevant.

[10.115] The Commission also considered the current rule that the Tribunal will not pay compensation for the benefit of the victim's estate. The Commission has recommended that the victim's estate could potentially benefit from a payment under the statutory scheme where a victim has begun an application for compensation but has died before their application has concluded. Therefore, this exclusion would not be relevant to the statutory scheme.

**R. 10.24 The Commission recommends** that the statutory body will not provide compensation in respect of the maintenance of any child born to a victim of sexual violence as a result of that sexual violence.

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<sup>105</sup> The Commission recommends in the Chapter on Determining Fair and Appropriate Compensation that the statutory body can take into account the severity and duration of any physical or psychiatric injury or injuries suffered by the victim when determining the amount of general compensation or bereavement payment, including: the nature, extent and duration of treatment undertaken and/or medication prescribed; likely success of treatment; and prognosis, to include any likely lasting impact, future risks or vulnerability.

# CHAPTER 11 DETERMINING FAIR AND APPROPRIATE COMPENSATION

|                   |                                                                         |            |
|-------------------|-------------------------------------------------------------------------|------------|
| <b>Chapter 11</b> | <b>Determining Fair and Appropriate Compensation.....</b>               | <b>371</b> |
| 1.                | <i>Introduction.....</i>                                                | 373        |
| 2.                | <i>Verifiable expenses and loss of earnings .....</i>                   | 373        |
|                   | (a) Introduction.....                                                   | 373        |
|                   | (b) Current scheme.....                                                 | 374        |
| (i)               | <i>Maximum amount of compensation.....</i>                              | 374        |
| (ii)              | <i>Minimum amount of compensation.....</i>                              | 375        |
|                   | (c) Relevant law.....                                                   | 376        |
|                   | (d) Comparative jurisdictions.....                                      | 377        |
| (i)               | <i>European Union.....</i>                                              | 377        |
| (ii)              | <i>Northern Ireland.....</i>                                            | 378        |
| (iii)             | <i>England, Scotland and Wales.....</i>                                 | 378        |
| (iv)              | <i>Australia.....</i>                                                   | 379        |
| (v)               | <i>California.....</i>                                                  | 380        |
|                   | (e) Submissions.....                                                    | 380        |
| (i)               | <i>Maximum amount of compensation.....</i>                              | 380        |
| (ii)              | <i>Minimum amount of compensation.....</i>                              | 381        |
|                   | (f) Proposals for reform.....                                           | 382        |
| (i)               | <i>Maximum amount of compensation.....</i>                              | 382        |
| (ii)              | <i>Minimum amount of compensation.....</i>                              | 383        |
| 3.                | <i>A framework for general compensation payments .....</i>              | 384        |
|                   | (a) Current scheme.....                                                 | 385        |
|                   | (b) Relevant law.....                                                   | 386        |
|                   | (c) Approaches to making general compensation .....                     | 387        |
| (i)               | <i>Personal Injuries Guidelines .....</i>                               | 387        |
| (ii)              | <i>Tariff scheme.....</i>                                               | 389        |
| (iii)             | <i>Band scheme.....</i>                                                 | 393        |
|                   | (d) Submissions.....                                                    | 396        |
|                   | (e) Proposals for reform.....                                           | 397        |
| (i)               | <i>Personal Injuries Guidelines .....</i>                               | 397        |
| (ii)              | <i>Tariff scheme.....</i>                                               | 399        |
| (iii)             | <i>Commission proposal: Band scheme.....</i>                            | 400        |
| (iv)              | <i>Minimum and maximum thresholds for general compensation payments</i> | 401        |
| (v)               | <i>Factors for allocating categories of harm .....</i>                  | 402        |

|     |                                                      |     |
|-----|------------------------------------------------------|-----|
| 4.  | <i>Bereavement payments for family members</i> ..... | 405 |
| (a) | Current scheme.....                                  | 405 |
| (b) | Irish law .....                                      | 406 |
| (c) | EU law .....                                         | 406 |
| (d) | Proposals for reform.....                            | 407 |



## 1. Introduction

- [11.1] The preceding Chapter on Types of Compensation explores the categories of payments that the Commission proposes should be available within the statutory scheme. This Chapter outlines the Commission's proposals regarding how the statutory body should assess and determine fair and appropriate amounts of compensation to be paid to applicants. It addresses compensation for reasonable, verifiable expenses and loss of earnings, and it proposes a framework for assessing general compensation payments for victims of violent crime. It also addresses how the bereavement payment for family members may be assessed and divided between eligible family members. As addressed in the previous Chapter, the Commission considers that general compensation payments for pain and suffering for victims of crimes of violence and bereavement payments to family members will be necessary in order to ensure compliance with the European Union ("EU") Directive relating to compensation to crime victims ("Compensation Directive").<sup>1</sup>
- [11.2] The Commission's main recommendation in this Chapter is that the statutory body should use a band scheme to assist in assessing and determining the amount of general compensation to pay to a victim of a crime of violence. The Commission also recommends that payments for reasonable, verifiable expenses and loss of earnings should not be subject to a maximum or minimum compensation threshold in the statutory scheme. The Commission has taken into account EU and Irish law requirements, consultee submissions, and the approach to compensation payments in other jurisdictions in the development of these proposals.

## 2. Verifiable expenses and loss of earnings

### (a) Introduction

- [11.3] In the Chapter on Types of Compensation, the Commission recommends that the statutory body can compensate certain eligible applicants for reasonable, verifiable expenses and for loss of earnings incurred as a result of a crime of violence. Eligible applicants are defined in the Chapter on Definitions of Eligible Applicants and Crimes of Violence. This section examines whether these payments should have a maximum threshold (a cap) and/or a minimum threshold.

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<sup>1</sup> Article 12(2) of the Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims [2004] OJ L 261/15 ("Compensation Directive"), and see Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 36.

**(b) Current scheme***(i) Maximum amount of compensation*

- [11.4] Under the Criminal Injuries Compensation Scheme (“the current scheme”), there is no cap, or maximum threshold, on the amount of awards of compensation given for verifiable expenses and loss of earnings. An applicant can be compensated for all losses or expenses that they can prove through receipts or otherwise where the Tribunal is satisfied that these expenses or losses arose because of the crime of violence.
- [11.5] The Criminal Injuries Compensation Tribunal (“the Tribunal”) has made large compensation payments for verifiable expenses and loss of earnings in many cases. For example, in *Decision 52895* (30 November 2023), the applicant suffered a traumatic brain injury following a criminal assault. Combining the applicant’s claim in respect of loss of earnings into the future, past loss of earnings, and verifiable expenses, the Tribunal made a total award of €571,192.<sup>2</sup> In *Decision 54772* (18 December 2023), the applicant also suffered a brain injury as a result of a criminal assault, and received extensive medical treatment for his injuries.<sup>3</sup> The Tribunal granted the applicant an award in respect of the following:
- Future loss of earnings: €483,887.25
  - Past loss of earnings: €38,737
  - Future costs referred to in a nursing consultant’s report: €691,832
  - Costs of reports: €6,885

This resulted in a total award of €1,221,341.25.

- [11.6] The Commission observes that in the context of the cash-limited scheme,<sup>4</sup> some very high awards for verifiable expenses and loss of earnings have taken up a large proportion of the overall budget<sup>5</sup> of the current scheme. For example, in

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<sup>2</sup> Criminal Injuries Compensation Tribunal, Case Reference 52895 (30 November 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/52895-30-november-2023/>> accessed 23 March 2026.

<sup>3</sup> Criminal Injuries Compensation Tribunal, Case Reference 54772 (18 December 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/54772-18-december-2023/>> accessed 23 March 2026.

<sup>4</sup> The nature of the current scheme is such that once the allocation has been used up, an applicant who is now outside of this must wait until the next allocation to receive their compensation.

<sup>5</sup> The Commission’s recommendations in relation to the funding of the statutory scheme are discussed in the Chapter on Funding the Statutory Scheme.

2022, €6,321,559 was paid to 192 applicants,<sup>6</sup> and in 2023, €7,516,228 was paid to 270 applicants.<sup>7</sup> An award in the millions would make up a significant proportion of this overall annual expenditure of the Tribunal. The most recent Annual Report of the Tribunal stated that in 2024, €10,015,000 was paid to 203 applicants.<sup>8</sup> The Commission has considered the implications of such large payments below, in contemplating whether uncapped payments of compensation for verifiable expenses and loss of earnings should be provided for in the statutory scheme.

(ii) *Minimum amount of compensation*

- [11.7] Paragraph 9 of the current scheme provides that “[n]o compensation will be payable unless the Tribunal is satisfied that the injury is such that compensation of not less than €500 should be awarded.”<sup>9</sup> This threshold was introduced in 2021 and replaced the previous minimum threshold of €63.49 (IR£50).<sup>10</sup> Unless the minimum threshold (in legal terms *de minimus*) is met, compensation will not be awarded to a victim under the current scheme.
- [11.8] *Decision 55010* (9 March 2023) is an example of the application of the minimum award requirement preventing any award being made. The applicant was assaulted, suffering head and shoulder injuries. She applied for compensation of IR£250 and submitted invoices for the treatment that she received. However, this did not reach the minimum award threshold. Therefore, the Tribunal could not make any award of compensation, despite considering the applicant to be a

<sup>6</sup> Department of Justice, Home Affairs and Migration, *Criminal Injuries Compensation Tribunal Annual Report 2022* (Criminal Injuries Compensation Tribunal, 29 July 2023) at page 18 <<https://www.gov.ie/en/publication/f0c49-criminal-injuries-compensation-tribunal-annual-report-2022/>> accessed 23 March 2026.

<sup>7</sup> Department of Justice, Home Affairs and Migration, *Criminal Injuries Compensation Tribunal Annual Report 2023* (Criminal Injuries Compensation Tribunal, 5 September 2024) at page 19 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/criminal-injuries-compensation-tribunal-annual-report-2023/>> accessed 23 March 2026.

<sup>8</sup> Department of Justice, Home Affairs and Migration, *Criminal Injuries Compensation Tribunal Annual Report 2024* (Criminal Injuries Compensation Tribunal, 18 July 2025) at page 17 <<https://www.gov.ie/en/departments-of-justice-home-affairs-and-migration/publications/annual-report-of-the-criminal-injuries-compensation-tribunal-2024/>> accessed 23 March 2026.

<sup>9</sup> Paragraph 9 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>10</sup> The Commission notes that the minimum award threshold was changed from €63.49 to €500 in April 2021. In the Tribunal’s 2022 Annual Report, the 2021 changes to the scheme were outlined, including the change in the minimum. The Report stated that the revised scheme “[u]pdates 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...” Department of Justice, Home Affairs and Migration, *Criminal Injuries Compensation Tribunal Annual Report 2022* (Criminal Injuries Compensation Tribunal, 29 July 2023) at page 36 <<https://www.gov.ie/en/publication/f0c49-criminal-injuries-compensation-tribunal-annual-report-2022/>> accessed 23 March 2026.

victim of a crime of violence who had suffered personal injury as a result of the crime of violence.<sup>11</sup>

- [11.9] Prior to the minimum threshold being changed, applicants often received awards of compensation below €500. For example, in *Decision 52856* (10 May 2022), the applicant was awarded €210 for medical and dental expenses after being struck in the face.<sup>12</sup> In *Decision 50053* (13 May 2022), the applicant was awarded €411.68 for loss of earnings and hospital expenses following an assault.<sup>13</sup> In *Decision 50421* (13 May 2022), the applicant received €150 for medical expenses after being stabbed.<sup>14</sup>
- [11.10] The Commission is concerned that this minimum threshold has prevented victims of crime from obtaining any compensation at all. The objective of the scheme is to compensate victims for the harm they have suffered as a result of a crime of violence. Excluding eligible victims from compensation due to a minimum award threshold may undermine this objective. Therefore, the Commission has considered below whether the statutory scheme should have a minimum requirement of loss in the context of verifiable expenses.

### (c) Relevant law

- [11.11] Article 12(2) of the Compensation Directive, discussed in detail in the previous Chapter, provides that compensation given to victims of crime must be fair and appropriate. However, as the Commission noted in its Consultation Paper, the

<sup>11</sup> Criminal Injuries Compensation Tribunal, Case Reference 55010 (9 March 2023) available at <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/55010-9-march-2023/>> accessed 23 March 2026.

<sup>12</sup> Criminal Injuries Compensation Tribunal, Case Reference 52856 (10 May 2022) available at <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/52856-10-may-2022/>> accessed 23 March 2026.

<sup>13</sup> Criminal Injuries Compensation Tribunal, Case Reference 50053 (13 May 2022) available at <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/50053-13-may-2022/>> accessed 23 March 2026.

<sup>14</sup> Criminal Injuries Compensation Tribunal, Case Reference 50421 (13 May 2022) available at <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/50421-13-may-2022/>> accessed 23 March 2026. The Commission notes that although some decisions were published after the minimum threshold was changed in 2021, the Tribunal deals with applications in accordance with the Scheme that applied at the time the application was lodged. Criminal Injuries Compensation Scheme, "Your questions answered: How your application will be dealt with if you applied to the Tribunal before the Scheme was amended on 20 April 2021" (8 September 2025) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/criminal-injuries-compensation-scheme-your-questions-answered/#how-your-application-will-be-dealt-with-if-you-applied-to-the-tribunal-before-the-scheme-was-amended-on-20-april-2021>> accessed 23 March 2026.

Directive itself sets out minimum requirements<sup>15</sup> which means that Member States are free to go beyond these requirements.<sup>16</sup>

- [11.12] As affirmed by the Advocate General<sup>17</sup> in *BV* nothing in the Compensation Directive “prevents national laws and procedures from including provisions, which in the determination of the amount of compensation to be granted, allow for ranges, maximum and/or minimum ceilings, and standard or fixed financial values for each type of loss or injury suffered by the victim, or type of crime committed”.<sup>18</sup> The CJEU’s position was reiterated in the cases of *Burdene*<sup>19</sup> and *LD*.<sup>20</sup> Therefore, it would appear that the Compensation Directive does permit both maximum and minimum thresholds for payments of compensation.

#### (d) Comparative jurisdictions

- [11.13] The Commission observes that some compensation schemes in other jurisdictions provide maximum and minimum amounts of compensation to victims of crime for verifiable expenses and loss of earnings.

##### (i) European Union

- [11.14] In providing compensation for verifiable expenses only, Bulgaria provides for a minimum award of BGN 250 (approx. €127.82) and a maximum award of BGN 10,000 (approx. €5,112.91),<sup>21</sup> the Czech Republic provides for a maximum award of financial assistance of up to CZK 200,000 (approx. €8,269.57),<sup>22</sup> Estonia has an upper limit of €9,590,<sup>23</sup> Malta has an overall limit of €23,300,<sup>24</sup> and Poland

<sup>15</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at para 4.12.

<sup>16</sup> Article 17 of the Compensation Directive (2004/80/EC).

<sup>17</sup> The Advocate General is a member of the Court of Justice of the European Union that can present an independent, non-binding legal opinion to the judge in a particular case.

<sup>18</sup> Case-129/19 *Opinion of Advocate General Bobek in Presidenza del Consiglio dei Ministri v BV, joined parties; Procura della Repubblica di Torino* ECLI:EU:C:2020:375 at para 141.

<sup>19</sup> Case C 126/23 *Burdene* EU:C:2024:937 at para 61.

<sup>20</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741.

<sup>21</sup> Article 13 of the Law on Assistance and Financial Compensation to Victims of Crime 2007 (Bulgaria).

<sup>22</sup> Section 28 of Act No 45/2013 Coll. Victims of Crime Act and Amendment of Certain Acts (Victims of Crime Act) (Czech Republic).

<sup>23</sup> Section 44(4) of the Victim Support Act 2022 (Estonia).

<sup>24</sup> Regulation 18 of the Criminal Injuries Compensation Scheme Regulations (Subsidiary Legislation 9.12) 2012 (Malta).

provides for a maximum award of PLN 25,000 (approx. €5,894.75) (or PLN 60,000 (approx. €14,147.40) in the case of death).<sup>25</sup>

*(ii) Northern Ireland*

[11.15] The Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009) operates a tariff system.<sup>26</sup> The scheme provides standard, fixed amounts of compensation for injuries set out in the tariff (intended to cover general compensation for pain and suffering). The scheme also provides for the reimbursement of verifiable expenses. There is no maximum payment under the scheme for verifiable expenses, like loss of earnings, the cost of medical care, funeral payments, and certain other payments in fatal cases.<sup>27</sup> This means that victims are compensated based on their actual needs and losses, which takes into account the potentially long-lasting consequences of injuries. The Commission notes that this approach means the system can take account of individual and long-term cases through uncapped verifiable expenses. There is no minimum prescribed amount of compensation for verifiable expenses and loss of earnings under the scheme.<sup>28</sup>

[11.16] The Commission understands that the reason for the Northern Irish scheme having no cap on verifiable expenses is so the compensation paid reflects the actual losses of the applicant. The needs and, therefore, the expenses of applicants will vary from case to case. Having no cap on these expenses means that the individual nature of the crime and its consequences are recognised, arguably providing compensation on a more equitable basis.

*(iii) England, Scotland and Wales*

[11.17] The Criminal Injuries Compensation Scheme in England, Scotland and Wales also operates a tariff system.<sup>29</sup> The types of compensation provided are injury payments as set out in a tariff (which are general compensation payments), and verifiable expenses, including loss of earnings, special expenses, bereavement

<sup>25</sup> Article 6 of the State Compensation for Victims of Certain Offences Act 2005 (Poland).

<sup>26</sup> Section 27 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>27</sup> The Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>28</sup> Paragraphs 31 – 37 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009). This is qualified however in section 31(1). Applicants who have lost earnings or earning capacity for longer than 28 weeks will not be eligible to claim compensation for the first 28 weeks of loss of earnings. Applicants may not claim compensation for special expenses unless they have lost earning capacity or if unemployed, were similarly incapacitated for 28 weeks.

<sup>29</sup> The Criminal Injuries Compensation Scheme 2012 (England, Scotland and Wales). Tariff schemes are discussed in further detail in section 3 of this Chapter.

payments, child's payments, dependency payments, funeral payments, and certain other payments in fatal cases.<sup>30</sup>

[11.18] The maximum amount of compensation available under the scheme is GBP 500,000 (approx. €576,407.34).<sup>31</sup> This amount is intended to take into account both general compensation payments and compensation for verifiable expenses. There is no prescribed minimum amount for verifiable expenses and loss of earnings within the scheme.<sup>32</sup>

*(iv) Australia*

[11.19] In New South Wales, compensation for verifiable expenses is capped at various amounts depending on the category of victim.<sup>33</sup> There is no minimum payment threshold for these expenses.

[11.20] A similar approach is taken in Victoria, which caps awards for verifiable expenses at AUD 61,499 (approx. €35,467.86).<sup>34</sup> The maximum amount of compensation that can be given is subject to indexation.<sup>35</sup> This means that the amount can change in a given year based on a formula which takes into account changes in consumer prices.<sup>36</sup> These expenses include:

- counselling expenses,
- medical expenses,
- loss of earnings up to AUD 20,500 (approx. €11,822.81),
- lost or damaged clothing worn at the time of the violent act,
- safety expenses, and

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<sup>30</sup> Paragraph 30 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>31</sup> Paragraphs 31 and 60 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>32</sup> Paragraph 44 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales). While there is no minimum amount, applicants may only claim for loss of earnings once they have lost earning capacity for 28 weeks. Under paragraph 50, applicants will only be eligible for a special expenses payment if they have lost earnings or earning capacity, or been incapacitated to a similar extent, for more than 28 weeks.

<sup>33</sup> Part 3 of the Victims Rights and Support Regulation 2019 (New South Wales).

<sup>34</sup> Victoria State Government, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 48 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 23 March 2026.

<sup>35</sup> Section 72 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>36</sup> Section 72(1) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

- in exceptional circumstances, expenses to assist with their recovery from the violent act.

There is no minimum award threshold for these expenses.

#### *(v) California*

[11.21] In California, the scheme provides compensation for verifiable expenses only, suffered “as a direct result of criminal acts”, which are capped depending on the type of expense.<sup>37</sup> The maximum overall benefit a victim may receive is USD 100,000 (approx. €86,786.00).<sup>38</sup> There are also specific caps on different recoverable expenses such as a USD 10,000 (approx. €8,618.24) cap on expenses for outpatient mental health counselling,<sup>39</sup> and USD 3,418 (approx. €2,246.44) for relocation expenses (where recommended by the police or a therapist).<sup>40</sup> There is no minimum award threshold.

### **(e) Submissions**

#### *(i) Maximum amount of compensation*

[11.22] The Commission asked in its Consultation Paper:

Do consultees consider that capped awards of compensation would provide a fairer system for a greater number of applicants, promoting consistency and transparency?<sup>41</sup>

[11.23] While one consultee expressed some reservations in relation to caps on the basis that a victim should be treated equally to those pursuing compensation through the civil courts, all other consultees who responded to this question were in favour of capped awards, subject to conditions. One consultee stated that the adoption of caps within the scheme could potentially ensure consistency and could reduce the burden on the cash-limited scheme. They considered that caps allow certainty in the amount of money that will be paid per applicant, and therefore certainty in the amount of compensation that is definitively going to be awarded to any applicant under the scheme. However, this consultee emphasised that any system of capping should have a degree of flexibility. This consultee believed that it is reasonable to say that those seeking compensation for more serious injuries, for example sexual crimes and serious assaults or fatalities,

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<sup>37</sup> Section 13950(a) of the California Government Code.

<sup>38</sup> Section 13957(b) of the California Government Code.

<sup>39</sup> Section 13957(a)(2)(A) of the California Government Code.

<sup>40</sup> Section 13957(a)(7) of the California Government Code.

<sup>41</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 136, question 4.4.



should be prioritised to accommodate the higher costs of expenses that these applicants may face.

- [11.24] Another submission believed that capped awards should be considered if it is required to make funds available to all qualified victims. A consultee suggested that capped awards can promote consistency and transparency, but there must always be room for exceptions. Another consultee suggested that caps would only be appropriate for single claimants and would be an “unjust instrument” where there are multiple claimants.
- [11.25] The Commission notes that these views were expressed in the context of a cash-limited scheme where some applicants may be excluded from compensation in a particular year where large awards are made to other applicants. This may not prove to be as significant an issue should the Commission’s recommendation that the statutory body be adequately funded from central funds on a multi-annual basis be implemented, as outlined in the Chapter on Funding the Statutory Scheme.

*(ii) Minimum amount of compensation*

- [11.26] The Commission also asked in its Consultation Paper whether the minimum award threshold of €500 strikes a fair balance between maximising Tribunal resources and ensuring applicants are appropriately compensated.<sup>42</sup>
- [11.27] Only one consultee believed that the current minimum award threshold is appropriate. The majority of submissions received suggested that the minimum threshold should be as low as possible, in order to include as many victims as possible. One consultee suggested that the previous minimum award threshold of €63.49 should be reinstated. Another consultee noted that the minimum award given for personal injuries is applied to those who appear to require a short-term recovery. However, they stated that within the context of sexual violence specifically, psychological injuries rarely have short-term recovery periods and can require ongoing aid and attention from clinical service providers. This consultee believed that any minimum threshold decided upon should be subject to automatic indexation in line with the cost of living, and to periodic review based on the experience of need, as identified by applicants to the compensation body.
- [11.28] However, some consultees also suggested that the minimum award threshold should not be so low as to overburden the system with small claims. To address this, one consultee believed that a fast-track process should be introduced for

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<sup>42</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 169, question 5.3.

small claims, but did not provide detail on how this process might work in parallel to other applications.

## **(f) Proposals for reform**

### *(i) Maximum amount of compensation*

- [11.29] The Commission is conscious of the fact that the current scheme does not provide a maximum amount of compensation that can be awarded for verifiable expenses and loss of earnings. An applicant can be compensated for all verifiable expenses and loss of earnings related to the personal injury inflicted by a crime of violence. The Commission has considered the views of consultees that maximum threshold, or caps, may be appropriate in some circumstances, but observes that consultees were responding in the context of the current cash-limited scheme, in which large payments to some applicants mean that there is no budget left for others. The Commission further notes that caps on verifiable expenses in some other jurisdictions must be considered in the context of access to and provision for social and health services that are more expansive than in Ireland. Access to a GP in the United Kingdom, for example, is free at point of service for everybody and prescription charges are currently capped at GBP 9.90.<sup>43</sup> The Commission notes that in Ireland, some groups can access GP services for free and access cheaper prescriptions, including those with a medical card.<sup>44</sup>
- [11.30] Introducing a maximum threshold for verifiable expenses and loss of earnings may mean that compensation paid would not reflect the actual losses suffered by the applicant, particularly for those who have suffered catastrophic injuries. The Commission considers that it is victims who have suffered the worst impacts from a crime of violence that require the most support, and introducing a cap would leave these victims worse off under the statutory scheme than the current scheme. The Commission does not believe that there are sufficient reasons to make the statutory scheme less generous than the current scheme in terms of the reimbursement of reasonable and verifiable expenses, and loss of earnings, that are incurred as a result of the crime of violence.
- [11.31] The Commission considers that, overall, permitting the statutory body to reimburse a victim for all of their expenses and losses that are directly connected to the crime of violence will lead to the most fair and equitable outcome for victims. The Commission notes that this is the approach in Northern Ireland and

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<sup>43</sup> See, for example, National Health Service, "Prescription charges" <<https://www.nhs.uk/nhs-services/prescriptions/nhs-prescription-charges/>> accessed 23 March 2026. The cap for prescriptions is GBP 500.

<sup>44</sup> See, for example, Health Service Executive, "Medical cards" <<https://www2.hse.ie/services/schemes-allowances/medical-cards/>> accessed 23 March 2026.

believes it is appropriate that the statutory scheme aligns on this issue with Northern Ireland.

[11.32] The Commission also observes that some applicants in Ireland will have access to private healthcare insurance or an entitlement to a medical card, which provides free access to some medical services. In such cases, the statutory body will not be required to compensate an applicant for the full expenses that they have incurred as a result of the crime of violence because certain medical expenses will be covered either by the applicant's private insurer or by their medical card. The victim should not be reimbursed twice for the same expenses and the statutory body should be a payor of last resort; the issue of avoiding double payments for applicants is addressed in more detail in the Chapter on Preventing Double Compensation.

[11.33] In relation to loss of earnings, as mentioned in the Chapter on Types of Compensation, the Commission considers that income covered by an employer or as part of income protection insurance should not be included in compensation payments for loss of earnings. However, if this does not cover the total loss of income, the part of the income lost which is not covered by the insurer or otherwise paid by an employer can be compensated under the statutory scheme.

**R. 11.1 The Commission recommends** that the statutory scheme should provide compensation for reasonable, verifiable expenses, and loss of earnings, not covered by any other source, incurred as a result of the crime of violence, without a maximum threshold.

*(ii) Minimum amount of compensation*

[11.34] The Commission recognises that there may be administrative consequences for the statutory scheme if a large number of low value payments of compensation need to be processed. However, it also recognises that the impact of being out of pocket is relative to the applicant. As noted in the Consultation Paper, applicants under the scheme may have vastly different financial circumstances.<sup>45</sup> For example, if an applicant is on minimum wage, at time of writing, they would be earning €495.25 in gross income for a 35-hour week, amounting to around €446 net weekly income.<sup>46</sup> Where this applicant paid €250 for treatment of their injuries, they would have paid more than half of their weekly income, which could

<sup>45</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 148.

<sup>46</sup> The hourly minimum wage since 1 January 2026 is €14.15 for those over 20. See Citizens Information, "Minimum wage" <<https://www.citizensinformation.ie/en/employment/employment-rights-and-conditions/pay-and-employment/minimum-wage/#537d1a>> accessed 23 March 2026.

lead to significant hardship, given the current cost of living. Such an expense could adversely impact any dependants they may have too.

[11.35] The Commission notes that the most recent minimum award recoverable in the current scheme, set at €500, would have excluded numerous applicants who were compensated before that minimum was set for expenses or loss as a result of a crime of violence.<sup>47</sup>

[11.36] The Commission is also conscious of its proposed objectives for the statutory scheme, as outlined in the Chapter on Establishing a Statutory Scheme, including the aim of having a rights-based and victim-centred approach. It has considered the requirements of the Compensation Directive that victims of crimes of violence receive fair and appropriate compensation, and it has considered the views of consultees outlined above.<sup>48</sup>

[11.37] In light of these considerations, the Commission recommends that an applicant should be entitled to compensation for their reasonable, verifiable expenses, and loss of earnings, no matter how small the amount under the statutory scheme. The Commission believes that this reflects a victim-centred approach that recognises that compensation serves not only to reimburse a victim's expenses, but also to acknowledge the inherent wrong done to them as a victim of a crime of violence.

**R. 11.2 The Commission recommends** that there should be no minimum payment threshold for eligible applicants for compensation to the statutory scheme for reasonable, verifiable expenses, and loss of earnings, incurred as a result of the crime of violence.

### 3. A framework for general compensation payments

[11.38] As discussed in the Chapter on Types of Compensation, the Commission is recommending that victims of crimes of violence should be eligible to receive a payment in recognition of the particular impact that the crime had on them, in addition to compensation for any verifiable expenses and losses incurred as a result of the crime of violence. The Commission refers to this type of payment as a general compensation payment and it is similar, but not identical, to general damages for pain and suffering that a person may be awarded against the wrongdoer in civil courts. Only victims of crimes of violence and well-meaning intervenors will

<sup>47</sup> See, for example, Criminal Injuries Compensation Tribunal, Case Reference 50053 (13 May 2022) available at <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/50053-13-may-2022/>> accessed 23 March 2026; Criminal Injuries Compensation Tribunal, Case Reference 52856 (10 May 2022) available at <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/52856-10-may-2022/>> accessed 23 March 2026.

<sup>48</sup> See further Article 12(2) of the Compensation Directive (2004/80/EC). The right to state compensation is discussed in detail in the Chapter on Background and a Rights-Based Approach.

be eligible for general compensation payments under the proposed statutory scheme.<sup>49</sup>

[11.39] The amount of general compensation payable to victims of crime is a question of Government policy which is not a matter for the Commission.<sup>50</sup> However, the Commission has considered, as a matter of principle, what kind of framework could be adopted within the statutory scheme to assist the statutory body in determining fair and appropriate general compensation payments, including whether this framework should include a specified minimum and maximum amount of compensation. A detailed framework could guide the statutory body in identifying, assessing, and appropriately compensating individuals for the varying impacts of crimes of violence, depending on an individual's circumstances and the nature of the crime.

### (a) Current scheme

[11.40] The current scheme compensates victims "in respect of personal injury where the injury is directly attributable to a crime of violence".<sup>51</sup> Payments of general compensation are only paid to family members of a victim who has died, and are subject to a cap, or maximum threshold.<sup>52</sup> This amount is limited to what is recoverable under section 49 of the Civil Liability Act 1961, up to a maximum of €35,000.<sup>53</sup>

[11.41] This is described in the application form for fatal injuries:

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<sup>49</sup> See the Chapter in this Report on Well-meaning Intervenor for the Commission's proposals relating to when such a person may be eligible for compensation under the statutory scheme.

<sup>50</sup> The Commission notes that in February 2026, in the *Blanco v Criminal Injuries Compensation Tribunal and Others* [2024] IEHC 171 case (following the CJEU's decision in *Case C-284/24 LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741), the "State agreed to pay damages – believed to be about €60,000 – plus legal costs" to the plaintiff. Carolan, "Violent crime victims to receive increased State compensation after European court ruling" *The Irish Times* (20 February 2026) <<https://www.irishtimes.com/crime-law/courts/2026/02/20/violent-crime-victims-to-receive-increased-state-compensation-after-european-court-ruling/>> accessed 23 March 2026.

<sup>51</sup> Paragraph 1 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>52</sup> The division of compensation among family members is discussed in detail in section 5 of this Chapter.

<sup>53</sup> See for example Criminal Injuries Compensation Tribunal, Case Reference F/53762 (13 February 2024), where the applicant was awarded €35,000 in respect of a fatal injury to her deceased partner, because the Tribunal was restricted to the solatium. <<https://www.gov.ie/en/publication/e03de-f53762-13-february-2024/>> accessed 23 March 2026. The upper limit of €35,000 is currently in force pursuant to the Civil Liability Act 1961 (Section 49) Order 2014 (SI No 6 of 2014), made under section 49(1A) of the Civil Liability Act 1961.

“In fatal cases the Scheme also provides that an award may be made in respect of mental distress of dependants ... The Tribunal will determine whether the award should be made and how the €35,000 is to be divided among the dependants of the deceased.”<sup>54</sup>

[11.42] Like verifiable expenses and loss of earnings, general compensation payments are subject to the minimum award threshold of €500 under the current scheme.<sup>55</sup>

[11.43] The Commission understands that usually the Tribunal divides general compensation among dependants in fatal cases based on their closeness to the victim.<sup>56</sup> However, there is no explicit guidance on how an amount of general compensation is determined by the Tribunal, or what the calculation is based on. Rather, the Tribunal has full discretion to make this decision subject to the current maximum threshold of €35,000.

### **(b) Relevant law**

[11.44] As discussed in detail in the previous Chapter, the CJEU in *BV* stated that Article 12(2) of the Compensation Directive requires that fair and appropriate compensation is “a contribution to the reparation of material and non-material losses suffered” by the victim.<sup>57</sup> The Commission observes that the provisions of the Compensation Directive represent a minimum requirement for Member States.<sup>58</sup> This means that Member States are free to go beyond such requirements.<sup>59</sup> The CJEU found that fixed rates of compensation are permitted under the Compensation Directive, as long as the rate is “capable of being varied in accordance with the nature of the violence suffered”.<sup>60</sup> The CJEU emphasised that the scale of fixed rates of compensation “must be sufficiently detailed” to avoid being “manifestly insufficient”.<sup>61</sup> The CJEU also found that the financial viability of the scheme can be a relevant consideration when determining a fair

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<sup>54</sup> Criminal Injuries Compensation Scheme, “Application Form (Fatal Injury) Scheme of Compensation for Personal Injuries Criminally Inflicted” (updated 18 July 2025) at section 10 <[application-form-for-fatal-cases.pdf](#)> accessed 23 March 2026.

<sup>55</sup> Paragraph 9 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>56</sup> The Tribunal requires the details of all dependants of the victim to be listed in the application form, outlining their relationship to the victim. “Application Form (Fatal Injury) Scheme of Compensation for Personal Injuries Criminally Inflicted” (updated 18 July 2025) at section 10 <[application-form-for-fatal-cases.pdf](#)> accessed 23 March 2026.

<sup>57</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 64.

<sup>58</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at para 4.12.

<sup>59</sup> Article 17 of the Compensation Directive (2004/80/EC).

<sup>60</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 65.

<sup>61</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 66.

and appropriate amount of compensation.<sup>62</sup> As noted above, the Compensation Directive also permits both maximum and minimum thresholds for payments of compensation, as affirmed in *BV*<sup>63</sup> and reiterated in *Burdene*<sup>64</sup> and *LD*.<sup>65</sup>

### (c) Approaches to making general compensation

[11.45] As discussed in detail in the Chapter on Types of Compensation, the Commission considers that the Compensation Directive, as confirmed by the CJEU in the case of *LD*,<sup>66</sup> requires the consideration of pain and suffering when determining fair and appropriate compensation for all victims of crimes of violence. The Commission has given in-depth consideration to an appropriate framework for making general compensation payments, given that it is recommending that such payments can be made by the statutory body in non-fatal cases. This would be a significant departure from the current scheme. The Commission has considered three different frameworks for determining an appropriate amount of general compensation for applicants. These are:

- The Personal Injuries Guidelines
- A tariff scheme
- A band scheme

#### (ii) *Personal Injuries Guidelines*

[11.46] On 6 March 2021, the Judicial Council adopted the Personal Injuries Guidelines (“PI Guidelines”).<sup>67</sup> The PI Guidelines are intended to provide guidance to courts when assessing the appropriate level of general damages that may be awarded for various types of personal injuries.<sup>68</sup> The PI Guidelines replaced the ‘Book of Quantum’, published by the Personal Injuries Assessment Board, which was previously the starting point for the assessment of damages in a personal injuries action. The Commission is aware that a General Scheme of a draft Bill containing

<sup>62</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 59.

<sup>63</sup> Case-129/19 *Opinion of Advocate General Bobek in Presidenza del Consiglio dei Ministri v BV, joined parties; Procura della Repubblica di Torino* ECLI:EU:C:2020:375 at para 141.

<sup>64</sup> Case C 126/23 *Burdene* EU:C:2024:937 at para 61.

<sup>65</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741.

<sup>66</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 36.

<sup>67</sup> The Judicial Council, *Personal Injuries Guidelines* (2021). The Personal Injuries Guidelines were adopted by the Judicial Council pursuant to section 7 of the Judicial Council Act 2019.

<sup>68</sup> The Judicial Council, *Personal Injuries Guidelines* (2021).

a proposed process for reviewing the Guidelines has recently been published<sup>69</sup> and that the PI Guidelines may be amended in the future through this process.<sup>70</sup>

[11.47] The PI Guidelines set out in detail the range of general damages that 12 main categories of injury should attract in personal injury cases. The PI Guidelines state that:

“It is widely accepted that the making of an award of general damages for pain and suffering is a somewhat artificial task. It involves the judge seeking to convert the pain and suffering of a given claimant into a monetary award which he or she considers to be reasonable by way of compensation. That is a difficult task and one which has historically led to judges making widely varying awards of damages in respect of relatively comparable injuries, a result which not only offends the principle of equality before the law but results in unnecessary appeals and the incurring of additional costs, apart altogether from the burden that such appeals place on the Courts’ own scarce resources.”<sup>71</sup>

[11.48] The PI Guidelines seek to achieve greater consistency in the amount of damages awarded in personal injuries cases. The Supreme Court in *Morrissey v Health Service Executive* has observed that “there is a significant subjective element to the calibration of compensation for pure pain and suffering”.<sup>72</sup> This is based on the fact that unlike special damages, which can be calculated precisely, in the

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<sup>69</sup> The Minister for Justice published the General Scheme of the Judicial Council (Amendment) Bill 2026 in January 2026. The Bill relates to the process for adoption of the Personal Injuries Guidelines. See Department of Justice, “Minister Jim O’Callaghan publishes General Scheme of Judicial Council (Amendment) Bill 2026” (20 January 2026) <<https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/press-releases/minister-jim-ocallaghan-publishes-general-scheme-of-judicial-council-amendment-bill-2026/>> accessed 23 March 2026.

<sup>70</sup> Draft amendments to the PI Guidelines were sent to the Minister for Justice by the Judicial Council on 21 January 2025. However, on 9 July 2025, the Cabinet Committee Sub-Group on Insurance Reform was informed that the Minister would not be bringing a resolution seeking their approval by the Oireachtas. See Dáil Éireann Debates (9 July 2025) vol 1071 no 1 <<https://www.oireachtas.ie/en/debates/debate/dail/2025-07-09/10/?highlight%5B0%5D=personal&highlight%5B1%5D=injuries&highlight%5B2%5D=guidelines&highlight%5B3%5D=personal&highlight%5B4%5D=injuries&highlight%5B5%5D=guidelines&highlight%5B6%5D=guidelines>> accessed 23 March 2026.

<sup>71</sup> The Judicial Council, *Personal Injuries Guidelines* (2021) at page 5.

<sup>72</sup> *Morrissey v Health Service Executive* [2020] IESC 6 at para 14.24 (Clarke CJ), [2024] 1 IR 103 at para 256.



case of general damages, the court is entitled to set and change the amount based on its own experience.<sup>73</sup>

- [11.49] The PI Guidelines outline general principles which should be considered by the court when determining an award of general damages, including the fact that “[a]wards must be proportionate to the injuries sustained and must also be proportionate when viewed in the context of awards of damages commonly made in cases involving injuries of a greater or lesser magnitude”.<sup>74</sup> The PI Guidelines provide that the most devastating and catastrophic injuries will be awarded “in or about” €550,000 in general damages.<sup>75</sup> The lowest amount of general damages provided for in the PI Guidelines is €500, which can be awarded for more minor injuries where a substantial recovery occurs.<sup>76</sup>

### *(iii) Tariff scheme*

- [11.50] The Commission gave some consideration to whether a tariff scheme would be appropriate for the statutory scheme. A tariff scheme uses fixed amounts of compensation for injuries listed in the tariff, and a specific amount of compensation is awarded for particular injuries.

### *Observations from the CJEU*

- [11.51] Tariff schemes have been discussed in various cases by the CJEU. In *BV*, the CJEU examined an Italian compensation scheme for victims of crime, which provided fixed rates of compensation.<sup>77</sup> The CJEU addressed the question of whether a fixed sum of €4,800 given to a victim of sexual violence could be considered fair and appropriate compensation, as required by the Compensation Directive. The CJEU made clear that the Compensation Directive “cannot be interpreted as meaning that it precludes a fixed rate of compensation to such victims, with the fixed amount granted to each victim being capable of being varied in accordance with the nature of the violence suffered”.<sup>78</sup> As outlined above, the CJEU emphasised that the scale of fixed rates of compensation “must be sufficiently

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<sup>73</sup> *Morrissey v Health Service Executive* [2020] IESC 6 at para 14.24 (Clarke CJ), [2024] 1 IR 103 at para 256.

<sup>74</sup> The Judicial Council, *Personal Injuries Guidelines* (2021) at page 6.

<sup>75</sup> The Judicial Council, *Personal Injuries Guidelines* (2021) at page 6.

<sup>76</sup> For example, minor neck injuries where a substantial recovery is made within six months can attract an award between €500 and €3,000. The Judicial Council, *Personal Injuries Guidelines* (2021) at page 29.

<sup>77</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566.

<sup>78</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 65.

detailed” to avoid being “manifestly insufficient”.<sup>79</sup> This view was reiterated in *Burdene*, where the CJEU found that:

“in order to be classified as ‘fair and appropriate’, within the meaning of Article 12(2) of Directive 2004/80, a fixed rate of compensation awarded under the national scheme of compensation to victims of violent intentional crime must be fixed taking into account the seriousness of the consequences, for the victims, of the crime committed and therefore represent an appropriate contribution to the reparation of the material and non-material harm suffered”.<sup>80</sup>

- [11.52] Therefore, the CJEU in *BV* determined that tariff schemes are in principle permissible under the Compensation Directive, provided that the sum takes into account the seriousness of the crime for the victim, and represents an appropriate contribution to the material and non-material harm suffered. However, a tariff scheme providing fixed rates of compensation must also be capable of change to take into account the nature of the violence suffered by the victim, in order to be considered fair and appropriate.

#### *Comparative jurisdictions*

- [11.53] There are multiple jurisdictions which use a tariff system, or fixed rates, of compensation. The Commission has examined the schemes in the Netherlands, Northern Ireland, and England, Scotland and Wales.

#### *The Netherlands*

- [11.54] In the Netherlands, there are fixed rates of awards on the basis of six injury categories, to which six increasing fixed amounts are linked, ranging from Category 1: €1,000 to Category 6: €35,000.<sup>81</sup> This is a fixed, one-off, undifferentiated amount intended to compensate for both verifiable expenses and general compensation.<sup>82</sup> According to the scheme, “[t]he seriousness of the injury suffered and the circumstances under which the violent crime or sexual

<sup>79</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 66.

<sup>80</sup> Case C 126/23 *Burdene* EU:C:2024:937 at para 62.

<sup>81</sup> Schadefonds Geweldsmisdrijven, “List of Injuries” (1 January 2026) <<https://schadefonds.nl/wp-content/uploads/2025/12/List-of-Injuries-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>82</sup> Schadefonds Geweldsmisdrijven, “Policy Manual” (1 January 2026) at page 21 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

crime was committed determine what injury category applies.”<sup>83</sup> The Dutch scheme has extremely detailed guidance for how compensation is assessed, and what injuries fall into each category.<sup>84</sup>

#### *Northern Ireland*

[11.55] The Northern Ireland Criminal Injuries Compensation Scheme is also made up of tariffs.<sup>85</sup> The scheme provides for a standard amount of compensation to be determined by reference to the nature of the injury in accordance with the tariff scheme. This is intended to be a general compensation payment. Compensation can be provided to applicants who have suffered a criminal injury, which includes “physical injury (including fatal injury), mental injury (that is, a disabling mental illness confirmed by psychiatric diagnosis) and disease (that is, a medically recognised illness or condition)”.<sup>86</sup> The scheme provides the following compensation payments:

- (a) a standard amount of compensation, determined by reference to the nature of the injury (the tariff);
- (b) in certain circumstances, an additional amount of compensation for loss of earnings;
- (c) in certain circumstances, an additional amount of compensation calculated with respect to special expenses;<sup>87</sup> and
- (d) in cases of fatal injury to a person, a bereavement support payment to acknowledge the grief and sorrow caused by the death of that person and the loss of that person’s care, guidance

<sup>83</sup> Schadefonds Geweldsmisdrijven, “List of Injuries” (1 January 2026) at page 1 <<https://schadefonds.nl/wp-content/uploads/2025/12/List-of-Injuries-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>84</sup> Schadefonds Geweldsmisdrijven, “List of Injuries” (1 January 2026) <<https://schadefonds.nl/wp-content/uploads/2025/12/List-of-Injuries-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026. See also Schadefonds Geweldsmisdrijven, “Policy Manual” (1 January 2026) <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>85</sup> The Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>86</sup> Paragraph 10 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>87</sup> Compensation for special expenses includes compensation for loss of or damage to property or equipment relied on by the victim as a physical aid, or treatment costs. Paragraph 36 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

and society, and such additional amounts as may be specified or otherwise determined in accordance with the Scheme.<sup>88</sup>

- [11.56] The scheme is made up of 25 fixed levels of general compensation, with Level 1 representing the minimum award of GBP 1,000 (approx. €1,152.81) and Level 25 representing the maximum award of GBP 250,000 (approx. €288,233.53) for any single injury.<sup>89</sup> Each tariff then describes a comprehensive range of injuries and lists the appropriate level and corresponding amount of compensation for each description of injury.<sup>90</sup> The scheme contains a detailed explanation of how compensation should be determined in different circumstances. For example, when a person suffers both a physical and a mental injury, and the tariff amount for the physical injury is higher than that for the mental injury, the applicant will be entitled only to the tariff amount for the physical injury.<sup>91</sup>

*England, Scotland and Wales*

- [11.57] England, Scotland and Wales also use a tariff scheme, which provides a range of compensation payments for victims of violent crime based on the severity of their injuries.<sup>92</sup> It provides “injury payments” as set out in a tariff (meaning general compensation payments), and other types of payment in the form of verifiable expenses not set out in the tariff, including loss of earnings, special expenses, bereavement payments, child’s payments, dependency payments, funeral payments and certain other payments in fatal cases.<sup>93</sup>
- [11.58] Annex E of the scheme provides for a transparent, standardised framework for claiming compensation awards by categorising injuries and assigning corresponding compensation amounts. The tariff table at Part A, which provides for the amount payable in respect of physical and mental injuries sets out injury payments ranging from a minimum payment (at Level A1) of GBP 1,000 (approx. €1,152.81) to (at level A20) a maximum payment of GBP 250,000 (approx. €288,233.53).<sup>94</sup> Part B, which provides for the amount payable in respect of fatal

<sup>88</sup> Paragraphs 38-45 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>89</sup> The Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009) at page 24.

<sup>90</sup> For example, a moderately disabling permanent mental illness, confirmed by psychiatric prognosis, is classed as “16” and attracts a standard amount of GBP 19,000 (approx. €21,906.98), whereas a fractured/chipped tooth requiring treatment is classed as “5” and attracts a standard amount of GBP 2,000 (approx. €2,305.99).

<sup>91</sup> The Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009) at page 22.

<sup>92</sup> Criminal Injuries Compensation Scheme 2012 (England, Scotland and Wales).

<sup>93</sup> Paragraph 30 of the Criminal Injuries Compensation Scheme 2012 (England, Scotland and Wales).

<sup>94</sup> The Criminal Injuries Compensation Scheme 2012 (England, Scotland and Wales) at page 43.

injuries, sexual and physical abuse, sets out injury payments ranging from a minimum payment (at Level B1) of GBP 1,000 (approx. €1,152.81) to (at level B15) a maximum payment of GBP 44,000 (approx. €50,730.81).<sup>95</sup>

[11.59] Injuries are classified based on their severity, with corresponding compensation amounts reflecting the impact on the victim's physical and psychological well-being.

*(iv) Band scheme*

[11.60] The Commission considered schemes which use different bands of compensation to determine an appropriate level of general compensation. A band scheme provides a range of figures of compensation based on different categories. Each band or range of figures can reflect the more or less severe impact of a particular offence. This type of scheme arguably allows for greater flexibility in responding to the actual consequences of a crime for a particular victim. Band schemes can be found in a number of other jurisdictions and the Commission has examined the schemes in Victoria and New South Wales in particular.

*Victoria*

[11.61] The Financial Assistance Scheme in Victoria provides that primary victims<sup>96</sup> may be eligible for a payment of special financial assistance which can be up to AUD 25,000 (approx. €14,412.19). Special financial assistance is "a payment made to a primary victim on behalf of the community in recognition of the harm suffered as a direct result of a violent act".<sup>97</sup>

[11.62] The Financial Assistance Scheme can pay special financial assistance to primary victims where:

- a violent act was committed against the primary victim, or
- the victim was a child and was injured as a direct result of hearing, witnessing, or otherwise being exposed to the effects of the violent act, and

<sup>95</sup> The Criminal Injuries Compensation Scheme 2012 (England, Scotland and Wales) at page 43.

<sup>96</sup> As defined by section 9 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria), a primary victim is "a person who is injured or dies as a direct result of an act of violence committed against the person".

<sup>97</sup> Victims of Crime Financial Assistance Scheme, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 64.

- the victim experienced or suffered a significant adverse effect as a direct result of the violent act which includes any grief, distress, trauma or injury.<sup>98</sup>

[11.63] The Financial Assistance Scheme must then decide:

- whether the primary victim experienced one violent act or related acts
- which category the violent act or related acts fall into
- whether the applicant is eligible to be uplifted into a higher category, and
- the amount of assistance to pay an applicant from the range of special financial assistance available for that category.<sup>99</sup>

[11.64] The amount payable is based on four categories of violent acts. The Commission notes that in contrast to the tariff schemes discussed in the above section, the scheme in Victoria is based on the violent act rather than the injury suffered by the victim. Each of these categories of violent acts have a minimum and maximum amount payable. For example, the minimum amount payable for rape, which is a Category A violent act, is AUD 9,334 (approx. €5,380.55), while the maximum amount payable is AUD 20,000 (approx. €11,528.94).<sup>100</sup>

[11.65] The Financial Assistance Scheme in Victoria has detailed guidance on how to assess which category a victim will fall into, and in what circumstances a victim will be eligible for a higher category of compensation. These circumstances include the severity of the injury suffered, whether the applicant was a victim of multiple acts of violence, or whether the victim suffered a deprivation of their liberty.<sup>101</sup>

### *New South Wales*

[11.66] The compensation scheme in New South Wales operates a similar band scheme for general compensation payments.<sup>102</sup> Alongside compensation for verifiable expenses, the Victims Support Scheme can provide recognition payments to

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<sup>98</sup> Victims of Crime Financial Assistance Scheme, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 64. See also section 11 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>99</sup> Victims of Crime Financial Assistance Scheme, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 64.

<sup>100</sup> The full categorisation of offences and the amount of compensation given for each offence is outlined in the Victims of Crime Financial Assistance Scheme, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 65-66.

<sup>101</sup> Victims of Crime Financial Assistance Scheme, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 66-68.

<sup>102</sup> Part 4 Division 5 of the Victims Rights and Support Act 2013 (New South Wales).

victims, which are payments “made in recognition of the trauma suffered by a victim of an act of violence or act of modern slavery”.<sup>103</sup>

[11.67] There are four categories of recognition payment which are:

“(1) A category A recognition payment is a payment given in respect of an act of violence or act of modern slavery that apparently occurred in the course of the commission of a homicide.

(2) A category B recognition payment is a payment given in respect of an act of violence or act of modern slavery of the following kinds—

(a) a sexual assault resulting in serious bodily injury or which involved an offensive weapon or was carried out by 2 or more persons,

(b) a sexual assault, sexual touching or sexual act or attempted sexual assault involving violence that is one of a series of related acts.

(3) A category C recognition payment is a payment given in respect of an act of violence or act of modern slavery involving any of the following—

(a) a sexual assault other than one referred to in subsection (2)(b),

(b) an attempted sexual assault resulting in serious bodily injury,

(c) an assault resulting in grievous bodily harm,

(d) physical assault of a child that is one of a series of related acts.

(4) A category D recognition payment is a payment given in respect of an act of violence or act of modern slavery involving any of the following—

(a) sexual touching or sexual act,

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<sup>103</sup> Section 34 of the Victims Rights and Support Act 2013 (New South Wales).

- (b) an attempted sexual assault involving violence other than one referred to in subsection (3)(b),
- (c) a robbery involving violence,
- (d) an assault (not resulting in grievous bodily harm)."<sup>104</sup>

[11.68] The amounts given for each category of recognition payment are:

Category A recognition payment: AUD 7,500- AUD 15,000 (approx. €4,322.71- €8,646.33)

Category B recognition payment: AUD 10,000 (approx. €5,763.62)

Category C recognition payment: AUD 5,000 (approx. €2,882.15)

Category D recognition payment: AUD 1,500 (approx. €864.64)<sup>105</sup>

#### **(d) Submissions**

[11.69] In its Consultation Paper, the Commission asked consultees:

"Is there a case to be made for a tariff system of compensation, whether generally or (for example) in relation to any compensation payable for pain and suffering? What would the relative advantages and disadvantages of a tariff system be?"<sup>106</sup>

[11.70] Submissions were generally of the view that, while verifiable expenses should continue to be assessed individually, a tariff system could be introduced for general compensation for pain and suffering.

[11.71] Several consultees stated that a tariff system would promote consistency and transparency within the scheme, which are both very important to survivors. However, submissions stated that any tariff system should not be overly prescriptive to avoid unnecessary complexity.

[11.72] One consultee recommended that the statutory body should implement a partial tariff, rather than a total tariff, because this can afford more flexibility to the body. They stated that a partial tariff scheme can offer flexibility to assess compensation in a consistent and detailed way, while also giving the statutory body discretion to determine compensation for verifiable expenses in accordance with the individual circumstances of each applicant's case. This consultee recommended

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<sup>104</sup> Section 35 of the Victims Rights and Support Act 2013 (New South Wales).

<sup>105</sup> Section 12 of the Victims Rights and Support Regulation 2013 (New South Wales).

<sup>106</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 136, question 4.5.



that the statutory body should be given discretion in varying the application of the tariff system in examining each individual case, and that this does not outweigh the benefits of consistency. In addition, this consultee suggested that the Oireachtas could provide a non-exhaustive list of circumstances where flexibility should be exercised. However, this consultee did not provide examples of factors which could be used.

- [11.73] One consultee considered that it may be difficult to assess whether a tariff system would be appropriate in assessing general compensation payments. In particular, they noted that it may be unclear whether the same fixed amount attached to general damages would be sufficient in each individual case.
- [11.74] Another consultee cited the PI Guidelines as a potential option for the statutory body to make payments for pain and suffering.
- [11.75] The Commission notes that the question asked in the Consultation Paper referred specifically to a tariff scheme, and not to the other frameworks considered by the Commission in this Report. Although the Commission's thinking has moved away from the establishment of a tariff scheme, as reflected below, it is clear from the consultee submissions that consultees favoured a framework that is consistent, transparent, and flexible. The Commission has taken this into account when developing the proposals outlined below.

### **(e) Proposals for reform**

- [11.76] As set out above, the three options for a framework for the statutory body to make general compensation payments considered by the Commission were the PI Guidelines, a tariff scheme, and a band scheme. Each option is addressed in turn below.

#### *(i) Personal Injuries Guidelines*

- [11.77] Regarding the PI Guidelines, the Commission considered that the advantages of such an approach would be that the statutory body could have regard to the same 12 detailed categories and sub-categories of injury, and the relevant circumstances to be taken into account in assessing the nature of the injury as the civil courts. This would have the advantage of consistency, and the statutory body could benefit from the substantial time, expertise, and experience that went into developing the PI Guidelines.
- [11.78] However, the Commission considers that using the same measure of impact as the civil courts use in tort cases may not be appropriate in a state compensation scheme for victims of crime. The principle of awarding damages in tort cases against a wrongdoer is to restore the plaintiff to the position they were in previously, as if the wrongful conduct had never happened. This is the legal principle *restitutio in integrum*, which means restoring the plaintiff to their original position.

- [11.79] In contrast, the Commission considers that the objective of a statutory scheme providing compensation to victims of crime, as discussed in the Chapter on Background and a Rights-Based Approach, is to vindicate the rights of victims to fair and appropriate compensation, and by doing this, recognise, on behalf of the State, the victim's experience and the impact of the crime. While the payment of compensation should acknowledge the suffering undergone by the applicant, it is not intended to compensate them fully, or to place them in the position they would have been in had the crime not happened.
- [11.80] The Advocate General in *BV* explained that the compensation provided for under the Compensation Directive is one of a "(generalised) public (monetary) assistance to crime victims. The basis for the intervention of the national scheme cannot be found in some form of fault committed by the Member States' authorities, such as, for example, in identifying or prosecuting the offenders."<sup>107</sup> The State is not the wrongdoer and so is not obliged to compensate the victim in the same way as a wrongdoer is in tort law. This approach was confirmed by the CJEU in *BV* where the CJEU stated that the fair and appropriate compensation required by Article 12(2) of the Compensation Directive does not have to be "complete reparation of material and non-material loss suffered by that victim".<sup>108</sup>
- [11.81] The Commission also notes that using the PI Guidelines as the framework for general compensation payments could potentially create an unsustainable financial burden on the state. The CJEU acknowledged in *BV* that the financial viability of a compensation scheme "must be ensured in order to guarantee fair and appropriate compensation by any victim of violent intentional crime".<sup>109</sup>
- [11.82] The Commission therefore considers that the PI Guidelines should not be used as the framework for guiding general compensation payments by the statutory body.
- [11.83] Notably, one of the questions posed by the High Court in *Blanco* (as discussed in detail in the previous Chapter) in its referral to the CJEU was: "what relationship should the 'fair and appropriate compensation' awarded to a victim pursuant to the Compensation Directive bear to the damages in tort that would be awarded to that victim as against the relevant perpetrator as tort-feasor?"<sup>110</sup>
- [11.84] Responding to this question in *LD*, the CJEU stated that the state must take into account the seriousness of the consequences for the victim, and "the reparation

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<sup>107</sup> Case-129/19 *Opinion of Advocate General Bobek in Presidenza del Consiglio dei Ministri v BV, joined parties; Procura della Repubblica di Torino* ECLI:EU:C:2020:375 at para 139.

<sup>108</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 60.

<sup>109</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 59.

<sup>110</sup> *Blanco v Criminal Injuries Compensation Tribunal* [2024] IEHC 171 at para 57 (Egan J).

that such victims may obtain on the basis of the tortious liability of the offender.”<sup>111</sup> This suggests that while the State is not obliged to pay the same level of general compensation that would be made in civil courts, some consideration may need to be given to the level of compensation a victim would obtain from the offender in civil proceedings. The Commission therefore suggests that in determining the exact figures for general compensation payments under the scheme, the Government may wish to give some consideration to the PI Guidelines.

*(ii) Tariff scheme*

- [11.85] The Commission also considered a tariff scheme as a potential framework for general compensation. Such a scheme would list particular payments for particular injuries. The advantage of a tariff scheme is that it could increase consistency in awards between victims of similar injuries and provide predictability for applicants.
- [11.86] However, as recommended in the Chapter on Defining Eligible Applicants and Crimes of Violence, the Commission has decided to move away from the current scheme’s approach of defining a victim as someone who suffers personal injury as a result of a crime. Rather, the Commission is recommending that a victim should be defined as someone who has suffered harm as a result of a crime of violence, and so the presence of a specific injury would not be necessary to be eligible for compensation under the statutory scheme for either victims or other eligible applicants.
- [11.87] Instead, the Commission is recommending that in order to be eligible for compensation under the scheme, a victim must have suffered harm. It is proposing to define harm as “physical, mental or emotional harm or distress which was caused directly by a criminal offence” and explains this proposal in the Chapter on Defining Eligible Applicants and Crimes of Violence. The Commission wishes to recognise the harm done to a person’s mental and physical health, as well as to their dignity and integrity when they are a victim of a crime of violence. This broad definition of harm means that an applicant does not need to have a recognisable psychiatric injury to be eligible for compensation.
- [11.88] Tariff schemes are usually based on categories of injuries. The Commission is concerned that a tariff scheme may not allow the statutory body sufficient flexibility to assess and respond to the seriousness of the individual consequences for a victim of a crime of violence, as required by the

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<sup>111</sup> Case C-284/24 LD v *Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 39.

Compensation Directive,<sup>112</sup> In contrast, a band scheme, as discussed below, may give the statutory body the required level of flexibility to make this assessment.

*(iii) Commission proposal: Band scheme*

- [11.89] The Commission examined the use of a band scheme in both Victoria and New South Wales, as outlined above. It observed that a band scheme offers flexibility in terms of assessing the actual impact of a crime of violence on an individual victim and ensuring a level of consistency in reflecting the actual impact in a compensation payment. The impact of a crime of violence can include physical and mental injury, and can also include harm that does not reach the threshold of injury, including emotional harm, distress and harm to a person's dignity and integrity.
- [11.90] The Commission considers that a band scheme permits a more case-specific approach to determining fair and appropriate levels of general compensation than a tariff. In permitting the statutory body to respond to the individual consequences for a victim, the Commission considers that a band scheme will satisfy the State's obligations under the Compensation Directive as confirmed in *BV*, *Burdene*, and *LD*.
- [11.91] In addition, the Commission notes that the guidance provided for decision-makers at the compensating body in Victoria may be a useful model. Additional guidance for decision-makers at the statutory body could assist further in determining what category an applicant would fall under within the band scheme. Additional guidance can add clarity to the scheme for applicants, staff and decision-makers.
- [11.92] The Commission therefore proposes four categories of general compensation payments for victims of crimes of violence. These first four categories of payment would permit the statutory body to allocate a case to a particular band, depending on the severity of the impact of the crime on the victim. These four categories would provide for minor, moderate, serious, and severe impacts.
- [11.93] The Commission recommends that these four categories would be labelled A-E and would be laid out as follows:
- (1) A *Category A general compensation payment* is a payment made where a crime of violence has had a severe impact on the applicant;
  - (2) A *Category B general compensation payment* is a payment made where a crime of violence has had a serious impact on the applicant;

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<sup>112</sup> As confirmed by the CJEU in Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 39.

(3) A *Category C general compensation payment* is a payment made where a crime of violence has had a moderate impact on the applicant;

(4) A *Category D general compensation payment* is a payment made where a crime of violence has had a minor impact on the applicant.

*(iv) Minimum and maximum thresholds for general compensation payments*

[11.94] Unlike verifiable expenses, general compensation is not based on receipts or invoices and it can therefore be difficult to quantify. To provide some guidance to the statutory body, the Commission considers that there should be both a maximum threshold, or a cap, and a minimum threshold on general compensation payments under the statutory scheme. The Commission notes that general compensation payments will usually be paid alongside compensation for reasonable, verifiable expenses. Therefore, even with a cap on general compensation payments, applicants would still receive compensation for the full amount of their reasonable, verifiable losses arising from the crime of violence. Category A general compensation payments would provide for the highest range of payments, and category D general compensation payments would be the lowest range of payments. The Commission considers that each category should have a maximum and minimum amount of compensation. However, if an applicant is eligible under a certain category but the amount of compensation is later reduced to an amount lower than the band minimum because of the applicant's contributory conduct, for example, the compensation payment would still be considered a payment in the same category.<sup>113</sup>

[11.95] It is outside the scope of this Report for the Commission to recommend a specific sum for both the maximum and minimum amounts of general compensation in each band. The Commission considers that it is for the Government to decide how best to integrate the CJEU's point regarding the requirement that "account be taken" of "the reparation that such victims may obtain on the basis of the tortious liability of the offender" in assessing fair and appropriate compensation.<sup>114</sup>

[11.96] In terms of the minimum threshold, the Commission recommends that this figure should be set by the Government and notes that the minimum payment under the PI Guidelines and the current scheme is €500. Given that the Commission is not recommending a minimum threshold for compensating verifiable expenses and loss of earnings, the Commission considers that setting a minimum payment for general compensation payments will not unfairly or inappropriately exclude otherwise eligible applicants. In this regard, the Commission notes the

<sup>113</sup> Reductions in compensation are discussed in the Chapter on Exclusionary Criteria.

<sup>114</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* ECLI:EU:C:2025:741 at para 39.

observation of the Supreme Court in *Dillon v Irish Life Assurance*, in which Murray J stated that claims which solely involve “mental distress, upset and anxiety” and do not meet the criteria of a recognised psychiatric disorder, fall outside the Personal Injuries Assessment Board regime and the statutory definition of “personal injury” and therefore “cannot expect anything other than very, very modest awards”.<sup>115</sup>

(v) *Factors for allocating categories of harm*

- [11.97] The Commission considers that the statutory body should have regard to a non-exhaustive list of factors when determining what category of general compensation an applicant would be eligible for, and in determining what specific amount of payment should be made. The Commission considers that the list of factors in the PI Guidelines that a court can have regard to when determining the level of an award in a civil case may provide a useful precedent for identifying the various ways a person can be impacted by injury and what personal factors may make that impact more or less severe.<sup>116</sup> These factors may include: age; nature, extent and duration of treatment; impact on work; interference with quality of life including social, familial and other relationships; and the duration of symptoms.<sup>117</sup>
- [11.98] The Commission considers that although it is not recommending the use of the PI Guidelines as the framework for determining the amounts of general damages, some of the factors in the Guidelines may be useful for the statutory body when determining the category and amount of general compensation for a particular victim. Those factors are included in the Commission’s proposal below. In addition, the Commission recommends that in determining whether the harm was minor, moderate, serious or severe, the statutory body may have regard to the category that the harm would fall under in the PI Guidelines.
- [11.99] The Commission considers that in determining what category the general compensation payment should fall under, as well as what specific amount of general compensation payment should be made, the statutory body should have regard to all of the consequences for the applicant. In particular, the statutory body should have regard to the following:

- a. the nature of the crime(s) of violence or attempt or threat of crime of violence and the circumstances in which it occurred;
- b. the age and capacity of the victim at the time of the crime;

<sup>115</sup> *Dillon v Irish Life Assurance PLC* [2025] IESC 37 at para 56 (Murray J).

<sup>116</sup> The Judicial Council, *Personal Injuries Guidelines* (2021).

<sup>117</sup> The Judicial Council, *Personal Injuries Guidelines* (2021).

- c. any relationship between the victim and the offender;
- d. the severity and duration of any physical or psychiatric injury or injuries suffered by the victim, including the:
  - i) Nature, extent and duration of treatment undertaken and/or medication prescribed;
  - ii) Likely success of treatment;
  - iii) Prognosis, to include any likely lasting impact, future risks or vulnerability.
- e. the overall impact of the crime on the victim, taking into account the individual circumstances of the victim at the time of the crime including any impact on:
  - i) quality of life, leisure activities, work and education;
  - ii) personal relationships.

**R. 11.3 The Commission recommends** that the statutory body should use a band scheme as a framework to assist in determining payments of general compensation. The band scheme should have four categories as follow:

**Categories of Payments**

- (1) *Category A general compensation payment* is a payment made where a crime of violence has had a severe impact on the applicant;
- (2) *Category B general compensation payment* is a payment made where a crime of violence has had a serious impact on the applicant;
- (3) *Category C general compensation payment* is a payment made where a crime of violence has had a moderate impact on the applicant;
- (4) *Category D general compensation payment* is a payment made where a crime of violence has had a minor impact on the applicant.

**R. 11.4 The Commission recommends** that each band category should provide a minimum and maximum amount of compensation. The top band, Category A, will represent a maximum threshold, or a cap, for general compensation payments. The bottom band for non-fatal cases, Category D, will contain a minimum threshold.

**R. 11.5 The Commission recommends** that the statutory body should consider the following when determining both the category of, and the amount of, general compensation to be paid:

**Considerations for category and amount of payment**

- (1) In determining what category that the general compensation payment should fall under, as well as what specific general compensation payment should be paid, the statutory body shall have regard to all of the consequences for the applicant, and in particular, shall have regard to the following matters:
  - (a) the nature of the crime(s) of violence or attempt or threat of crime of violence and the circumstances in which it occurred;
  - (b) the age and capacity of the victim at the time of the crime;
  - (c) any relationship between the victim and the offender;
  - (d) the severity and duration of any physical or psychiatric injury or injuries suffered by the victim, including the:
    - (i) nature, extent and duration of treatment undertaken and/or medication prescribed;
    - (ii) likely success of treatment;
    - (iii) prognosis, to include any likely lasting impact, future risks or vulnerability.
  - (e) the overall impact of the crime on the victim, taking into account the individual circumstances of the victim at the time of the crime including any impact on:
    - (i) quality of life, leisure activities, work and education;
    - (ii) personal relationships.
- (2) In determining whether the harm was minor, moderate, serious or severe, the statutory body may have regard to the category that the harm would fall under in the Personal Injuries Guidelines.



## 4. Bereavement payments for family members

### (a) Current scheme

[11.100] As noted above, only dependants of those fatally injured are entitled to general compensation payments for pain and suffering under the current scheme.<sup>118</sup> As described in *Decision F/52353* (3 November 2022),<sup>119</sup> this payment amounts to compensation for the statutory dependants of a deceased who have suffered emotional distress as a result of the wrongful death of that deceased.<sup>120</sup>

[11.101] A dependant, as defined in the Civil Liability Act 1961, is not limited to a person under the care of the victim, but includes other family members who have suffered injury or mental distress as a result of the death. A dependant can include a spouse, civil partner, cohabitant, parent, grandparent, step-parent, child, grandchild, step-child, brother, sister, half-brother or half-sister of the deceased who has suffered injury or mental distress as a result of the death.<sup>121</sup>

[11.102] The Tribunal can make awards of compensation for pain and suffering in fatal cases on the same basis as courts award such damages in civil cases.<sup>122</sup> This payment is referred to as the 'solatium', meaning an amount awarded by a court for injured feeling or mental distress.<sup>123</sup> As noted above, the current solatium is €35,000,<sup>124</sup> and this payment is divided between all dependants deemed to have suffered harm as a result of the death.

[11.103] The Commission understands that, while there is no explicit guidance on how the solatium should be divided between family members, usually the Tribunal divides general compensation among dependants in fatal cases based on the closeness of their relationship with the victim.<sup>125</sup> This is in line with the general approach of the courts, as detailed below.

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<sup>118</sup> Paragraph 6(e) of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>119</sup> Criminal Injuries Compensation Tribunal, Case Reference F/52353 (3 November 2022) <<https://www.gov.ie/en/publication/43073-f52353-3-november-2022/>> accessed 23 March 2026.

<sup>120</sup> The upper limit of €35,000 is currently in force pursuant to the Civil Liability Act 1961 (Section 49) Order 2014 (SI No 6 of 2014), made under section 49(1A) of the Civil Liability Act 1961.

<sup>121</sup> Section 47(1) of the Civil Liability Act 1961.

<sup>122</sup> Paragraph 6(e) of the Criminal Injuries Compensation Scheme (31 January 2025). See also section 49 of the Civil Liability Act 1961.

<sup>123</sup> According to *Murdoch and Hunt's Encyclopedia of Irish Law* (Bloomsbury Professional 2021).

<sup>124</sup> The upper limit of €35,000 is currently in force pursuant to the Civil Liability Act 1961 (Section 49) Order 2014 (SI No 6 of 2014), made under section 49(1A) of the Civil Liability Act 1961.

<sup>125</sup> The Tribunal requires the details of all dependants of the victim to be listed in the application form, outlining their relationship to the victim. "Application Form (Fatal Injury)

**(b) Irish law**

[11.104] When dividing the solatium between dependants, the Irish courts focus on the extent of 'mental distress' suffered by each individual as a result of the death of a relative. In general, the approach is to assess each family member's connection to the victim and divide the award on that basis.<sup>126</sup>

[11.105] For example, in *McLaughlin v McColgan*, the High Court divided the solatium evenly between the victim's wife and two children, awarding them €11,666.67 each.<sup>127</sup> In *Wolohan v McDonnell*, the High Court awarded a payment of €8,750 to each of the victim's three children. The Court granted the remaining €8,750 to the victim's father.<sup>128</sup> Parents will usually be entitled to a share, but the courts will consider how close a relationship the victim had with each parent when determining the amount. In *Thawley v Gavin*, the Court awarded the mother and father €1,000 each in circumstances where they did not have meaningful engagement with the victim's upbringing.<sup>129</sup> The rest went to the victim's husband. In *Cooney v HSE*, the High Court awarded €27,500 to the victim's long-term partner who was the mother of his three children, and awarded the remaining €7,500 to the victim's mother. The Court did not award any of the solatium to the victim's brothers because the victim's partner and mother were more directly affected by the death.<sup>130</sup>

**(c) EU law**

[11.106] The CJEU has addressed how payments to family members may comply with the right to fair and appropriate compensation under the Compensation Directive. In the case of *Burdene*,<sup>131</sup> the CJEU considered the question of which family members are eligible to apply for compensation and how this compensation may be distributed. The case was a request for a preliminary ruling in respect of national legislation which made the right to compensation of parents of the deceased subject to the absence of a surviving spouse and children, and the right

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Scheme of Compensation for Personal Injuries Criminally Inflicted" (updated 18 July 2025) at section 10 <[application-form-for-fatal-cases.pdf](#)> accessed 23 March 2026.

<sup>126</sup> *Margaret McLaughlin (on Behalf of the Statutory Dependents of John McLaughlin) v Aaron McColgan* [2021] IEHC 452 at para 16 (Simons J).

<sup>127</sup> *Margaret McLaughlin (on Behalf of the Statutory Dependents of John McLaughlin) v Aaron McColgan* [2021] IEHC 452.

<sup>128</sup> *Wolohan v McDonnell* [2020] IEHC 149.

<sup>129</sup> *Thawley v Gavin* [2018] IEHC 57.

<sup>130</sup> *Lyndsey Cooney (on Behalf of the Statutory Dependents of Dualtagh Donnelly) v Health Service Executive* [2021] IEHC 754 at para 61.

<sup>131</sup> Case C 126/23 *Burdene* EU:C:2024:937.

to compensation of siblings of the deceased subject to the absence of parents. In the Advocate General's opinion of 8 May 2024, he expressed the view that:

"a compensation scheme under which victims are excluded without any regard whatsoever for the degree of harm they have suffered, on the grounds of an abstract ranking of priority among the various victims who are eligible to be compensated and based solely on the nature of the family ties, from which mere presumptions are drawn regarding the existence or significance of this harm, cannot result in 'fair and appropriate compensation' within the meaning of Article 12(2) of Directive 2004/80."<sup>132</sup>

[11.107] The CJEU held that the individual circumstances of each family member had to be assessed in order to decide whether they are eligible for compensation. The CJEU considered that a tiered approach which limited compensation to close family members of the victim, while giving priority to some family members, "taking into account the individual circumstances of each case", may be appropriate.<sup>133</sup> However, an automatic exclusion of specific family members, failing to "take account of the suffering and seriousness of the consequences of the offence for those persons" does not "adequately contribute to the reparation of the material and non-material damage suffered by them".<sup>134</sup>

[11.108] In summary, the CJEU held that excluding compensation for certain victims of violent intentional crime without assessing the extent of the harm that each individual has suffered will not meet the requirements of the Compensation Directive.<sup>135</sup>

#### **(d) Proposals for reform**

[11.109] As outlined in the Chapter on Defining Eligible Applicants and Crimes of Violence, the Commission is recommending that the proposed statutory scheme should compensate family members in the event of a death caused by a crime of violence. This should be one lump sum to be divided between family members and should be known as a bereavement payment.

[11.110] The Commission recommends that the definition of a family member for the purposes of defining a victim for the statutory scheme should reflect the definition provided for in the Criminal Justice (Victims of Crime) Act 2017. Family members are therefore proposed to be defined as "a spouse, civil partner or

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<sup>132</sup> *Opinion of Advocate General Richard de la Tour in Case C 126/23 Burdene* EU:C:2024:937 at para 47.

<sup>133</sup> *Case C 126/23 Burdene* EU:C:2024:937 at paras 63 and 64.

<sup>134</sup> *Case C 126/23 Burdene* EU:C:2024:937 at para 65.

<sup>135</sup> *Case C 126/23 Burdene* EU:C:2024:937 at para 67.

cohabitant of the victim; a child or step-child of the victim; a parent or grandparent of the victim; a brother, sister, half brother or half sister, step brother or step sister of the victim; a grandchild of the victim; an aunt, uncle, nephew or niece of the victim, and any other person who is or, where the victim is deceased, was dependant on the victim".<sup>136</sup> The proposed definition also includes any other person who the statutory body considered "had a sufficiently close connection with the victim as to warrant his or her being treated as a family member".<sup>137</sup> A family member must have suffered harm, as defined in the Chapter on Defining Eligible Applicants and Crimes of Violence, to be eligible for a bereavement payment. Such family members would be eligible for this category of payment.

[11.111] The Commission initially considered whether this more expansive definition of family member might create an unsustainable burden on the finances of the statutory body. However, following consideration of the relevant Irish and EU law, it considered that the approach to the making and dividing of a bereavement payment by the statutory body should be the same as both the current scheme and under the Civil Liability Act, as outlined above.

[11.112] Bereavement payments would be made to family members where a crime of violence has resulted in the death of the victim. The Commission notes that such payments under the Civil Liability Act are a lump sum payment, subject to a maximum threshold, or cap. This figure is currently €35,000.<sup>138</sup> The Commission does not recommend that this figure should necessarily be replicated for the statutory body. It recommends that the figure for the lump sum bereavement payment should be set by the Minister for Justice with due consideration for the fact that the Compensation Directive, as confirmed by the CJEU, requires a contribution to reparation that is not "purely symbolic or manifestly insufficient having regard to the seriousness of the consequences ... of the crime committed".<sup>139</sup>

[11.113] The Commission recommends that the bereavement payment for family members in the event of a death caused by a crime of violence should be divided among family members based on their closeness with the victim, and the harm they have suffered as a result of the death.

[11.114] The Commission also recommended in the Chapter on Defining Eligible Applicants and Crimes of Violence that the statutory body should have the power to request that the family nominate a representative to make an application on

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<sup>136</sup> Section 2(1)(a) – (g)(i) of the Criminal Justice (Victims of Crime) Act 2017.

<sup>137</sup> Section 2(1)(g)(ii) of the Criminal Justice (Victims of Crime) Act 2017.

<sup>138</sup> The upper limit of €35,000 is currently in force pursuant to the Civil Liability Act 1961 (Section 49) Order 2014 (SI No 6 of 2014), made under section 49(1A) of the Civil Liability Act 1961.

<sup>139</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566 at para 63.

behalf of all eligible family members. Where no agreement is reached the statutory body may nominate a representative to make the application on behalf of all family members, based on the degree of relationship between the family members and the victim.

- R. 11.6 **The Commission recommends** that there should be one lump sum bereavement payment to family members who have suffered harm in fatal cases which shall be divided between them.
- R. 11.7 **The Commission recommends** that the statutory body should decide on the division of the bereavement payment between family members based on the closeness of their relationship with the victim and the level of harm they have suffered as a result of the death.
- R. 11.8 **The Commission recommends** that the statutory body may request that the family nominate a representative to make an application on behalf of all eligible family members, where more than one family member wishes to apply for a bereavement payment. Where no agreement is reached by the family, the statutory body may nominate a representative of the family to make an application on behalf of all eligible family members, on the basis of the degree of relationship between the family members and the victim. (This recommendation is also in the Chapter on Defining Eligible Applicants and Crimes of Violence.)

# CHAPTER 12

## LEGAL ASSISTANCE

### Table of Contents

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|    |                                                                                        |     |
|----|----------------------------------------------------------------------------------------|-----|
| 1. | <i>Introduction</i> .....                                                              | 413 |
|    | (a) Assistance under the current scheme .....                                          | 413 |
|    | (b) Assistance under the proposed statutory scheme .....                               | 414 |
|    | (c) Why is reform necessary? .....                                                     | 416 |
| 2. | <i>Whether legal assistance or other support may be necessary for applicants</i> ..... | 416 |
|    | (a) Current scheme.....                                                                | 417 |
|    | (b) Current law .....                                                                  | 418 |
|    | (i) <i>Irish law</i> .....                                                             | 419 |
|    | (ii) <i>European Convention on Human Rights</i> .....                                  | 420 |
|    | (iii) <i>European Union law</i> .....                                                  | 422 |
|    | (c) Comparative jurisdictions .....                                                    | 424 |
|    | (i) <i>France</i> .....                                                                | 424 |
|    | (ii) <i>The Netherlands</i> .....                                                      | 424 |
|    | (iii) <i>England, Scotland and Wales</i> .....                                         | 424 |
|    | (iv) <i>Northern Ireland</i> .....                                                     | 425 |
|    | (v) <i>Victoria</i> .....                                                              | 425 |
|    | (d) Submissions .....                                                                  | 426 |
|    | (e) Proposals for reform.....                                                          | 427 |
|    | (i) <i>Legal assistance</i> .....                                                      | 427 |
|    | (ii) <i>Accompaniment at hearings</i> .....                                            | 428 |
| 3. | <i>Funding necessary legal assistance</i> .....                                        | 428 |
|    | (a) Current scheme.....                                                                | 429 |
|    | (b) Current law .....                                                                  | 429 |
|    | (i) <i>Irish law</i> .....                                                             | 429 |
|    | (ii) <i>European Convention on Human Rights</i> .....                                  | 430 |
|    | (iii) <i>European Union law</i> .....                                                  | 431 |
|    | (iv) <i>Kelly and Doyle v Criminal Injuries Tribunal</i> .....                         | 433 |
|    | (c) Comparative jurisdictions .....                                                    | 435 |
|    | (i) <i>France</i> .....                                                                | 435 |
|    | (ii) <i>The Netherlands</i> .....                                                      | 435 |
|    | (iii) <i>England, Scotland and Wales</i> .....                                         | 436 |
|    | (iv) <i>Northern Ireland</i> .....                                                     | 436 |

|       |                                                            |     |
|-------|------------------------------------------------------------|-----|
| (v)   | <i>Victoria</i> .....                                      | 436 |
| (d)   | Submissions.....                                           | 437 |
| (e)   | The Commission's view .....                                | 438 |
| (ii)  | <i>Legal aid</i> .....                                     | 438 |
| (iii) | <i>Contribution to legal costs</i> .....                   | 444 |
| (f)   | Proposals for reform.....                                  | 445 |
| (i)   | <i>Circumstances for contributing to legal costs</i> ..... | 445 |
| (ii)  | <i>Scale of fees</i> .....                                 | 446 |
| (iii) | <i>Advance decision on legal costs</i> .....               | 447 |
| (iv)  | <i>Appealing a decision on legal costs</i> .....           | 449 |
| (v)   | <i>Applications to courts</i> .....                        | 450 |
| 4.    | <i>Reimbursement of other costs</i> .....                  | 451 |
| (a)   | Current scheme.....                                        | 451 |
| (b)   | Comparative jurisdictions.....                             | 452 |
| (i)   | <i>England, Scotland and Wales</i> .....                   | 452 |
| (ii)  | <i>Northern Ireland</i> .....                              | 452 |
| (c)   | Proposals for reform.....                                  | 453 |





## 1. Introduction

- [12.1] In this Chapter, the Commission addresses the question of whether some applicants applying for compensation under the proposed statutory scheme may require legal or other types of assistance. It outlines the situation under the Criminal Injuries Compensation Scheme ("the current scheme"), relevant legal requirements, consultees' views, and the approach in a number of other jurisdictions.
- [12.2] The Commission anticipates that legal assistance will not be needed in most applications for compensation under the proposed statutory scheme. The information and assistive tier recommended by the Commission in the Chapter on the Structure of the Statutory Body and the Application Process should provide sufficient assistance to applicants in most cases. However, the Commission is of the view that there may be cases where the circumstances are so complex or an applicant's circumstances may be such that legal assistance may be necessary.
- [12.3] The Chapter begins by examining whether legal assistance for applicants may in some cases be necessary to fulfil the right to effective access to justice contained in Irish law, European Union ("EU") law and under the European Convention on Human Rights ("ECHR"), and to fulfil a victim's right to obtain state-funded compensation under the Directive relating to compensation to crime victims ("Compensation Directive").
- [12.4] The Commission then examines two potential models for funding necessary legal assistance. First, it examines the provision of legal aid, and then it explores whether the statutory body could provide a direct contribution to an applicant's necessary legal costs.
- [12.5] The Chapter concludes with the Commission's main recommendation, which is that the statutory body should make a contribution to some legal costs in certain limited and exceptional circumstances, as set out in this Chapter.

### (a) Assistance under the current scheme

- [12.6] The current scheme was envisioned as an informal process that would allow victims to access compensation without undue formality. The current scheme's intention is stated at paragraph 19, that "the administration of the Scheme and, in particular, proceedings before the Tribunal, should be informal".<sup>1</sup>

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<sup>1</sup> Paragraph 19 of the Criminal Injuries Compensation Scheme (31 January 2025).

- [12.7] Paragraph 26 of the current scheme provides that “[a]n applicant may be accompanied by his legal adviser or another person but the Tribunal will not pay the costs of legal representation”.<sup>2</sup>
- [12.8] While there is no provision for legal costs to be paid or reimbursed, paragraph 27 of the current scheme provides that “[t]he Tribunal may, at its discretion, pay the necessary and reasonable expenses of witnesses”.<sup>3</sup>
- [12.9] The absence of provision for legal aid or legal costs under the current scheme means that applicants must pay their own costs if they wish to have legal assistance. For applicants who are unable to afford legal assistance, this could act as a barrier to accessing compensation if their case involves a complex legal issue. The Commission considers that it is likely that some victims of crimes of violence may need additional assistance to navigate the process, present their case, and enforce their right to fair and appropriate compensation.

### **(b) Assistance under the proposed statutory scheme**

- [12.10] The Commission intends that the information and assistive tier, as recommended in the Chapter on the Structure of the Statutory Body and the Application Process, would assist victims throughout the application process. This could include helping victims to assess their eligibility for the scheme, complete their application forms, identify complex issues in their application, and stay informed of relevant developments in their case. The Commission emphasises that the information and assistive tier will not provide legal advice.
- [12.11] The Commission expects that most cases before the statutory body will be relatively straightforward. However, it anticipates that there may be cases with complex legal issues. Therefore, the Commission considers it necessary to examine whether some applicants may need legal assistance, whether there is a legal requirement for state-funded legal assistance in some cases, and if there is, what model should be used to provide such state funding.
- [12.12] The Commission noted in its Consultation Paper on Compensating Victims of Crime that the blanket exclusion of legal aid and costs under the current scheme does not consider the individual circumstances of victims or the fact that they may be traumatised, may be at-risk adults,<sup>4</sup> or may lack the capacity to make an

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<sup>2</sup> Paragraph 26 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>3</sup> Paragraph 27 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>4</sup> The Commission defines an at-risk adult as “a person who is not a child, and by reason of their physical or mental condition or other particular personal characteristics or family or life circumstance (whether permanent or otherwise) needs support to protect themselves from harm at a particular time”. See Law Reform Commission, *A Regulatory Framework for Adult Safeguarding vol 1* (LRC 128-2024) at Chapter 2.

application to the scheme.<sup>5</sup> It also noted that national courts are required under the ECHR and the Charter of Fundamental Rights of the European Union to consider individual circumstances in order to determine whether the provision of legal aid is necessary to facilitate access to justice. The Commission stated that scheme decision-makers could be provided with a similar discretion to consider the individual circumstances of applicants in respect of legal aid or reimbursement of legal fees.<sup>6</sup> The Commission expressed a provisional view in its Consultation Paper that there should be some mechanism for victims to recover their legal costs.<sup>7</sup>

- [12.13] Milquet, Special Advisor to the European Commission President, made recommendations in this context in her report on Strengthening Victims' Rights. She noted the connection between the rights associated with access to legal aid and the rights of victims in the criminal justice system. Milquet highlighted the Directive establishing minimum standards on the rights, support and protection of victims of crime ("Victims' Rights Directive"). In particular, she highlighted its provisions on legal advice and representation in court,<sup>8</sup> interpretation and translation expenses,<sup>9</sup> and the reimbursement of other expenses.<sup>10</sup>
- [12.14] Article 13 of the Victims' Rights Directive provides that: "Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law".
- [12.15] Milquet noted that, in most EU Member States, victims must meet a financial test in order to obtain legal aid, and recommended that victims of crimes of violence be exempt from this test.<sup>11</sup> She recommended that the European Commission examine the income restrictions for accessing legal aid in Member States and assess whether this creates an obstacle for victims accessing compensation. She

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<sup>5</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at para 6.66.

<sup>6</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at para 6.66.

<sup>7</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at para 6.70.

<sup>8</sup> Article 13 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L 315/57 ("Victims' Rights Directive").

<sup>9</sup> Article 7 of the Victims Rights Directive (2012/29/EU).

<sup>10</sup> Article 14 of the Victims Rights Directive (2012/29/EU).

<sup>11</sup> Milquet, *Strengthening Victims' Rights: from Compensation to Reparation for a new EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at page 56.

further recommended that the Compensation Directive should include a provision to extend the application of legal aid to victims of crimes of violence.<sup>12</sup>

### **(c) Why is reform necessary?**

- [12.16] The Commission anticipates that, while most cases coming before the statutory body will be straightforward, there may be cases which present legally complex issues. This could include cases where exclusions are applied, as discussed in the Chapter on Exclusionary Criteria. For example, the victim may have engaged in misconduct that contributed to the crime of violence but disputes that this should lead to a reduction or refusal of compensation. Therefore, the Commission believes it is necessary to assess whether legal assistance may be needed when interacting with the statutory body, whether the state should fund this assistance, and how it might be funded.
- [12.17] The Commission has identified a number of questions which arise in this context, namely:
- Will there be cases where applicants to the proposed statutory scheme may need legal assistance or other support?
  - If applicants do need legal assistance:
    - Should provision be made for legal aid for victims applying to the scheme, or
    - Should the statutory body be given the power to contribute to a victim's legal costs?
  - Should the statutory body reimburse other expenses incurred to support an application, such as expert reports or evidence?

## **2. Whether legal assistance or other support may be necessary for applicants**

- [12.18] As noted by the Commission in its Consultation Paper, having access to legal assistance in the form of legal advice and/or representation is an important feature of the right to effective access to justice.<sup>13</sup> Legal assistance can be necessary to ensure individuals are in a position to exercise their legal rights. The Commission also considers below whether applicants to the proposed statutory scheme may be accompanied by another person for assistance or support, which is permitted under the current scheme.
- [12.19] This section first discusses in more depth whether provision exists for legal assistance under the current scheme. The section then elaborates on the concept

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<sup>12</sup> Milquet, *Strengthening Victims' Rights: from Compensation to Reparation for a new EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at page 56.

<sup>13</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at para 6.60.

of effective access to justice in an Irish, ECHR and EU context. It also looks at the approaches taken by compensation schemes in other jurisdictions. The Commission presents its recommendations at the end of this section, taking into account the views of consultees.

## (b) Current scheme

[12.20] The informal approach adopted by the Criminal Injuries Compensation Tribunal ("the Tribunal") aims to ensure that individuals can navigate the process without unnecessary complexity or procedural barriers. This is reflected in the Explanatory Notes attached to the application forms for fatal and non-fatal injuries:

"The Scheme was drafted with the intention that it would be accessible to applicants who have limited or no legal knowledge and that an applicant, acting on his/her own behalf, would be able to bring an application to the Tribunal, without needing legal assistance."<sup>14</sup>

[12.21] The Tribunal has also stated that, in principle, legal representation is not required for proceedings before it.<sup>15</sup>

[12.22] As stated above, the current scheme permits applicants to be accompanied by a legal adviser or another person when appearing before the Tribunal.<sup>16</sup> The Commission understands that most applicants attending oral hearings are accompanied by a friend or companion. Of pending cases at the time of writing, 32% of applicants have legal representation.<sup>17</sup>

[12.23] Paragraph 25 of the current scheme states that it is the applicant's responsibility to establish their case. This may require an applicant to engage in legal procedures such as calling, examining and cross-examining witnesses.<sup>18</sup> The

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<sup>14</sup> Criminal Injuries Compensation Scheme, "Non-Fatal Injury Application Form: Explanatory Notes" at para 1 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/>> accessed 23 March 2026 and Criminal Injuries Compensation Scheme, "Fatal Injury Application Form: Explanatory Notes" at para 1 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

<sup>15</sup> Department of Justice, Home Affairs and Migration, *Criminal Injuries Compensation Tribunal Annual Report 2024* (Criminal Injuries Compensation Tribunal, 26 September 2025) at page 10 <<https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/publications/annual-report-of-the-criminal-injuries-compensation-tribunal-2024/>> accessed 23 March 2026.

<sup>16</sup> Paragraph 26 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>17</sup> The Commission was told by the current secretariat to the Tribunal that, of cases pending in January 2026, 32% of applicants are represented by legal practitioners.

<sup>18</sup> Paragraph 25 of the Criminal Injuries Compensation Scheme (31 January 2025).

Tribunal has stated that where an applicant is represented, it will communicate with their legal representative regarding procedures.<sup>19</sup>

- [12.24] For an unrepresented applicant, understanding and engaging with these legal procedures could be challenging. An application may raise legal questions, and this may be a challenge for an applicant who cannot access legal assistance. It is possible that an applicant may not have the experience or skill to extract relevant information from a witness. This process of questioning witnesses may also create a risk of secondary victimisation for victims of crime who are still recovering from a traumatic event.
- [12.25] A panel of three Tribunal members hears appeals.<sup>20</sup> In 2024, the Tribunal held 55 appeal hearings under the current scheme.<sup>21</sup> During an appeal hearing, a member of the Tribunal's staff may call, examine, and cross-examine witnesses, in addition to making submissions to the Tribunal.<sup>22</sup> Tribunal members are qualified legal professionals who have experience questioning witnesses and extracting information relevant to a case.<sup>23</sup> The Commission understands, as indicative information, that around 12.5% of appeals under the current scheme were conducted by an oral hearing in 2025.
- [12.26] These circumstances could place applicants who do not have legal representation, and experience of the legal system, at a disadvantage. This could act as a barrier to victims obtaining compensation and raises concerns about the fairness of procedures and victims' rights. These concerns are discussed in depth below.

### **(c) Current law**

- [12.27] This section discusses the relevant law for assessing whether legal assistance is necessary for applicants to the proposed statutory scheme. In an Irish context, it

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<sup>19</sup> Criminal Injuries Compensation Scheme, "Instruction 2: Remote appeal hearings" (updated 7 October 2022) at footnote (2) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/instruction-2-remote-appeal-hearings/>> accessed 23 March 2026.

<sup>20</sup> Paragraph 24 of the Criminal Injuries Compensation Scheme (31 January 2025); Department of Justice, Home Affairs and Migration, *Criminal Injuries Compensation Tribunal Annual Report 2024* (Criminal Injuries Compensation Tribunal, 26 September 2025) at page 9 <<https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/publications/annual-report-of-the-criminal-injuries-compensation-tribunal-2024/>> accessed 23 March 2026.

<sup>21</sup> Department of Justice, Home Affairs and Migration, *Criminal Injuries Compensation Tribunal Annual Report 2024* (Criminal Injuries Compensation Tribunal, 26 September 2025) at page 14 <<https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/publications/annual-report-of-the-criminal-injuries-compensation-tribunal-2024/>> accessed 23 March 2026.

<sup>22</sup> Paragraph 25 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>23</sup> Paragraph 16 of the Criminal Injuries Compensation Scheme (31 January 2025).

examines constitutional rights, such as the right to fair procedures and the right to effective access to courts. In a European context, it examines the right of access to courts under the ECHR and the right to effective judicial protection and an effective remedy under EU law.

(i) *Irish law*

- [12.28] The Irish courts have interpreted Article 40.3 of the Constitution as conferring implied or derived rights to fair procedures,<sup>24</sup> and of access to the courts.<sup>25</sup>
- [12.29] The courts have confirmed that the Tribunal should operate according to constitutional fair procedures.<sup>26</sup> The courts may review decisions of the Tribunal where fair procedures have not been complied with.<sup>27</sup> In *Kelly and Doyle v Criminal Injuries Compensation Tribunal*, for example, Ní Raifeartaigh J found the applicants' lack of access to previous decisions of the Tribunal to be "fundamentally unfair".<sup>28</sup> She considered this to be a breach of constitutional fair procedures.<sup>29</sup> Ní Raifeartaigh J addressed a number of other issues in this case, including whether the lack of funding for legal assistance in Tribunal proceedings was a breach of the right of access, and the case is discussed in more detail below.
- [12.30] The courts have also considered whether legal representation is needed in order to protect the rights to constitutional fair procedures and access to the courts. In *McKelvey v Iarnród Éireann*, the Supreme Court was asked to review an employment disciplinary scheme. There was no express entitlement to a legal adviser within the scheme, and the employer refused to allow legal representation in this case.<sup>30</sup> The court considered whether the applicant in this case needed legal representation in order for the process to be fair.<sup>31</sup> In assessing the issue of legal representation, the court followed the approach in *Burns v Governor of Castlerea Prison*.<sup>32</sup> The court in *Burns* set out a list of factors, adopted

<sup>24</sup> Article 40.3° of the Constitution; *Re Haughey* [1971] IR 217 at page 264 (Ó Dálaigh CJ).

<sup>25</sup> Article 40.3.1° of the Constitution; *Macauley v Minister for Posts and Telegraphs* [1966] IR 345.

<sup>26</sup> *State (Creedon) v Criminal Injuries Compensation Tribunal* [1988] IR 51.

<sup>27</sup> *State (Hayes) v Criminal Injuries Compensation Tribunal* [1982] ILRM 210.

<sup>28</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 162 (Ní Raifeartaigh J).

<sup>29</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 162 (Ní Raifeartaigh J).

<sup>30</sup> *McKelvey v Iarnród Éireann* [2019] IESC 79, [2020] 1 IR 573.

<sup>31</sup> *McKelvey v Iarnród Éireann* [2019] IESC 79, [2020] 1 IR 573 at para 8.1 (Clarke CJ).

<sup>32</sup> *Burns v Governor of Castlerea Prison* [2009] IESC 33, [2009] 3 IR 682.

from an English case,<sup>33</sup> that a court may consider when determining whether legal representation is desirable for the fairness of a case. The factors include:

- the seriousness of the charge and possible penalty,
- the possibility of legal arguments in the case,
- the ability of the individual to present their own case,
- any procedural difficulty,
- the need to make a decision reasonably quickly, and
- the need for fairness between the parties.<sup>34</sup>

[12.31] The court in *McKelvey* concluded that, on the facts of that particular case and considering the factors above, the lack of legal representation would not result in the process being unfair.<sup>35</sup>

(ii) *European Convention on Human Rights*

[12.32] Article 6(1) of the ECHR provides:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.<sup>36</sup>

[12.33] The European Court of Human Rights (“ECtHR”) has confirmed that one element of Article 6(1) is the right of effective access to a court or tribunal.<sup>37</sup> However, this right of access is not absolute and may be limited in certain circumstances.<sup>38</sup> This limitation must not restrict access in such a way that the very essence of the right of effective access is reduced.<sup>39</sup>

[12.34] In *Airey v Ireland*, the ECtHR held that the failure to provide legal assistance in legal proceedings for obtaining a judicial separation was a violation of Article 6 of the ECHR. The court considered it unlikely that the applicant could effectively present her case to obtain a judicial separation without the assistance of a lawyer. The court concluded that the ability of the applicant to go to the High Court

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<sup>33</sup> *R v Secretary of State for the Home Department, ex parte Tarrant* [1985] 1 QB 251.

<sup>34</sup> *Burns v Governor of Castlereagh Prison* [2009] IESC 33 at pages 10-11, [2009] 3 IR 682 at paras 14-15 (Geoghegan J).

<sup>35</sup> *McKelvey v Iarnród Éireann* [2019] IESC 79, [2020] 1 IR 573 at para 8.3 (Clarke CJ).

<sup>36</sup> Article 6(1) of the European Convention on Human Rights.

<sup>37</sup> *Golder v United Kingdom* App no 4451/70 (ECtHR 21 February 1975) at para 36.

<sup>38</sup> *P, C and S v United Kingdom* App no 56547/00 (ECtHR 16 July 2002) at para 90; Council of Europe, *Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (civil limb)* (European Court of Human Rights, updated 31 August 2025) at para 135.

<sup>39</sup> *Winterwerp v the Netherlands* App no 6301/73 (ECtHR 24 October 1979) at paras 60 and 75.



without such assistance was not, in itself, an effective right of access to the courts. This is because ECHR rights are intended to be practical and effective.<sup>40</sup>

- [12.35] The court in *Airey* stated that Article 6(1) may sometimes require a state to provide for the assistance of a lawyer. These circumstances may be when the assistance of a lawyer is necessary for effective access to the courts. This may be because legal representation is required under national law, or because of the complexity of the procedure or the case.<sup>41</sup> Considering the circumstances in this case, the court concluded that the applicant did not enjoy an effective right of access to the High Court due to the lack of legal assistance. Therefore, the court held that there had been a breach of Article 6(1).<sup>42</sup>
- [12.36] The ECtHR developed the factors in *Airey* in later cases. The court stated that the importance of what is at stake for the applicant,<sup>43</sup> and the applicant's capacity to represent themselves effectively will also have to be considered.<sup>44</sup>
- [12.37] A later case of note in this context is *P, C and S v United Kingdom*. This case involved care proceedings and the adoption of a child. In this case, the ECtHR noted that the proceedings were of "exceptional complexity", the documentation was "voluminous", and included "highly complex expert evidence" relating to the parents' ability to care for their daughter.<sup>45</sup> The court concluded that the principles of effective access to court and fairness required that the applicants receive the assistance of a lawyer. This was due to the complexity of the case, the importance of the proceedings to the applicants, and the sensitive nature of the case.<sup>46</sup> The ECtHR held that there had been a breach of Article 6(1) as the assistance of a lawyer was "an indispensable requirement" in this case, due to the "crucial consequences" of the outcome of the case.<sup>47</sup>
- [12.38] The ECtHR has considered various types of bodies to be "tribunals" for the purposes of Article 6(1).<sup>48</sup> In the case of *Rolf Gustafson v Sweden*, the ECtHR

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<sup>40</sup> *Airey v Ireland* App no 6289/73 (ECtHR 9 October 1979) at para 24.

<sup>41</sup> *Airey v Ireland* App no 6289/73 (ECtHR 9 October 1979) at para 26.

<sup>42</sup> *Airey v Ireland* App no 6289/73 (ECtHR 9 October 1979) at para 28.

<sup>43</sup> *Steel and Morris v United Kingdom* App no 68416/01 (ECtHR 15 February 2005) at para 61; *P, C and S v United Kingdom* App no 56547/00 (ECtHR 16 July 2002) at para 100.

<sup>44</sup> *McVicar v United Kingdom* App no 46311/99 (ECtHR 7 May 2002) at paras 48-62; *Steel and Morris v United Kingdom* App no 68416/01 (ECtHR 15 February 2005) at para 61.

<sup>45</sup> *P, C and S v United Kingdom* App no 56547/00 (ECtHR, 16 July 2002) at para 95.

<sup>46</sup> *P, C and S v United Kingdom* App no 56547/00 (ECtHR, 16 July 2002) at para 95.

<sup>47</sup> *P, C and S v United Kingdom* App no 56547/00 (ECtHR, 16 July 2002) at para 100.

<sup>48</sup> For example, the ECtHR held that a forestry disputes resolution committee in *Argyrou and Others v Greece* App no 10468/04 (ECtHR, 15 January 2009) at para 27, and an appeals board for senior police officers in *Thierry v France* App no 37058/19 (ECtHR, 31 January 2023) at para 32, were "tribunals".

considered whether a criminal damage compensation board was a “tribunal”. The court stated that the right to compensation under the scheme could be categorised as a “civil” right and the board could therefore be considered a tribunal within the meaning of Article 6(1).<sup>49</sup> The Irish Court of Appeal in *Kelly and Doyle v Criminal Injuries Tribunal* was of the view that the current scheme for compensating victims of crime in Ireland could fall within the remit of Article 6(1) though the Court did not make a ruling on this issue.<sup>50</sup> This particular case is discussed further below.

### (iii) *European Union law*

[12.39] Under Article 19(1) of the Treaty on European Union, Member States “shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law”.<sup>51</sup>

[12.40] The right to an effective remedy is also protected in EU law by Article 47 of the Charter of Fundamental Rights of the European Union (“the Charter”). It provides that:

“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.”<sup>52</sup>

[12.41] This right applies to Member States when they are implementing EU law or applying rights guaranteed under EU law.<sup>53</sup> The right to an effective remedy is supported by the principles of equivalence and effectiveness.

- Equivalence means that procedures for implementing EU law must be similar, or equivalent, to the procedures for implementing national law.<sup>54</sup>

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<sup>49</sup> *Rolf Gustafson v Sweden* App no 23196/94 (ECtHR, 1 July 1997) at paras 35-42.

<sup>50</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 112 (Ní Raifeartaigh J). See further *Kelly and Doyle v Criminal Injuries Tribunal* [2021] IECA 131 at paras 15-16. The Court clarified that what was confirmed in the 2020 case “was that *even if* one assumed for the sake of the argument on legal aid/costs that the appellants fell within Article 6(1) of the Convention, this would not in any event bring them to the end-point they wished to reach, namely a right to legal aid and/or costs in proceedings before the Tribunal.”

<sup>51</sup> Article 19(1) of the Consolidated version of the Treaty on European Union [2012] OJ C 326/13.

<sup>52</sup> Article 47 of the Charter of Fundamental Rights of the European Union.

<sup>53</sup> Official Journal of the European Union, *Explanations relating to the Charter of Fundamental Rights* (2007/C 303/02) at page 29. See also Case C-617/10 *Åklagaren v Hans Åkerberg Fransson* EU:C:2013:105.

<sup>54</sup> Case C-231/96 *Edilizia Industriale Siderurgica Srl (Edis) v Ministero delle Finanze* EU:C:1998:401 at para 36.

- Effectiveness means that these procedures must not make it practically impossible or overly difficult for people to exercise their EU rights.<sup>55</sup>

[12.42] The EU principle of effectiveness has shaped interpretations of the right of effective access to courts. O’Leary has noted that, looking at the caselaw of the Court of Justice of the European Union (“CJEU”), effectiveness has become closely connected to the right to effective judicial protection or access to courts.<sup>56</sup>

[12.43] The case of *Presidenza del Consiglio dei Ministri v BV* concerned the Compensation Directive. As discussed in the first Chapter of this Report, the CJEU held that this Directive contains a right to compensation for victims of violent intentional crimes under EU law.<sup>57</sup> Access to that right therefore must be “effective” under Article 19(1) of the Treaty of the European Union, including in the absence of legal assistance. This was one of the issues explored by the Irish Court of Appeal in *Kelly and Doyle v Criminal Injuries Compensation Tribunal*,<sup>58</sup> which is discussed in more detail below.

[12.44] The Victims’ Rights Directive also contains a number of relevant provisions. The CJEU has confirmed that the Directive provides a horizontal framework for interpreting victims’ rights at an EU level and should be used to interpret relevant sections of the Compensation Directive.<sup>59</sup> Recital 9 of the Directive states that victims of crime “should be provided with sufficient access to justice”, in the context of criminal proceedings.<sup>60</sup> Recital 38 provides that persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm should be provided with specialist support services and legal protection. These specialist support services include the provision of legal advice and advocacy.<sup>61</sup>

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<sup>55</sup> Joined Cases C-222/05, C-223/05, C-224/05 and C-225/05 *Van der Weerd and Others v Minister van Landbouw, Natuur en Voedselkwaliteit* EU:C:2007:318 at para 33; see also *Dowling v Minister for Finance* [2013] IESC 37 at para 10.6, [2013] 4 IR 576 at para 80 (Clarke J).

<sup>56</sup> O’Leary, “The Legacy of *Airey v Ireland* and the Potential of European Law in Relation to Legal Aid” (2019) 42 Dublin University Law Journal 93 at page 108.

<sup>57</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566.

<sup>58</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342.

<sup>59</sup> Case C-126/23 *Burdene* EU:C:2024:937 at para 48. This is discussed in the Chapter on Background and a Rights-Based Approach.

<sup>60</sup> Recital 9 of the Victims’ Rights Directive (2012/29/EU).

<sup>61</sup> Recital 38 of the Victims’ Rights Directive (2012/29/EU).

## (d) Comparative jurisdictions

### (i) France

[12.45] The assistance of a lawyer is not mandatory when applying for compensation to the Crime Victims Compensation Board in France. However, a victim may get advice from a lawyer or victim support association at any time during the application process.<sup>62</sup>

### (ii) The Netherlands

[12.46] Victim Support Netherlands (Slachtofferhulp Nederland) can assist victims in applying for compensation from the Criminal Injuries Compensation Fund, (Schadefonds Geweldsmisdrijven).<sup>63</sup> The staff in Victim Support Netherlands can help a victim to:

- decide whether they should submit an application to the Fund,
- complete the application form for compensation, or
- appeal a decision where a claim for compensation has been refused.<sup>64</sup>

### (iii) England, Scotland and Wales

[12.47] Legal representatives or other representatives are not required to act on behalf of applicants to the Criminal Injuries Compensation Scheme in England, Scotland and Wales, but if an applicant does appoint a representative, the Criminal Injuries Compensation Authority ("CICA") will communicate directly with the representative. If CICA makes an award of compensation, this will be paid directly to the applicant or their legal representative.<sup>65</sup>

[12.48] Where an applicant asks a friend or relative to act as their representative, they need to confirm to CICA that it may take instructions from the representative

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<sup>62</sup> Fonds de Garantie des Victims, "I have not yet submitted my claim" <<https://www.fondsdegarantie.fr/en/i-have-not-yet-submitted-my-claim/>> accessed 23 March 2026.

<sup>63</sup> Schadefonds Geweldsmisdrijven, "Help from other organisations" <<https://schadefonds.nl/home-english/>> accessed 23 March 2026.

<sup>64</sup> Slachtofferhulp Nederland (Victim Support Netherlands), "Schadefonds Geweldsmisdrijven (Victims of Violent Crimes Compensation Fund)" <[https://www.slachtofferhulp-nl.translate.goog/schadevergoeding/schadefonds-geweldsmisdrijven/?x\\_tr\\_sl=nl&x\\_tr\\_tl=en&x\\_tr\\_hl=nl&x\\_tr\\_pto=wapp](https://www.slachtofferhulp-nl.translate.goog/schadevergoeding/schadefonds-geweldsmisdrijven/?x_tr_sl=nl&x_tr_tl=en&x_tr_hl=nl&x_tr_pto=wapp)> accessed 23 March 2026.

<sup>65</sup> Criminal Injuries Compensation Authority and Ministry of Justice, "Getting help with your application" (updated 1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#getting-help-with-your-application>> accessed 23 March 2026.

about their application.<sup>66</sup> Applicants can also get free independent advice from local support or other charitable organisations.<sup>67</sup>

#### *(iv) Northern Ireland*

[12.49] Applicants to the Criminal Injuries Compensation Scheme in Northern Ireland may make their application themselves, or with the help of a solicitor.<sup>68</sup> Victims can also obtain support from Victim Support for Northern Ireland, an organisation funded by the Government to assist victims, free of charge, with the compensation process. They offer support in completing applications and have specially trained advisors to offer assistance to victims at review and appeals stages of an application.<sup>69</sup>

#### *(v) Victoria*

[12.50] An applicant to the Financial Assistance Scheme in Victoria may choose to have a lawyer or another person assist them as their “authorised representative”.<sup>70</sup> An authorised representative can:

- make decisions on behalf of an applicant,
- provide support to gather documents,
- start, edit and complete an application,
- speak with the Financial Assistance Scheme about an application, and

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<sup>66</sup> Criminal Injuries Compensation Authority and Ministry of Justice, “Other help” (updated 1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#other-help>> accessed 23 March 2026.

<sup>67</sup> Criminal Injuries Compensation Authority and Ministry of Justice, “Free independent advice” (updated 1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#free-independent-advice>> accessed 23 March 2026.

<sup>68</sup> Northern Ireland Direct, “Help to make your claim” <<https://www.nidirect.gov.uk/articles/claiming-compensation-criminal-injuries#toc-2>> accessed 23 March 2026; Victim Support NI, “Compensation” <<https://www.victimsupportni.com/help-for-victims/compensation/>> accessed 23 March 2026.

<sup>69</sup> Department of Justice, *A Guide to the Northern Ireland Criminal Injuries Compensation Scheme (2009)* at para 1.3 <<https://www.nidirect.gov.uk/sites/default/files/2025-01/guide-criminal-injuries-compensation-scheme-2009%20latest.pdf>> accessed 23 March 2026.

<sup>70</sup> Victims of Crime, “Legal assistance with the Financial Assistance Scheme” (updated 5 December 2024) <<https://www.victimsofcrime.vic.gov.au/legal-support>> accessed 23 March 2026.

- view a submitted application.<sup>71</sup>

[12.51] The Victims Legal Service also provides free legal advice and support to applicants to the scheme.<sup>72</sup>

### **(e) Submissions**

[12.52] In its Consultation Paper, the Commission considered the issue of access to justice in the context of legal assistance.<sup>73</sup> The Commission sought the views of consultees as to whether applicants require legal advice and/or representation in the compensation process.<sup>74</sup>

[12.53] A large number of submissions agreed that legal assistance may be needed by applicants to the scheme. In particular, consultees highlighted that the Tribunal's procedures were quite legal in nature, and not informal as stated in the current scheme. One consultee provided the appeals process as an example. They stated that it would be reasonable for applicants to get legal advice or representation given the legal nature of the appeals process. Another consultee spoke about the Tribunal's use of legal phrases in their correspondence with them. A different consultee raised a concern that applicants may struggle to instruct experts who are providing evidence in Tribunal proceedings. They pointed out that this is something a legal practitioner would have considerable experience doing.

[12.54] Several submissions also noted that assistance with the application process could reduce the likelihood of secondary victimisation to the applicant. Consultees stated that guidance throughout the process, such as assistance with the application form, gathering of documentation, and handling of witnesses, would be of help to applicants. One submission noted that legal advice at an early stage may help victims to determine whether they are eligible for compensation and reduce the number of unsuccessful applications to the Tribunal.

[12.55] However, many consultees pointed out that a more simplified, accessible, and informal system could solve many of these issues. Some consultees suggested the provision of victim advocates for applicants during the process. However, it was stressed that victim advocates or victim support organisations should not be a substitute for legal advice and representation where that is needed.

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<sup>71</sup> Victims of Crime, "Nominate someone to help with your Financial Assistance Scheme application" (updated 18 August 2025) <<https://www.victimsofcrime.vic.gov.au/nominate-someone-to-help-apply>> accessed 23 March 2026.

<sup>72</sup> Victims of Crime, "Victims Legal Service" (updated 12 December 2025) <<https://www.victimsofcrime.vic.gov.au/victims-legal-service>> accessed 23 March 2026.

<sup>73</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at paras 6.60 – 6.72.

<sup>74</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 206 and 228, question 6.7.

## **(f) Proposals for reform**

### *(i) Legal assistance*

- [12.56] The Commission considers that the protections under the ECHR and EU law suggest that certain individuals in certain cases may require legal assistance to protect their rights effectively. A victim's right to obtain compensation following a crime of violence is one example of such rights.
- [12.57] The Commission emphasises that a principal objective of the proposed statutory scheme is to ensure that a victim can access compensation in an informal and accessible manner, without procedural complexity. The Commission considers that the statutory body should also operate in a manner that permits applicants, in general, to access its processes without legal assistance. In addition, the Commission anticipates that its proposal to establish an information and assistive tier would support applicants in completing applications and reduce the need for legal assistance. In light of this, the Commission expects that the majority of applications to the statutory body will not require legal assistance.
- [12.58] However, the Commission acknowledges that there may be applications for compensation under the proposed statutory scheme where applicants need access to legal advice or representation. This may be because of the complexity of legal issues in the case or the applicant's personal circumstances.
- [12.59] The Commission anticipates that a variety of complex legal issues may arise in cases coming before the statutory body. Some procedures are complex and may be difficult to understand for some applicants. Some of these issues were also raised by consultees, as examples of situations where legal assistance may be necessary. These examples include where:
- the application of the terms of the proposed statutory scheme is in dispute (such as in the context of exclusions),
  - complex expert evidence is required and may be tested by the decision-maker, and this evidence could be disputed, or
  - an applicant decides to appeal a decision of the statutory body, and an oral hearing is needed.
- [12.60] The Commission also recognises that there may be some victims who require additional assistance to exercise their rights, due to their personal circumstances, including the level of trauma they have experienced because of the crime of violence. As a result, they may not be able to present their case or represent themselves effectively.
- [12.61] The Commission therefore recommends that applicants may access legal assistance to assist with the preparation and presentation of their application where legal assistance is necessary either because their case is complex or because of their personal circumstances. The Commission envisages that the

proposed information and assistive tier of the statutory body could identify applicants who may be in need of legal support.

- [12.62] While the Commission anticipates that these cases will be rare, it considers it necessary to determine whether funding for legal assistance is necessary to ensure a victim's right to compensation is effective in practice. Legal assistance could be funded through one of two models: either by providing legal aid to applicants to the proposed statutory scheme, or by giving the statutory body a power to pay an applicant's legal costs. These models are explored in the following sections of this Chapter.

**R. 12.1 The Commission recommends** that applicants may access legal assistance to assist with the preparation and presentation of their application where legal assistance is necessary either because their case is complex or because of their personal circumstances.

*(ii) Accompaniment at hearings*

- [12.63] The Commission also considered the possibility of applicants being accompanied by a friend or other companion when they attend hearings held by the statutory body.
- [12.64] Consultees suggested that making provision for someone to support applicants could reduce the risk of secondary victimisation, and suggested that victim support organisations could have a role to play in this.
- [12.65] The Commission considers that applicants should be entitled to be accompanied by a person of their choice at a hearing of the statutory body. As the Commission considers that legal representation may be necessary for certain victims in certain cases, it considers that legal advisers should be permitted to attend hearings with applicants. However, the Commission also believes that facilitating a victim's needs may take other forms, such as the ability to bring a friend or family member to a hearing. This is also the approach adopted by the jurisdictions assessed by the Commission.
- [12.66] Therefore, the Commission recommends that applicants may be accompanied at oral hearings by their legal adviser or another person of their choosing.

**R. 12.2 The Commission recommends** that applicants may be accompanied at oral hearings by their legal adviser or another person of their choosing.

### 3. Funding necessary legal assistance

- [12.67] As noted above, the Commission explored two models for the funding of necessary legal assistance. The first option the Commission assessed to support a victim's right to effective access to justice through legal assistance is to provide



for legal aid. The second option the Commission considered to fund legal assistance for a victim was to give the statutory body a power to contribute to an applicant's legal costs. These legal costs may cover legal advice in the preparation of an application to the proposed statutory scheme and/or legal representation in a hearing of the statutory body.

[12.68] This section examines the current scheme in relation to the Tribunal's funding of legal assistance. It discusses the relevant law on civil legal aid and legal costs. It also discusses the provision for legal aid and costs in criminal injury compensation schemes in other countries. The Commission then analyses the submissions received in response to its Consultation Paper in the context of legal aid and costs, before setting out its recommendations.

### **(a) Current scheme**

[12.69] Under the current scheme, there is no provision for legal aid for applicants to the scheme who wish to avail of legal advice and/or legal representation. There is also no provision for the Tribunal to pay legal costs under the current scheme.<sup>75</sup>

[12.70] However, the Tribunal has previously awarded costs for ancillary, or supporting, applications to the courts. In *Decision 23970* (27 October 2022), for example, an application in respect of wardship of the applicant was made to the High Court. The Tribunal covered the cost of this application for wardship.<sup>76</sup>

### **(b) Current law**

#### *(i) Irish law*

[12.71] The courts have held that there is no constitutional right to civil legal aid in Ireland.<sup>77</sup> However, in *O'Donoghue v Legal Aid Board*, the Supreme Court held that the constitutional right to fair procedures and access to the courts may, in certain circumstances, include an entitlement to legal aid.<sup>78</sup> This constitutional

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<sup>75</sup> Paragraph 26 of the Criminal Injuries Compensation Scheme (31 January 2025); Criminal Injuries Compensation Scheme, "Non-Fatal Injury Application Form: Explanatory Notes" at para 1 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/>> accessed 23 March 2026 and Criminal Injuries Compensation Scheme, "Fatal Injury Application Form: Explanatory Notes" at para 1 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/>> accessed 23 March 2026.

<sup>76</sup> Criminal Injuries Compensation Tribunal, Case Reference 23970 (27 October 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/23970-27-october-2022/>> accessed 23 March 2026.

<sup>77</sup> *Corcoran v Minister for Social Welfare* [1991] 2 IR 175, *McBrearty v Morris* [2003] IEHC 154, *Grogan v The Parole Board and the Minister for Justice, Equality and Law Reform* [2008] IEHC 204.

<sup>78</sup> *O'Donoghue v Legal Aid Board* [2004] IESC 413, [2006] 4 IR 204.

obligation to make legal aid available may arise, for example in wardship proceedings,<sup>79</sup> or in a review of detention.<sup>80</sup>

- [12.72] In *Magee v Farrell*, the Supreme Court confirmed that there is a constitutional right to state-funded legal aid in criminal proceedings with serious consequences, and particularly where an individual may lose their freedom.<sup>81</sup> The court distinguished between the proceedings before a coroner and criminal proceedings. It stated that proceedings before a coroner are an investigation of facts and are not for establishing liability or guilt. The court concluded that a right to legal representation does not mean that you have a right to state-funded legal aid (outside of the criminal context identified).<sup>82</sup>

(ii) *European Convention on Human Rights*

- [12.73] The ECtHR in *Airey v Ireland* also considered the issue of when legal aid should be granted.<sup>83</sup> As discussed above, an effective right of access to the courts in accordance with Article 6(1) of the ECHR is required and this may require a state to provide for legal assistance in certain circumstances.<sup>84</sup> However, the court held that a state is not required to provide free legal aid for every dispute related to a "civil right".<sup>85</sup> The ECtHR has also emphasised that criteria may be imposed on the granting of legal aid, such as the applicant's financial circumstances or the applicant's chance of success in the case.<sup>86</sup>
- [12.74] When assessing whether provision should be made for the reimbursement of legal costs, the court will apply the same set of factors for assessing whether provision should be made for legal aid.<sup>87</sup> These factors are discussed above. In *CB v United Kingdom*, the court considered the compensation scheme for victims of crime in England, Scotland and Wales. The court held that, in this particular case, the fact that the scheme did not cover legal costs did not prevent the applicant from obtaining legal representation, or effective legal representation. However, the court did acknowledge that in another case, the lack of provision for the reimbursement of legal fees could effectively prevent an applicant from obtaining

<sup>79</sup> *Stevenson v Landy* (High Court, 10 February 1993).

<sup>80</sup> *Kirwan v Minister for Justice* [1994] 2 IR 417.

<sup>81</sup> *Magee v Farrell* [2009] IESC 60 at page 10, [2009] 4 IR 703 at para 20 (Finnegan J).

<sup>82</sup> *Magee v Farrell* [2009] IESC 60 at page 21, [2009] 4 IR 703 at para 38 (Finnegan J).

<sup>83</sup> *Airey v Ireland* App no 6289/73 (ECtHR 9 October 1979).

<sup>84</sup> See section 2(b)(ii) of this Chapter for the court's discussion of this.

<sup>85</sup> *Airey v Ireland* App no 6289/73 (ECtHR 9 October 1979) at para 26.

<sup>86</sup> *Steel and Morris v United Kingdom* App no 68416/01 (ECtHR 15 February 2005) at para 62.

<sup>87</sup> *CB v United Kingdom* App no 35512/04 (ECtHR 25 August 2005).

representation or deprive an applicant of the benefit of their claim under the scheme.<sup>88</sup>

[12.75] The Commission also notes a Recommendation of the Committee of Ministers on rights, services and support for victims of crime.<sup>89</sup> Article 16 provides that, in order to vindicate a victim of crime's right to a civil remedy, Member States should ensure a right of access to the courts or other authorities, and legal aid, where appropriate.<sup>90</sup> However, the conditions and procedural rules under which access to an effective remedy are provided for, are to be determined by national law.<sup>91</sup>

*(iii) European Union law*

[12.76] Article 47 of the Charter provides that:

"Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."<sup>92</sup>

[12.77] In *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v Bundesrepublik Deutschland*, the CJEU considered whether the fact that a company could not qualify for legal aid was a breach of the principle of effective judicial protection or access to courts.<sup>93</sup> The court held that it is for national courts to determine whether:

- the conditions for granting legal aid are a limitation on the right of access to the courts and this limitation undermines the essence of the right,

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<sup>88</sup> *CB v United Kingdom* App no 35512/04 (ECtHR 25 August 2005).

<sup>89</sup> Council of Europe, Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime (Adopted by the Committee of Ministers on 15 March 2023 at the 1460th meeting of the Ministers' Deputies).

<sup>90</sup> Article 16(1) of the Council of Europe, Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime (Adopted by the Committee of Ministers on 15 March 2023 at the 1460th meeting of the Ministers' Deputies).

<sup>91</sup> Article 16(2) of the Council of Europe, Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime (Adopted by the Committee of Ministers on 15 March 2023 at the 1460th meeting of the Ministers' Deputies). See also Article 12 which provides that Member States should ensure that victims have access to legal aid, at least where they have the status of parties to criminal proceedings.

<sup>92</sup> Article 47 of the Charter of Fundamental Rights of the European Union.

<sup>93</sup> Case C-279/09 *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v Bundesrepublik Deutschland* EU:C:2010:811.

- the conditions pursue a legitimate aim, and
- the method used is proportionate to achieve the aim.<sup>94</sup>

[12.78] The court went on further to state that, when national courts are making this assessment, they must consider:

- what the case is about,
- whether the applicant has a reasonable chance of succeeding,
- the importance of the case to the applicant,
- how complex the law and procedure in the case is, and
- the applicant's ability to represent themselves effectively.<sup>95</sup>

[12.79] In assessing proportionality, the court stated that national courts may also consider the cost of the proceedings (where advance payment is required), and whether these costs are an insurmountable obstacle to a person's access to the courts.<sup>96</sup>

[12.80] There is no clear entitlement to legal costs in the context of compensating victims of crime under EU law. However, the European Council contemplated legal costs in the context of compensating victims of crime, when discussing the content of the Compensation Directive. Recital 3 of the Compensation Directive states:

"At its meeting in Tampere on 15 and 16 October 1999, the European Council called for the drawing-up of minimum standards on the protection of the victims of crime, in particular on crime victims' access to justice and their rights to compensation for damages, including legal costs."<sup>97</sup>

[12.81] This suggests that the Council contemplated that legal costs may be necessary to access compensation. However, the fact that this is not reflected in a substantive provision may reflect a view among Member States that this issue should be decided at the national level.

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<sup>94</sup> Case C-279/09 *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v Bundesrepublik Deutschland* EU:C:2010:811 at para 60.

<sup>95</sup> Case C-279/09 *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v Bundesrepublik Deutschland* EU:C:2010:811 at para 61.

<sup>96</sup> Case C-279/09 *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v Bundesrepublik Deutschland* EU:C:2010:811 at para 61.

<sup>97</sup> Recital 3 of the Compensation Directive (2004/80/EC).

*(iv) Kelly and Doyle v Criminal Injuries Tribunal*

[12.82] In the case of *Kelly and Doyle v Criminal Injuries Tribunal*, the Irish Court of Appeal considered, among other issues,<sup>98</sup> the absence of funding for legal aid or reimbursement of legal costs under the current scheme.<sup>99</sup> The appellants claimed that the inability of the Tribunal to pay an applicant's legal costs and the failure of the Minister for Justice and Equality to prescribe the Tribunal under the civil legal aid scheme, meant that it was impossible and/or excessively difficult to obtain funding to bring a claim of compensation under the current scheme.<sup>100</sup>

[12.83] While Ní Raifeartaigh J did examine these issues, she noted that the court was somewhat limited in the extent to which it could address the issue of the funding of legal assistance because of the limited information it had received from the appellants. The court noted that the appellants had offered minimal information about their personal and financial circumstances. This left the court to consider the appellants' claim in a "near-evidential vacuum and on the basis of assumption and inference". The court stated this to be an unsatisfactory situation.<sup>101</sup>

[12.84] Ní Raifeartaigh J noted the case of *Presidenza del Consiglio dei Ministri v BV* before conducting an assessment of the issue of funding for legal assistance.<sup>102</sup> The *BV* case clarified that the Compensation Directive gives victims a right to compensation. Therefore, Ní Raifeartaigh J considered whether the funding of legal assistance is needed to give an applicant to the current scheme effective protection of this right.<sup>103</sup>

[12.85] In asking whether the EU principle of effective judicial protection requires the funding of legal assistance for a claim for compensation, Ní Raifeartaigh J referred to the case of *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v Bundesrepublik Deutschland*, discussed above.<sup>104</sup> In particular, Ní Raifeartaigh J asked whether the lack of funding for legal assistance:

- is a limitation on the right of access to the Tribunal (and impairs an applicant's right to compensation),

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<sup>98</sup> The Court also considered exclusions under the scheme, access to past decisions, and the lack of compensation for pain and suffering. These issues are discussed in the Chapter on Administration of the Statutory Body and Statutory Scheme, the Chapter on Exclusionary Criteria, and the Chapter on Types of Compensation.

<sup>99</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342.

<sup>100</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 87 (Ní Raifeartaigh J).

<sup>101</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 92 (Ní Raifeartaigh J).

<sup>102</sup> Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566.

<sup>103</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 86 (Ní Raifeartaigh J).

<sup>104</sup> Case C-279/09 *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v Bundesrepublik Deutschland* EU:C:2010:811.

- pursues a legitimate aim, and
- the method used is proportionate to achieve the aim.<sup>105</sup>

[12.86] She also considered the nature of the proceedings and what is at stake for the applicants, the complexity of the proceedings, and the ability of the applicants to represent themselves.<sup>106</sup>

[12.87] Ní Raifeartaigh J noted that proceedings before the Tribunal are designed to be as simple as possible and are unlikely to raise complex legal issues.<sup>107</sup> The proceedings are not court proceedings nor are they adversarial and there is no risk of a costs order being made against an applicant. The Tribunal will organise and pay for necessary reports to ensure that there is expert evidence of injuries and for future prognosis of injuries. In applying the principles developed in the ECtHR caselaw, as discussed above, the court was of the view that the funding of legal assistance was not required in this case. In arriving at this view, Ní Raifeartaigh J acknowledged that while the issue of compensation may be important to the appellants, their cases did not reach the threshold required under ECHR law.<sup>108</sup> She also stated that the exclusions under the current scheme that had been applied against the appellants were not complex enough to reach the threshold required under EU and ECHR law.<sup>109</sup>

[12.88] In conducting the proportionality assessment, the court acknowledged that the Tribunal's aim is to have a simple, informal and low-cost, financially viable scheme for applying for compensation. Ní Raifeartaigh J considered this to be a legitimate aim, and considered the absence of funding for legal assistance to be proportionate to this aim. In particular, the court pointed out that it is a third party, and not the State, who is at fault in proceedings before the Tribunal.<sup>110</sup>

[12.89] Finally, the court held that, while an individual claimant might prefer to have funding for legal assistance to represent them before the Tribunal, the absence of funding does not impair the essence of the right to compensation.<sup>111</sup> Therefore, the court concluded that, according to Article 47 of the Charter, Article 19 of the Treaty on European Union, and the principle of effectiveness under EU law, the Tribunal is not required to grant legal aid or make an award of costs to ensure

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<sup>105</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 113 (Ní Raifeartaigh J).

<sup>106</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 113 (Ní Raifeartaigh J).

<sup>107</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 114 (Ní Raifeartaigh J).

<sup>108</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 115 (Ní Raifeartaigh J).

<sup>109</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 116 (Ní Raifeartaigh J).

<sup>110</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 117 (Ní Raifeartaigh J).

<sup>111</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 117 (Ní Raifeartaigh J).

the protection of an applicant's right to compensation under the Compensation Directive.<sup>112</sup>

[12.90] The Commission notes that this judgment was delivered in the context of assessing the legality of the current scheme. More recent developments regarding the interpretation of the Compensation Directive may introduce additional complexity in the application of the statutory scheme. These include the cases of *Burdene*, which confirmed the relevance of the Victims' Rights Directive to the interpretation of the Compensation Directive,<sup>113</sup> and *LD v Criminal Injuries Compensation Tribunal*, which outlined the requirement of payments for pain and suffering.<sup>114</sup> The Commission recommends that such payments should be made under the statutory scheme in the Chapter on Types of Compensation and refers to such payments as 'general compensation payments'.

### (c) Comparative jurisdictions

#### (i) France

[12.91] Of the jurisdictions examined by the Commission, only France provides legal aid for victims of crime in its State compensation scheme. Applicants to the Crime Victims Compensation Board in France may be granted legal aid depending on their financial resources or the nature of the offence that gave rise to their injury.<sup>115</sup>

#### (ii) The Netherlands

[12.92] The Criminal Injuries Compensation Fund in the Netherlands will not separately compensate the cost of legal assistance. This is due to the nature of the payment, the simplicity of the process, and the fact that victims may get assistance from the Victim Support Centre free of charge.<sup>116</sup>

[12.93] However, if an applicant is objecting to a decision by the Fund, the Fund will reimburse the cost of legal assistance if the costs were reasonable. This only

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<sup>112</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 118 (Ní Raifeartaigh J).

<sup>113</sup> Case C-126/23 *Burdene* EU:C:2024:937.

<sup>114</sup> Case C-284/24 *LD v Criminal Injuries Compensation Tribunal* EU:C:2025:741.

<sup>115</sup> Fonds de Garantie des Victimes, "I have not yet submitted my claim" <<https://www.fondsdegarantie.fr/en/i-have-not-yet-submitted-my-claim/>> accessed 23 March 2026.

<sup>116</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 27 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

applies where the decision has been revoked because the Fund acted unlawfully.<sup>117</sup>

*(iii) England, Scotland and Wales*

[12.94] The Criminal Injuries Compensation Authority in England, Scotland and Wales will not normally pay the applicant's cost of making an application, such as the cost of legal or other representation.<sup>118</sup>

*(iv) Northern Ireland*

[12.95] The cost of legal representation is not covered under the Northern Ireland Criminal Injuries Compensation Scheme.<sup>119</sup> As noted above, victims can obtain support from specially trained advisors at Victim Support for Northern Ireland, free of charge, at review and appeals stages of an application.<sup>120</sup>

*(v) Victoria*

[12.96] In Victoria, the Financial Assistance Scheme provides that a legal practitioner or other representative cannot charge or recover from an applicant any costs relating to the representation or assistance of an applicant in the making of an application.<sup>121</sup> However, the scheme decision-maker may pay an amount to a legal practitioner or other representative for these costs where they consider this reasonable.<sup>122</sup> Before paying legal costs, the scheme decision-maker will consider whether:

- the lawyer is listed as the victim's authorised representative,
- the lawyer has a certificate to practice, and

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<sup>117</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 27 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>118</sup> Paragraph 93 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>119</sup> Paragraphs 20(2) and 77 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>120</sup> Department of Justice, *A Guide to the Northern Ireland Criminal Injuries Compensation Scheme* (2009) at para 1.3 <<https://www.nidirect.gov.uk/sites/default/files/2025-01/guide-criminal-injuries-compensation-scheme-2009%20latest.pdf>> accessed 23 March 2026. See also Paragraph 77 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>121</sup> Section 25(2) of the Victims of Crime (Financial Assistance Scheme) 2022 (Victoria).

<sup>122</sup> Section 39 of the Victims of Crime (Financial Assistance Scheme) 2022 (Victoria).



- the application is complex.<sup>123</sup>

[12.97] The scheme decision-maker will not pay legal costs if the application is an abuse of the process or does not have any reasonable chance of success. An application's reasonable chance of success is assessed on the material available to the legal practitioner when the application was filed.<sup>124</sup>

#### **(d) Submissions**

[12.98] In its Consultation Paper, the Commission welcomed the views of consultees as to whether a system of legal advice, legal aid, or discretionary reimbursement of applicants' legal costs, along with efforts to simplify procedures of the Tribunal, would increase access to the scheme.<sup>125</sup> The Commission expressed a provisional view that legal costs should be recoverable by applicants in certain circumstances, such as where the applicant is unable to complete the application process by themselves.<sup>126</sup>

[12.99] Specifically, the Commission asked whether consultees considered that provision for legal aid should be made.<sup>127</sup> It also asked whether consultees agreed that the Tribunal should have a power to award legal costs, and if so, whether there should be limits to this power.<sup>128</sup>

[12.100] A number of submissions expressed the view that civil legal aid should be made available. One submission stated that where an applicant chooses to get legal assistance, they should have legal aid available to them as their application is progressed. One consultee expressed a preference for granting legal aid at the start of the process rather than awarding costs after a decision has been made. The consultee was of the view that this would relieve the financial burden on applicants to pay their legal costs before receiving a payment of compensation.

[12.101] Several submissions stated that the Tribunal should have a power to award legal costs where legal representation is needed. One submission gave the example of

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<sup>123</sup> Victims of Crime, "Legal assistance with the Financial Assistance Scheme" (updated 5 December 2024) <<https://www.victimsofcrime.vic.gov.au/legal-support>> accessed 23 March 2026.

<sup>124</sup> Victims of Crime, "Legal assistance with the Financial Assistance Scheme" (updated 5 December 2024) <<https://www.victimsofcrime.vic.gov.au/legal-support>> accessed 23 March 2026.

<sup>125</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 198.

<sup>126</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 199.

<sup>127</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at pages 206 and 228, question 6.7.

<sup>128</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at pages 206 and 229, question 6.8.

where an applicant could not have made their application without legal support or where technical legal issues arise in a case. One consultee suggested that legal costs should be awarded independent of a compensation award to avoid confusion and increase transparency.

[12.102] Most consultees were unsure whether appropriate limits could be placed on a power to award costs. One consultee suggested that the ordinary principles of awarding costs should apply to cases before the Tribunal. This would mean that costs could be recovered for what was properly necessary for the fair presentation of the case. In such instances, the consultee suggested, more complex cases may be awarded a higher level of costs.

### **(e) The Commission's view**

[12.103] The Commission has considered the relevant law, submissions to its consultation, and recent developments. It notes that in the case of *Kelly and Doyle v Criminal Injuries Tribunal*, the Court of Appeal did not consider that the absence of legal aid or reimbursement of legal costs made the appellants' right to compensation ineffective.<sup>129</sup> The Commission notes that this judgment was delivered in the context of the current scheme and that recent caselaw developments, as discussed above, may result in more complexity for applicants applying to the scheme.

[12.104] The Commission is of the view that there may be cases where the complexity of a case or an applicant's personal circumstances may mean that legal representation is necessary to fulfil their right to effective access to justice, and this means that the State should provide some means for accessing such representation. As set out in the ECtHR caselaw above, an applicant's capacity to present their case and the complexity of the case are key considerations in determining whether an applicant needs access to legal assistance in order to vindicate their right of effective access to justice.

#### *(i) Legal aid*

[12.105] The first option that the Commission considered for assisting certain applicants in accessing legal representation was providing for legal aid. It explored two potential models for the provision of legal aid:

- (1) a specialised legal aid scheme, and
- (2) an extension of the current legal aid scheme to include the proposed statutory scheme.

[12.106] A specialised civil legal aid scheme may be established by an adjudicative body or tribunal. An example of this is the Mental Health Legal Aid Scheme. The Mental

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<sup>129</sup> *Kelly and Doyle v Criminal Injuries Tribunal* [2020] IECA 342.

Health Act 2001 permits the Mental Health Commission to create a legal aid scheme for patients.<sup>130</sup> Under the scheme, the Mental Health Commission shall assign a legal representative to a patient who is before a Mental Health Tribunal.<sup>131</sup> A legal representative is chosen from a panel of approved legal representatives.<sup>132</sup> As of April 2025, there were 93 legal representatives on this panel.<sup>133</sup> Where a patient chooses their own legal representative who is not from the panel, they will have to pay their own costs.<sup>134</sup>

- [12.107] A specialised legal aid scheme, such as the Mental Health Legal Aid Scheme, could potentially be established to assist applicants to the proposed statutory scheme. This would consist of a specialised panel of legal practitioners (solicitors and barristers), from which victims could choose a legal practitioner to represent them or to provide advice or assistance with their application.
- [12.108] The benefits of the creation of a scheme like this would be the concentration and development of relevant skills and experience. This is because legal practitioners who are listed on the panel would appear regularly before the statutory body and become familiar with its procedures.
- [12.109] On the other hand, the Commission considers that the creation of a specialised legal aid scheme could create an added administrative burden for the proposed statutory scheme. In addition, the statutory scheme may not be large enough to justify its own specialised legal aid scheme.
- [12.110] In light of the above, the Commission has decided that a specialised legal aid scheme is not its preferred approach to funding legal representation for applicants to the statutory body.
- [12.111] The Civil Legal Aid Act 1995 established a general civil legal aid scheme in Ireland. Certain bodies may be prescribed under this legislation. Under this legislation, an individual who wishes to receive legal aid must apply for and obtain a certificate from the Legal Aid Board. The Legal Aid Board determines eligibility for the scheme on certain criteria, such as:

- the individual's financial circumstances,<sup>135</sup>

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<sup>130</sup> Section 33(3)(c) of the Mental Health Act 2001.

<sup>131</sup> Section 17(1)(b) of the Mental Health Act 2001.

<sup>132</sup> Section 7.2 of the Mental Health Legal Aid Scheme 2005.

<sup>133</sup> Mental Health Commission, "Legal Representatives" <<https://www.mhcirl.ie/what-we-do/mental-health-tribunals/tribunal-panel-members/legal-representatives>> accessed 23 March 2026.

<sup>134</sup> Mental Health Commission, "Legal Representatives" <<https://www.mhcirl.ie/what-we-do/mental-health-tribunals/tribunal-panel-members/legal-representatives>> accessed 23 March 2026.

<sup>135</sup> Section 28(2) of the Civil Legal Aid Act 1995, as amended by section 25(e)(i), (iii) of the Courts and Civil Law (Miscellaneous Provisions) Act 2013 and section 29 of Civil Legal Aid

- the individual's reasons for taking the case,
- the individual's chance of success,
- the suitability of the proceedings (considering the subject of the case),
- the reasonableness of granting legal aid (considering the circumstances of the case).<sup>136</sup>

[12.112] In considering the individual's financial circumstances, the Legal Aid Board will assess the individual's disposable income, and where appropriate, their disposable capital.<sup>137</sup> The Legal Aid Board will also require that the individual pay a contribution, which is assessed by reference to the individual's financial circumstances.<sup>138</sup>

[12.113] However, the Legal Aid Board may grant legal aid to an individual without reference to these financial thresholds or waive the requirement to pay a contribution, or require a lower contribution, where this would cause difficulty for the individual.<sup>139</sup>

[12.114] In addition to the criteria above, the Legal Aid Board will consider whether a "reasonably prudent person" would engage legal services even if the cost would be a financial difficulty for them. It will also consider whether a solicitor or barrister would reasonably advise the individual to pay for legal assistance.<sup>140</sup>

[12.115] The civil legal aid scheme is currently limited to court proceedings and inquests by the coroner.<sup>141</sup> The Minister for Justice, Home Affairs and Migration, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, may also prescribe a tribunal to be included under the

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1995, as amended by section 80 of the Civil Law (Miscellaneous Provisions) Act 2008; Part 5 of the Civil Legal Aid Regulations 1996 (SI No 273 of 1996), as amended by regulation 3 of the Civil Legal Aid Regulations 2013 (SI No 346 of 2013).

<sup>136</sup> Section 28(2) of the Civil Legal Aid Act 1995, as amended by section 25(e)(i), (iii) of the Courts and Civil Law (Miscellaneous Provisions) Act 2013.

<sup>137</sup> Section 29 of the Civil Legal Aid Act 1995, as amended by section 80 of the Civil Law (Miscellaneous Provisions) Act 2008; Part 5 of the Civil Legal Aid Regulations 1996 (SI No 273 of 1996), as amended by regulation 3 of the Civil Legal Aid Regulations 2013 (SI No 346 of 2013).

<sup>138</sup> Section 29(3) of the Civil Legal Aid Act 1995.

<sup>139</sup> Section 29(2) of the Civil Legal Aid Act 1995, as amended by section 80 of the Civil Law (Miscellaneous Provisions) Act 2008.

<sup>140</sup> Section 24 of the Civil Legal Aid Act 1995.

<sup>141</sup> Section 28(2) of the Civil Legal Aid Act 1995, as amended by section 25(e)(i), (iii) of the Courts and Civil Law (Miscellaneous Provisions) Act 2013.

scheme.<sup>142</sup> To date, only one tribunal has been prescribed, the International Protection Appeals Tribunal.<sup>143</sup>

[12.116] The civil legal aid scheme was reviewed for the first time in 2025.<sup>144</sup> The Review Group looked at the effective “blanket ban” or “overall prohibition” on access to the civil legal aid scheme for proceedings before adjudicative bodies and tribunals. It recognised that, while the purpose of these bodies was to create an informal, low cost, non-legal environment, there has been an increase in the complexity of these cases.<sup>145</sup>

[12.117] Submissions to the Review raised the need for legal representation in adjudicative bodies and tribunals.<sup>146</sup> In particular, the Council of the Bar of Ireland submitted that the lack of provision for legal aid for applicants to the Tribunal can no longer be justified. It maintained that legal representation under the civil legal aid scheme should be available to victims to support their rights. The Council also noted that the personal circumstances of victims may mean that they are unable to represent themselves. This may mean that access to legal advice and representation is “crucial” in order to achieve “the best possible outcome” for a victim.<sup>147</sup>

[12.118] The Review Group published two reports: a Majority Report and a Minority Report.<sup>148</sup> The Majority Report noted that the increase in the complexity of the cases coming before adjudicative bodies and the law in the relevant areas has led to an increased use of legal representation in proceedings before these bodies. It noted that, while not every case will require legal representation, access to legal

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<sup>142</sup> Section 27(2)(b) of the Civil Legal Aid Act 1995, as amended by section 25(d)(i), (ii) of the Courts and Civil Law (Miscellaneous Provisions) Act 2013.

<sup>143</sup> Civil Legal Aid (International Protection Appeals Tribunal) Order 2017 (SI No 81 of 2017).

<sup>144</sup> Majority of Civil Legal Aid Review Group on the Future of the Civil Legal Aid Scheme, *Civil Legal Aid Review 2025: A Review of the Civil Legal Aid Scheme in Ireland* (Department of Justice, Home Affairs and Migration, 24 July 2025).

<sup>145</sup> Majority of Civil Legal Aid Review Group on the Future of the Civil Legal Aid Scheme, *Civil Legal Aid Review 2025: A Review of the Civil Legal Aid Scheme in Ireland* (Department of Justice, Home Affairs and Migration, 24 July 2025) at pages 25 – 26.

<sup>146</sup> Civil Legal Aid Review Group on the Future of the Civil Legal Aid Scheme, *Report on Stakeholder Submissions* (Department of Justice, Home Affairs and Migration, 24 July 2025) at para 74.

<sup>147</sup> The Bar of Ireland, *Submission of the Council of the Bar of Ireland to the Review Group on Civil Legal Aid* (3 February 2023) at page 13.

<sup>148</sup> At a conference on the topic of civil legal aid, the Minister for Justice stated that he will be considering both the Majority Report and Minority Report as guidelines for reforming the scheme. See Department of Justice, Home Affairs and Migration, “Minister O’Callaghan Speech Civil Legal Aid: From Review to Reform - 12 January 2026, Trinity College Dublin” <<https://www.gov.ie/en/departments/departments-home-affairs-and-migration/publications/minister-ocallaghan-speech-civil-legal-aid-from-review-to-reform-12-january-2026-trinity-college-dublin/>> accessed 23 March 2026.

aid may be required in some cases, such as in cases concerning EU law. The Majority Report stated that the current situation is not in line with its vision for a more accessible and responsive civil legal aid system, nor is it compatible with EU law.<sup>149</sup>

[12.119] Therefore, the Majority Report recommended that the effective ban on accessing the current civil legal aid scheme for proceedings before adjudicative bodies should be lifted, and the scheme expanded. The recommended expansion is to ensure legal advice and representation are available, where required, because:

- of the complexity of a case, or
- there is a legal requirement.<sup>150</sup>

[12.120] While the Minority Report welcomed the recommendation in the Majority Report to lift the ban on legal representation in adjudicative bodies and tribunals, the authors criticised the lack of clarity around the new system.<sup>151</sup>

[12.121] In particular, the Minority Report refers to the Majority Report's recommendations for a reformed merits test. It states that the recommendation to provide for a different merits test for proceedings before adjudicative bodies is a reduction in the scope of the current scheme, as there is no need to prove complexity or a legal right at present.<sup>152</sup>

[12.122] The Minority Report suggested that, where a merits test is applied, there should be no distinction made between proceedings before courts and proceedings before adjudicative bodies.<sup>153</sup> It recommended that European law principles on access to legal aid should be included in a merits test and be set out in legislation. The Minority Report suggested that a requirement to provide legal aid should depend on factors such as:

- the importance of the case to the applicant,
- the vulnerability of the applicant,
- the emotional involvement of the applicant which affects the level of objective required to present a case in court,

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<sup>149</sup> Majority of Civil Legal Aid Review Group on the Future of the Civil Legal Aid Scheme, *Civil Legal Aid Review 2025: A Review of the Civil Legal Aid Scheme in Ireland* (Department of Justice, Home Affairs and Migration, 24 July 2025) at pages 25 - 26.

<sup>150</sup> Majority of Civil Legal Aid Review Group on the Future of the Civil Legal Aid Scheme, *Civil Legal Aid Review 2025: A Review of the Civil Legal Aid Scheme in Ireland* (Department of Justice, Home Affairs and Migration, 24 July 2025) at recommendation 10.

<sup>151</sup> Eilis Barry, *Civil Legal Aid Review 2025: A Review of the Civil Legal Aid Scheme in Ireland* (Department of Justice, Home Affairs and Migration, 24 July 2025) at page 43.

<sup>152</sup> Eilis Barry, *Civil Legal Aid Review 2025: A Review of the Civil Legal Aid Scheme in Ireland* (Department of Justice, Home Affairs and Migration, 24 July 2025) at page 44.

<sup>153</sup> Eilis Barry, *Civil Legal Aid Review 2025: A Review of the Civil Legal Aid Scheme in Ireland* (Department of Justice, Home Affairs and Migration, 24 July 2025) at page XIV.

- the complexity of the relevant law or procedure,
- the need to establish facts through expert evidence and the examination of witnesses,
- the applicant's ability to represent him or herself effectively, and
- the existence of a statutory requirement to have legal representation.<sup>154</sup>

[12.123] The Commission considered the potential expansion of the current civil legal aid scheme to explicitly include applications to the statutory body. This would bring the proposed statutory scheme within the scope of the Legal Aid Board. In this regard, the Commission welcomes the recommendation of the Civil Legal Aid Review Group to lift the exclusion of legal aid for adjudicative bodies and tribunals.

[12.124] If applications to the statutory body were included in the existing legal aid scheme, this could provide a predictable structure for the control and management of legal fees. The system is already well-understood by practitioners, which could facilitate its adoption. By using an existing framework, legal assistance could become accessible without creating a potentially burdensome new structure for the statutory body.

[12.125] However, expanding the civil legal aid scheme in its current form may still exclude some applicants to the proposed statutory scheme who do not meet the eligibility criteria for the civil legal aid scheme but may need access to legal assistance. This model could be revisited following the implementation of the recommendations of the Civil Legal Aid Review Group on eligibility criteria. In particular, the recommendations to conduct a structural review of financial eligibility testing,<sup>155</sup> and establish a new model of legal merits testing with user-focussed criteria included are of interest.<sup>156</sup>

[12.126] On balance, the Commission considers that, at present, this model of funding may not be sufficient to assist applicants whose cases may be particularly complex or who, because of their individual circumstances, may require legal assistance. Therefore, the Commission is of the view that bringing the proposed statutory scheme under the scope of the existing civil legal aid scheme would not be an adequate means of supporting victims who need legal assistance.

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<sup>154</sup> Ellis Barry, *Civil Legal Aid Review 2025: A Review of the Civil Legal Aid Scheme in Ireland* (Department of Justice, Home Affairs and Migration, 24 July 2025) at recommendation 11.

<sup>155</sup> Majority of Civil Legal Aid Review Group on the Future of the Civil Legal Aid Scheme, *Civil Legal Aid Review 2025: A Review of the Civil Legal Aid Scheme in Ireland* (Department of Justice, Home Affairs and Migration, 24 July 2025) at recommendation 20.

<sup>156</sup> Majority of Civil Legal Aid Review Group on the Future of the Civil Legal Aid Scheme, *Civil Legal Aid Review 2025: A Review of the Civil Legal Aid Scheme in Ireland* (Department of Justice, Home Affairs and Migration, 24 July 2025) at recommendation 12.

*(ii) Contribution to legal costs*

[12.127] The Commission also considered granting the statutory body a power to make payments towards legal costs, as a method of providing for state-funded legal assistance.

[12.128] In civil proceedings, a court may order that a party pay the legal costs of another party. This is called an award of costs.<sup>157</sup> The courts have a discretion to award costs.<sup>158</sup> The Legal Services Regulation Act 2015 outlines the factors that a court should consider in deciding whether to award costs.<sup>159</sup> It is generally the successful party in the proceedings who will be entitled to an award of costs. This is called “costs to follow the event”.<sup>160</sup> A court may also decide to award costs in exceptional circumstances to the unsuccessful party in the proceedings. This may be because the interests of justice require a departure from the general rule, given the special circumstances of a case.<sup>161</sup>

[12.129] The Commission considers that granting the statutory body a discretionary power to contribute to legal costs would be a more effective approach than providing for legal aid. One key advantage to giving the statutory body the power to make a contribution to legal costs is that it would allow the statutory body to decide which applicants can be reimbursed and what amount is appropriate. The statutory body will be best placed to assess the needs of a particular victim of crime and the complexity of an application. It will minimise potential delays to applications and assist victims who will not have to go through a separate process to access legal funding, which could pose an additional administrative burden on them and may risk secondary traumatisation.

[12.130] In addition, victims who may otherwise be ineligible for legal aid because of their means may be eligible for a contribution to their costs. Overall, the Commission considers that providing for a contribution to legal costs may permit more flexibility in funding legal assistance in suitable cases than providing for legal aid.

[12.131] The Commission considers the ECtHR’s judgment in *CB v United Kingdom* of particular relevance.<sup>162</sup> As stated above, in this case, the Court highlighted that a lack of repayment of legal costs could prevent a victim from getting legal

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<sup>157</sup> Section 168 of the Legal Services Regulation Act 2015.

<sup>158</sup> Order 99, rule 1(2) of the Rules of the Superior Courts 1986; Order 66(1) of the Circuit Court Rules 2001; Order 53, rule 1(1) of the District Court Rules 1997.

<sup>159</sup> Section 169(1) of the Legal Services Regulation Act 2015; Order 99, rule 3(1) of the Rules of the Superior Courts 1986.

<sup>160</sup> Section 169 of the Legal Services Regulation Act 2015.

<sup>161</sup> *Dunne v Minister for the Environment (No 2)* [2008] 2 IR 775 at para 26 (Murray CJ); For a discussion of the law on costs see *Little v The Chief Appeals Officer, Social Welfare Appeals Office and Minister for Social Protection (No 2)* [2024] IESC 53.

<sup>162</sup> *CB v United Kingdom* App no 35512/04 (ECtHR 25 August 2005).



assistance or prevent them from benefiting from a compensation scheme, depending on the facts and circumstances of the case.

[12.132] Therefore, the Commission considers that the statutory body should have the power to make a contribution to legal costs in certain limited circumstances. The circumstances proposed by the Commission are set out below.

**(f) Proposals for reform**

*(i) Circumstances for contributing to legal costs*

[12.133] The Commission recommends that the statutory body should have a power to make a contribution towards the cost of an applicant's legal assistance in certain circumstances. The Commission does not envisage that the legal assistance required for applications for compensation should attract payments at the same level as court costs. The Commission considers that contributions should be made on an appropriate scale and each level of the scale should reflect the complexity of the application.

[12.134] The Commission considers that where an applicant is successful in their application for compensation, and they have used legal assistance, in certain circumstances, they may be entitled to payment of some of their legal costs. The Commission emphasises that applicants would not have an automatic right to receive a contribution to these legal costs, but rather a right to apply for such a contribution.

[12.135] The Commission considers that a contribution should only be paid where legal assistance is essential for the presentation of an applicant's case. The decision of the statutory body on whether to contribute to costs could be informed by the factors identified by the ECtHR. The statutory body should consider whether legal assistance is necessary because of the complexity of the case or the personal circumstances of the applicant. A case may be complex where an applicant is required to establish facts through expert evidence or by examining witnesses, or where the application of an exclusion under the proposed statutory scheme is in dispute. The applicant's ability to present their application effectively may be relevant in terms of their personal circumstances.

[12.136] Therefore, the Commission recommends that the statutory body may make a contribution towards the costs of legal assistance where such assistance is necessary because of:

(1) the complexity of the case

or

(2) the circumstances of the applicant.

With the exception of advanced payments, addressed below, the applicant will only receive this contribution to costs if they are successful.

**R. 12.3 The Commission recommends** that the statutory body may make a contribution towards the costs of legal assistance where a legal practitioner is necessary because of:

- (1) the complexity of the case
- or
- (2) the circumstances of the applicant.

With the exception of cases where an advanced decision has been made, an applicant will only receive a contribution to legal costs if they are successful in their application for compensation.

*(ii) Scale of fees*

[12.137] The Commission envisages that the payment of legal costs would come from the same funding for the statutory body as compensation for victims. As a result, the Commission is not recommending that legal costs should be reimbursed to the same level that costs would be ordered against another party in court proceedings. The Commission is conscious that contributing to legal costs could have significant implications for the operational costs of the statutory body.

[12.138] In light of this, the Commission is of the view that the contributions a successful applicant could receive would depend on the type of legal assistance an applicant received. Once the statutory body establishes what type of legal assistance the applicant required and received, it would decide how much to pay towards the applicant's legal costs based on an established scale of payments. The statutory body would have a discretion to decide where on the scale an applicant's contribution should fall. This discretion would be exercised by the statutory body on the basis of the complexity of the case and the circumstances of the applicant. For the most complex cases, the statutory body could make a contribution at the highest end of the scale. If the applicant has availed of legal assistance at various stages of the application process, each stage of necessary legal assistance should be reimbursed to some level.

[12.139] In summary, the Commission recommends that a contribution towards the costs paid to an applicant for necessary legal assistance should be based on a scale of fees. The Commission considers it to be beyond its remit to set out exact figures for such a scale of fees. It considers that the appropriate body to set out such a scale is the statutory body itself. It could recommend a schedule of fees, which could then be approved by the Minister for Justice for:

- (1) An amount for legal assistance at application stage,
- (2) An amount for legal representation at an oral hearing at first instance,

- (3) An amount for legal representation at an oral hearing on appeal.

**R. 12.4 The Commission recommends** that a contribution towards the costs to be paid to an applicant for necessary legal assistance should be based on a scale of fees. The statutory body should recommend a schedule of fees, to be approved by the Minister for Justice, for:

- (1) An amount for legal assistance at application stage,
- (2) An amount for legal representation at an oral hearing at first instance,
- (3) An amount for legal representation at an oral hearing on appeal.

*(iii) Advance decision on legal costs*

[12.140] The Commission notes that some applicants may not be able to progress their case without legal assistance. This may be because of a particularly complex case or their personal circumstances. The Commission envisages that a person may not be in a position to engage a legal practitioner unless they have a guarantee of a contribution to legal costs. This concern was raised by consultees. The Commission considers, therefore, that it may be appropriate, in some circumstances, for the statutory body to make a decision on whether to make a contribution to legal costs at the start of the application process. The Commission considers that this would give certain applicants who otherwise may not be able to access legal assistance the ability to engage legal advisers.

[12.141] The Commission recommends that an advance decision on a contribution to legal costs may be made by the statutory body where an applicant cannot vindicate their right of access to justice and right to an effective remedy without advance approval that the statutory body will make a contribution to their costs. As discussed in the Chapter on the Structure of the Statutory Body and the Application Process, the Commission considers that the applicant could indicate their intention to make a request for an advance decision on a contribution to legal costs in the application form, and the reasons they are making such a request. The information and assistive tier should then explain the criteria for such payments and give the applicant a separate application form. Staff of the information and assistive tier could support and inform applicants in regard to whether they meet these criteria and in completing the form. Once it is complete, the relevant staff member of the information and assistive tier could indicate on the form, perhaps by ticking a box, that they consider the applicant meets the criteria, but they will not make a decision on this issue. The Commission envisages that the assessment and adjudicative tier will ultimately make a decision on these requests.

[12.142] Where an applicant has not indicated their wish to apply for an advance decision on the application form, the proposed information and assistive tier of the statutory body could identify cases that may require legal assistance, due to their

complexity and the applicant's circumstances, and could alert the applicant to the possibility of requesting an advance payment.

[12.143] Once a request has been made by an applicant, the staff of this tier could then forward this request to the assessment and adjudicative tier. There, an assessment and adjudication officer could assess the request and make a decision that the statutory body will make a contribution to legal costs at the end of the case.

[12.144] Where an advance decision is made to contribute to legal costs, the Commission recommends that this contribution should be based on the same schedule of fees as an ordinary application for a contribution to costs from the statutory body. The statutory body would not make the payment upfront but rather would guarantee that the payment would be made on conclusion of the application.

[12.145] The Commission recommends that, in these circumstances, even if an applicant is unsuccessful, they should still receive the contribution to legal costs given that an assessment of the circumstances was made by the statutory body and the applicant has received a guarantee in advance by the statutory body.

[12.146] The Commission recommends that the statutory body may make an advance decision on costs where a legal adviser is necessary because of:

- (1) the complexity of a particular case,
- (2) the circumstances of a particular applicant, and where
- (3) an applicant cannot access a legal adviser without advance approval that the statutory body will make a contribution to their costs, and
- (4) an applicant cannot vindicate their right of access to justice and right to an effective remedy without advance approval that the statutory body will make a contribution to their costs.

[12.147] As stated above, the applicant should receive this contribution regardless of the ultimate success of their application.

**R. 12.5 The Commission recommends** that the statutory body may make an advance decision on costs where a legal adviser is necessary because of:

- (1) the complexity of the case,
- (2) the circumstances of the applicant, and where
- (3) an applicant cannot access a legal adviser without advance approval that the statutory body will make a contribution to their costs, and
- (4) an applicant cannot vindicate their right of access to justice and right to an effective remedy without advance approval that the statutory body will make a contribution to their costs.

The applicant should receive this contribution regardless of the success of their application.

- R. 12.6 The Commission recommends** that an applicant can indicate that they wish to request an advance decision on a contribution to costs on their application form, and provide detailed reasons for making this request. (This recommendation is also in the Chapter on the Structure of the Statutory Body and the Application Process.)
- R. 12.7 The Commission recommends** that where an applicant has indicated that they wish to make such a request, the information and assistive tier should take the following steps:
- explain the criteria for such decisions to applicants,
  - furnish the applicant with a separate application form to make such requests,
  - support and inform applicants in regard to whether they meet these criteria,
  - indicate on the relevant form that they consider the applicant meets the criteria, and
  - forward to the assessment and adjudicative tier for a decision on these requests. (This recommendation is also in the Chapter on the Structure of the Statutory Body and the Application Process.)

*(iv) Appealing a decision on legal costs*

[12.148] The Commission anticipates that an applicant may want to appeal a decision by the statutory body on a contribution to costs. This could be where:

- the statutory body has declined to make an advance decision to contribute to their legal costs, or
- an application for a contribution to costs after a decision on compensation has been made and has been refused, or
- the applicant wishes to appeal the amount of the contribution to costs that the statutory body has decided to pay.

[12.149] If the applicant wishes to appeal the refusal to make an advance decision on a contribution to costs, the applicant could submit the appeal before their application is heard at first instance.

[12.150] In the Chapter on the Structure of the Statutory Body and the Application Process, the Commission recommends that the statutory body should have an internal appeals tier. The Commission considers that this tier could suitably hear appeals of decisions on contributions to legal costs. This decision should be based on the record the statutory body has in relation to the original application. "Based on the record" means the appeal will be heard on the basis of the application form and any evidence submitted to support the application and request for a

contribution to costs but there will be no oral hearing. However, the Commission considers that the statutory body should have the power to request more information or evidence, where it is of the view that this is required to determine the appeal. Decisions made by this tier on a contribution to legal costs would be the final decision of the statutory body in relation to legal costs.

[12.151] The Commission considers that this process should be informal so that applicants can engage with the process without legal assistance. The Commission envisages that the information and assistive tier, as recommended in the Chapter on the Structure of the Statutory Body and the Application Process, would provide all necessary assistance in the initial application process and in the appeals process.

**R. 12.8 The Commission recommends** that an applicant may appeal the decision on a contribution to costs on the record to the internal appeals tier of the statutory body. The decision of the internal appeals tier will be final.

*(v) Applications to courts*

[12.152] The Commission is also aware that applications to the statutory body may give rise to related applications to the courts, for example, appeals on a point of law, judicial reviews, and cases stated to the High Court. After the statutory body makes a decision, an applicant may decide to appeal this decision on a point of law or judicially review the decision. In these circumstances, the court could award costs in favour of or against the applicant in the usual manner as discussed above.

[12.153] Where the statutory body decides to state a case to the High Court, an applicant may wish to be joined as a party. The applicant should be facilitated to participate in the proceedings in the High Court, where the statutory body is of the opinion that the issue is of sufficient importance. The Commission recommends that, where the statutory body is stating a case to the High Court, and an applicant wants to be joined as a party, the statutory body may contribute to the applicant's legal costs.

[12.154] There may also be ancillary or supporting applications made to the courts. Necessary applications for court approval have previously been made in relation to cases before the Tribunal, such as for a wardship application.<sup>163</sup> The Commission considers that the statutory body should have a power to reimburse the full costs of these applications to the courts, unless otherwise provided for under the Civil Legal Aid Act 1995.<sup>164</sup>

<sup>163</sup> For example, a High Court wardship application has previously been made on behalf of a victim applying to the Tribunal. See the discussion of Case Reference 23970 (27 October 2022) above.

<sup>164</sup> A person making an application to court under Parts 5 and 6 of the Assisted Decision-Making (Capacity) (Amendment) Act 2022 may qualify for legal advice. See section 26(3)(c)

[12.155] The Commission recommends that the statutory body should reimburse the costs of the applicant's ancillary applications to the courts that are necessary for the purposes of an application for compensation. The Commission notes the current proposals for reform of civil legal aid, as discussed above, which if implemented, may supersede this recommendation.

**R. 12.9 The Commission recommends** that where the statutory body is stating a case to the High Court, and an applicant wants to be joined as a party, the statutory body may contribute to the applicant's costs.

**R. 12.10 The Commission recommends** that the statutory body should reimburse the costs of the applicant's ancillary applications to the courts that are necessary for the purposes of an application for compensation.

## 4. Reimbursement of other costs

[12.156] The Commission also considered whether to recommend granting the statutory body a power to reimburse other costs that an applicant may incur during the application process. Applicants to the proposed statutory scheme may incur other costs or expenses when making their application. These could be witness expenses or the cost of obtaining reports or other evidence, such as medical or other expert evidence.

[12.157] This section examines the Tribunal's power to reimburse costs incurred by the applicant during the application process under the current scheme. It then discusses the approach to costs other than legal costs by criminal injury compensation schemes in other countries. Finally, the section sets out the Commission's recommendations in this regard.

### (a) Current scheme

[12.158] In relation to costs other than legal costs, the Tribunal has a discretion to pay expenses of witnesses, where these expenses are necessary and reasonable.<sup>165</sup> Where an applicant's award of compensation is refused, the Tribunal may, in exceptional circumstances, reimburse (in full or in part), the costs of medical or other expert reports which were incurred by the applicant at the request or direction of the Tribunal.<sup>166</sup>

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and (d) of the Civil Legal Aid Act 1995, as amended by sections 52(b)(iii) and 57A(b) of the Assisted Decision-Making (Capacity) Act 2015.

<sup>165</sup> Paragraph 27 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>166</sup> Criminal Injuries Compensation Scheme, "Instruction 4: Report costs incurred at the request or direction of Tribunal" (updated 7 October 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/instruction-4-report-costs-incurred-at-the-request-or-direction-of-tribunal/>> accessed 23 March 2026.

## (b) Comparative jurisdictions

### (i) *England, Scotland and Wales*

[12.159] The Criminal Injuries Compensation Authority in England, Scotland and Wales may pay the cost of obtaining medical or other expert evidence in connection with an application. This is only in limited circumstances and where a claims officer is satisfied that the applicant is likely to be eligible for compensation.<sup>167</sup> The circumstances for paying for medical evidence are:

- where the applicant cannot reasonably obtain the information, but the Authority can,
- where the applicant cannot afford to obtain the information, or
- where the cost of obtaining the information is over £50.<sup>168</sup>

[12.160] Other expert evidence may be paid for by the Authority where the evidence is necessary for the proper consideration of an application, and it would be reasonable in all the circumstances for the Authority to pay the cost of obtaining the evidence.<sup>169</sup> The Authority will pay reasonable costs of other expenses the applicant incurred when obtaining medical or expert evidence. This may include the cost of travelling to and from an appointment.<sup>170</sup>

### (ii) *Northern Ireland*

[12.161] Any costs incurred in making an application to the Northern Ireland Criminal Injuries Compensation Scheme, such as the cost of a medical or other expert

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<sup>167</sup> Paragraph 94 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales); Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at page 63 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

<sup>168</sup> Paragraph 94(a) of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales); Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at pages 63-64 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

<sup>169</sup> Paragraph 94(b) of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales); Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at page 64 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 19 March 2026.

<sup>170</sup> Paragraph 95 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales); Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at page 64 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.



report, will not be covered.<sup>171</sup> However, at an appeal hearing, the reasonable expenses incurred by the applicant or any witness may be paid.<sup>172</sup>

### (c) Proposals for reform

[12.162] Where an applicant is successful, the Commission recommends that the reasonable and verifiable costs of any reports, including medical reports, or other evidence submitted by a successful applicant may be reimbursed.

[12.163] The Commission also recommends that the reasonable and necessary expenses of witnesses may be reimbursed in both successful and unsuccessful applications. These should be verifiable through receipts or invoices.

[12.164] Where an applicant is unsuccessful, the Commission considers that costs or expenses for the production of evidence may only be reimbursed where the statutory body has requested such evidence, or directed such evidence to be produced. The Commission recommends that the reasonable and verifiable costs of any reports or other evidence that the statutory body requests may be reimbursed. The Commission recommends, in the Chapter on Administration of the Statutory Body and Statutory Scheme, that the chairperson of the statutory body could have the power to direct witnesses to attend before it and produce specified documents. However, the Commission notes that the burden of proof still remains on the applicant regarding proving their eligibility for compensation.

**R. 12.11 The Commission recommends** that the reasonable and verifiable costs of any reports or other evidence submitted by a successful applicant may be reimbursed.

**R. 12.12 The Commission recommends** that the statutory body may reimburse the reasonable, necessary and verifiable expenses of witnesses.

**R. 12.13 The Commission recommends** that the reasonable and verifiable costs of any reports or other evidence that the statutory body requests or directs to be produced may be reimbursed, including for an unsuccessful applicant

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<sup>171</sup> Paragraph 20(2) of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009) and section 11 of the Criminal Injuries Compensation (Northern Ireland) Order 2002.

<sup>172</sup> Paragraph 77 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

# CHAPTER 13 INTERACTION WITH COURT PROCEEDINGS

## Table of Contents

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|                   |                                                                                 |            |
|-------------------|---------------------------------------------------------------------------------|------------|
| <b>Chapter 13</b> | <b>Interaction with Court Proceedings</b>                                       | <b>454</b> |
| 1.                | <i>Introduction</i>                                                             | 455        |
| 2.                | <i>Sequencing of proceedings</i>                                                | 455        |
|                   | (a) Current scheme                                                              | 456        |
|                   | (b) Why is reform necessary?                                                    | 458        |
|                   | (c) Comparative jurisdictions                                                   | 459        |
|                   | (d) Submissions                                                                 | 464        |
|                   | (e) Proposals for reform                                                        | 465        |
| 3.                | <i>Sharing of information with courts</i>                                       | 468        |
|                   | (a) Introduction                                                                | 468        |
|                   | (b) Disclosure in criminal proceedings                                          | 469        |
|                   | (c) Discovery in civil proceedings                                              | 476        |
|                   | (d) Proposals for reform                                                        | 476        |
| 4.                | <i>Testing evidence of an application for compensation in court proceedings</i> | 482        |
|                   | (a) Introduction                                                                | 482        |
|                   | (b) Comparative jurisdictions                                                   | 483        |
|                   | (c) Proposals for reform                                                        | 485        |

## 1. Introduction

- [13.1] This Chapter examines the potential interaction between the operation of the statutory body and court proceedings. It explores the sequencing of proceedings of the statutory body and court proceedings, the potential sharing of information and documents by the statutory body with the courts, and the potential testing of such evidence during court proceedings.
- [13.2] The current practice of the Criminal Injuries Compensation Tribunal ("the Tribunal") is, generally, to wait until the conclusion of related court proceedings before it makes a decision on an application for compensation. This includes both criminal trials and civil proceedings. This Chapter analyses whether this approach is in line with relevant law and policy and a victim-centred approach. The Commission ultimately recommends that the statutory body should assess claims as expeditiously as possible, and that the statutory body should only delay decisions on applications for compensation until the conclusion of court proceedings where this is required in the interests of justice.
- [13.3] The Commission anticipates that this change in approach will lead to an increase in decisions on applications for compensation before the conclusion of related court proceedings. It acknowledges that this change in the sequencing of proceedings may result in an increase in requests to the statutory body for discovery in civil proceedings or disclosure in criminal proceedings. In other words, a defendant or another party may request documents from the statutory body to assist their case in court more often than is currently the case. In addition, once a document from the statutory body has been shared in such a manner, a victim may be examined about its content when they are giving evidence in court.
- [13.4] The Commission understands that this proposed change in sequencing and its implications for information sharing by the statutory body will impact victims in several ways. In this Chapter, the Commission examines these potential impacts. It sets out its view on how requests for documents and the introduction of compensation evidence in court through examination or cross-examination may be dealt with in a victim-centred manner, and makes certain recommendations on these issues.

## 2. Sequencing of proceedings

- [13.5] This section sets out the current approach to the sequencing of Tribunal decisions and court proceedings, the potential European Union ("EU") direction of travel, and the approach to sequencing in comparative jurisdictions. It then examines the submissions received from consultees on the issue of sequencing, before explaining the Commission's proposals for reform.

**(a) Current scheme**

- [13.6] The Criminal Injuries Compensation Scheme (“the current scheme”) contemplates that criminal proceedings may be ongoing while the victim is simultaneously pursuing claims for compensation. Paragraph 22 of the current scheme states that an applicant to the current scheme must inform the Tribunal if the crime of violence is the subject of criminal proceedings or if it was reported without delay to the Gardaí or to Fiosrú, the Office of the Police Ombudsman (“Fiosrú”).<sup>1</sup>
- [13.7] Victims are not prohibited from claiming compensation under the current scheme even if they are also entitled to claim compensation from other sources.<sup>2</sup> This means an applicant to the current scheme may pursue civil proceedings against the perpetrator of the crime, as well as compensation from the Tribunal. However, paragraph 5 of the current scheme provides that the amount of any payments by the Tribunal will be affected by the rule against double compensation. This rule requires that a victim should not be compensated twice for the same harm, and permits the Tribunal to reduce or refuse a compensation payment to avoid duplicate payments, or impose conditions for repayment.<sup>3</sup>
- [13.8] An application to the current scheme must be made not later than three months after the event giving rise to the injury.<sup>4</sup> Given that court proceedings are unlikely to conclude within such a short timeframe, it is clear that the conclusion of court proceedings is not necessary for the initial submission of an application. In fact, the Supreme Court has clarified that the current scheme’s time limit must be met regardless as to whether criminal proceedings have begun.<sup>5</sup>
- [13.9] The Tribunal may extend the three month time limit, up to a maximum of two years after the crime of violence occurred, where it considers the circumstances justify exceptional treatment.<sup>6</sup> In a number of cases, the Tribunal found that the

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<sup>1</sup> Paragraph 22 of the Criminal Injuries Compensation Scheme (31 January 2025). The Tribunal may waive this requirement where it is satisfied that the applicant made reasonable efforts to report to and cooperate with the Gardaí or Fiosrú, the Office of the Police Ombudsman.

<sup>2</sup> Paragraph 5 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>3</sup> This issue is explored in depth in the Chapter on Preventing Double Compensation in this Report.

<sup>4</sup> Paragraph 20 of the Criminal Injuries Compensation Scheme (31 January 2025) states that applications to the scheme should be made “as soon as possible” and no later than three months after the crime of violence occurred.

<sup>5</sup> *DPP v Duffy* [2023] IESC 1 at para 65 (O’Malley J).

<sup>6</sup> Paragraph 20 of the Criminal Injuries Compensation Scheme (31 January 2025). See also Criminal Injuries Compensation Scheme, “Application Form (Non-Fatal Injury) Scheme of Compensation for Personal Injuries Criminally Inflicted” and “Application Form (Fatal Injury) Scheme of Compensation for Personal Injuries Criminally Inflicted” (updated 18 July 2025) at section 4 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-non-fatal-cases>> accessed 23 March 2026.

applicant's decision to wait for court proceedings to conclude was not an adequate reason for delaying an application.<sup>7</sup> The Tribunal has also previously stated in a case that "the fact of court proceedings does not stop time for the purposes ... of the scheme".<sup>8</sup>

[13.10] There is no express requirement on the Tribunal to delay making a decision on compensation under the current scheme due to ongoing court proceedings. However, the Tribunal's webpage states that typically the secretariat (administrative staff) of the Tribunal does not forward applications to the Tribunal for decision while civil or criminal proceedings are ongoing. Instead, the Tribunal will wait until the conclusion of the proceedings before making a decision on the application.<sup>9</sup> This general approach was confirmed to the Commission by the Tribunal secretariat.

[13.11] The Commission understands that there are two main justifications for the current practice of the Tribunal in waiting for the conclusion of court proceedings before making a decision on a compensation application. These are:

- to protect against any potential risk of an unfair trial for a defendant in criminal proceedings, and
- to prevent victims receiving double payments.

[13.12] The potential impact on the defendant's right to a fair trial of deciding on an application for compensation before a trial, and how the statutory body might mitigate against any potential violation, is addressed below. Regarding the issue of potential double payments, the Commission addresses this in the Chapter on Preventing Double Compensation. In that Chapter, the Commission makes recommendations to reduce the risk of double payments, in the event that a payment of compensation is made by the statutory body in advance of later payments made as a result of court proceedings. The Commission also makes

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<sup>7</sup> Criminal Injuries Compensation Tribunal, Case Reference 51784 (16 March 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/51784-16-march-2023/>> accessed 23 March 2026; Criminal Injuries Compensation Tribunal, Case Reference 23669 (6 August 2023) at para 9 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/23669-6-august-2023/>> accessed 23 March 2026; Criminal Injuries Compensation Tribunal, Case Reference 53099 (3 September 2023) at paras 7 – 8 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/53099-3-september-2023/>> accessed 23 March 2026.

<sup>8</sup> Criminal Injuries Compensation Tribunal, Case Reference 53099 (3 September 2023) at para 7 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/53099-3-september-2023/>> accessed 23 March 2026.

<sup>9</sup> Criminal Injuries Compensation Scheme, "Your questions answered: Making an application to the Tribunal if you are awarded compensation through the courts" (updated 8 September 2025) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/criminal-injuries-compensation-scheme-your-questions-answered/#making-an-application-to-the-tribunal-if-you-are-awarded-compensation-through-the-courts>> accessed 23 March 2026.

recommendations in that Chapter about the creation of a mechanism to recoup double payments where they may occur.

**(b) Why is reform necessary?**

[13.13] In its Consultation Paper, the Commission addressed the issue of the sequencing of Tribunal decisions and the conclusion of court proceedings. It noted that the current approach to sequencing results in delays for victims receiving compensation, as it may take several years for victims to receive compensation as part of court proceedings.<sup>10</sup>

[13.14] In criminal proceedings, compensation is sometimes offered voluntarily by the defendant or ordered at the sentencing stage, and in civil proceedings, damages are usually awarded at the conclusion of the civil trial. Delaying the decision on compensation under the scheme until the end of such proceedings may impact a victim's ability to access medical or other supports that are necessary for their recovery and result in financial hardship. The delay may also cause distress to victims and contribute to secondary victimisation.

[13.15] In her report to the European Commission President on Strengthening Victims' Rights, Special Adviser Milquet analysed the practice in Member States of waiting for the conclusion of criminal proceedings before a compensation payment is made by the state.<sup>11</sup> Her report is clear from the outset that a rights-based approach to state compensation requires victims to be compensated with upfront payments by the state rather than awaiting the conclusion of criminal proceedings, or any other judicial decision.<sup>12</sup> She emphasised the need to shift from the current approach, stating that:

"[T]he offender should be sued both for the crime perpetrated and for victims' compensation. However, as specified in this report, offenders' compensation is extremely difficult for victims to obtain. It is costly and time consuming and often provides only symbolic compensation. It is also difficult to execute the adjudicated compensation decision from the offender. The majority of EU Member States require that the victim first pursues offender compensation before claiming state compensation. A reversal of this approach is needed. The duty of the State to respect victims'

<sup>10</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at paras 7.11 – 7.16.

<sup>11</sup> Milquet, *Strengthening Victims' Rights: from Compensation to Reparation for a new EU Victims' Rights Strategy 2020-2025* (European Commission 2019).

<sup>12</sup> Milquet, *Strengthening Victims' Rights: from Compensation to Reparation for a new EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at pages 36 – 38, 52.

rights to be compensated should be to provide victims with upfront payment and to recapture it later from the offender.”<sup>13</sup>

- [13.16] Additionally, the EU Directive establishing minimum standards on the rights, support and protection of victims of crime (“Victims’ Rights Directive”) provides that a person should be considered a victim regardless of whether the alleged perpetrator of the crime has been prosecuted or convicted.<sup>14</sup>
- [13.17] In its Consultation Paper, the Commission questioned whether valid reasons exist for applying this approach to sequencing in all cases.<sup>15</sup> In considering the first justification outlined above, that awaiting the conclusion of criminal proceedings is necessary to protect against any potential risk of an unfair trial for a defendant, the Commission noted that the criminal process and the compensation process serve different purposes.<sup>16</sup> The purpose of a criminal process is to determine whether the defendant is guilty of an alleged offence. In contrast, the compensation process seeks to establish whether an applicant has been harmed as a result of a crime of violence. The compensation process takes place regardless of whether the alleged perpetrator of the crime has been identified or convicted.<sup>17</sup>
- [13.18] The Commission observed in its Consultation Paper that the requirement for victims to wait until the conclusion of any court proceedings before receiving a decision on their compensation application caused unnecessary and frustrating delays for victims and was a potential cause of financial hardship.<sup>18</sup>

### **(c) Comparative jurisdictions**

- [13.19] The Commission examined the issue of sequencing of compensation applications and court proceedings in a number of jurisdictions. Of the compensation schemes examined, in general, victims are not required to wait until the

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<sup>13</sup> Milquet, *Strengthening Victims’ Rights: from Compensation to Reparation for a new EU Victims’ Rights Strategy 2020-2025* (European Commission 2019) at page 37.

<sup>14</sup> Recital 19 of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L 315/57 (“Victims’ Rights Directive”).

<sup>15</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at paras 7.29 – 7.34.

<sup>16</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at para 7.31.

<sup>17</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at paras 7.31 – 7.33.

<sup>18</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at para 7.31.

conclusion of court proceedings before a decision on their compensation application will be made.

(i) *France*

- [13.20] In France, the mission of the Guarantee Fund for Victims (Fonds de Garantie des Victimes) is to compensate victims of crime “under the best possible conditions”.<sup>19</sup> One of its key priorities is to help victims “deal with their situation without delay”.<sup>20</sup>
- [13.21] While the Fund recommends that victims file a complaint with the police before filing a claim for compensation with the Crime Victims Compensation Board,<sup>21</sup> victims may make a claim at any stage of the criminal proceedings.<sup>22</sup>
- [13.22] Victims have three years from the date of the crime to apply to the Board. Where there have been criminal proceedings for the same crime, this time limit may be extended by one year from the date of the last court date. The admissibility of a claim outside of this time limit may be considered where there are legitimate reasons for the late application.<sup>23</sup> The Board will send the victim’s claim and supporting documentation to the Fund without delay, and the Fund is required to make an offer of compensation to a victim within two months of receiving a completed claim.<sup>24</sup>
- [13.23] For victims of terrorism, the Fund strives to pay a financial advance promptly to cover the initial costs of the victim’s injuries. The Fund then makes an offer of

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<sup>19</sup> Fonds de Garantie des Victimes, “Acting on behalf of victims in the name of national solidarity” <<https://www.fondsdegarantie.fr/en/acting-on-behalf-of-victims-in-the-name-of-national-solidarity/>> accessed 23 March 2026.

<sup>20</sup> Fonds de Garantie des Victimes, “Acting on behalf of victims in the name of national solidarity” <<https://www.fondsdegarantie.fr/en/acting-on-behalf-of-victims-in-the-name-of-national-solidarity/>> accessed 23 March 2026.

<sup>21</sup> Fonds de Garantie des Victimes, “I haven’t yet filed a claim with the CIVI” <<https://www.fondsdegarantie.fr/en/i-havent-yet-filed-a-claim-with-the-civi/>> accessed 23 March 2026.

<sup>22</sup> Fonds de Garantie des Victimes, “I have not yet submitted my claim” <<https://www.fondsdegarantie.fr/en/i-have-not-yet-submitted-my-claim/>> accessed 23 March 2026.

<sup>23</sup> Fonds de Garantie des Victimes, “I haven’t yet filed a claim with the CIVI” <<https://www.fondsdegarantie.fr/en/i-havent-yet-filed-a-claim-with-the-civi/>> accessed 23 March 2026.

<sup>24</sup> Fonds de Garantie des Victimes, “Compensation Booklet: Infractions” (June 2020) at pages 4-5 <<https://www.fondsdegarantie.fr/wp-content/uploads/2021/01/EN-Livret-indemnisation-infractions JUIN 2020 EP.pdf>> accessed 23 March 2026.



compensation to the victim as soon as the full extent of the victim's loss is capable of being assessed.<sup>25</sup>

*(ii) The Netherlands*

- [13.24] Victims must submit a request for compensation to the Criminal Injuries Compensation Fund (Schadefonds Geweldsmisdrijven) within ten years of the crime of violence.<sup>26</sup> If a victim submits a request outside of this time limit, the request will be rejected, unless there are valid reasons for the late application.<sup>27</sup> The victim must support their reasons for not meeting the time limit, such as by medical evidence of the psychological effect of the crime or a report to the police on a later date.<sup>28</sup>
- [13.25] A victim does not need to make a report to the police in order to submit a request for compensation to the Fund. However, if a victim does make a report to the police, this can be used as evidence in their application for compensation.<sup>29</sup> If the perpetrator has been prosecuted for the crime of violence, this can also be used as evidence.<sup>30</sup> If there has been a criminal case against the perpetrator in advance of the application for compensation, the Fund will always include this judgment in its assessment. A judgment is seen as objective evidence supporting the victim's application.<sup>31</sup>

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<sup>25</sup> Fonds de Garantie des Victimes, "The missions of compensation of FGTI" <<https://www.fondsdegarantie.fr/en/fgti-2/the-missions-of-compensation/>> accessed 23 March 2026.

<sup>26</sup> Section 7 of the Schadefonds Geweldsmisdrijven Act (Wet schadefonds geweldsmisdrijven); Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 18 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>27</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 18 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>28</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 19 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>29</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 7 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>30</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 7 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>31</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 7 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

- [13.26] The Fund may decide to reject a request where the police investigation into the crime of violence is still in progress. In these circumstances, the victim may apply to the Fund after the conclusion of the investigation.<sup>32</sup>

*(iii) England, Scotland and Wales*

- [13.27] Applications to the Criminal Injuries Compensation Scheme in England, Scotland and Wales must be made within two years of the crime occurring.<sup>33</sup> This time limit may be extended where there are exceptional circumstances meaning that the victim could not have applied earlier, and the evidence provided is sufficient to support the application and does not require further investigation by a claims officer.<sup>34</sup>
- [13.28] To be eligible for an award under the scheme, the Criminal Injuries Compensation Authority requires applicants to report the crime to the police as soon as reasonably practicable. Otherwise, the Authority cannot make a compensation payment.<sup>35</sup>
- [13.29] The Authority states that applications must be made without delay and victims should not wait until criminal proceedings have concluded. The Scheme does not require that the perpetrator of the crime be convicted, and a claims officer does not need to wait until the outcome of a criminal trial if enough information is available to decide the compensation application.<sup>36</sup> However, a claims officer may, in exceptional circumstances, defer the decision on an application until the end of criminal proceedings. This is where the claims officer is satisfied that these proceedings are material to the determination.<sup>37</sup>

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<sup>32</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 8 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>33</sup> Paragraph 87 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>34</sup> Paragraph 89 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>35</sup> Paragraph 22 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales); Criminal Injuries Compensation Authority, "Criminal injuries compensation: a guide" (updated 1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#reporting-the-incident-to-the-police>> accessed 23 March 2026.

<sup>36</sup> Criminal Injuries Compensation Authority, "Criminal injuries compensation: a guide" (updated 1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#time-limits-for-applying>> accessed 23 March 2026.

<sup>37</sup> Paragraph 98(a) of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

*(iv) Victoria*

- [13.30] The Victorian Law Reform Commission ("VLRC"), in its Supplementary Consultation Paper on the Review of the Victims of Crime Assistance Act 1996, identified the two year time limit for applying to the state compensation scheme as a barrier for certain victims.<sup>38</sup> It also noted that it was generally the practice that the Victims of Crime Assistance Tribunal would order an adjournment where criminal proceedings are ongoing.<sup>39</sup> The VLRC stated that these delays can retraumatise victims, and may even embed further economic disadvantage.<sup>40</sup> However, the VLRC later noted the suggestion raised in its consultation process that the making of interim awards by the Victims of Crime Assistance Tribunal helped victims' urgent needs to be met and potentially mitigated the adverse impacts of delays.<sup>41</sup>
- [13.31] Ultimately, the VLRC recommended that the time limit for making an application should be increased to three years, with exceptions for certain victims and crimes.<sup>42</sup> It also recommended that the scheme decision-maker should have discretion to accept late applications, and recommended a set of factors that the decision-maker should consider when deciding whether to use their discretion.<sup>43</sup> The VLRC considered that, provided the evidentiary requirements are met, it should no longer be the practice to wait for the conclusion of court proceedings before providing assistance to a victim.<sup>44</sup> The VLRC recommended that the scheme decision-maker should not have the power to delay an application pending the outcome of legal proceedings.<sup>45</sup>
- [13.32] The VLRC examined a statutory provision which stated that the Tribunal must refuse compensation where a victim did not report the crime to the police within

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<sup>38</sup> Victorian Law Reform Commission, *Supplementary Consultation Paper: Review of the Victims of Crime Assistance Act 1996* (2017) at paras 7.25 – 7.38.

<sup>39</sup> Victorian Law Reform Commission, *Supplementary Consultation Paper: Review of the Victims of Crime Assistance Act 1996* (2017) at para 10.35.

<sup>40</sup> Victorian Law Reform Commission, *Supplementary Consultation Paper: Review of the Victims of Crime Assistance Act 1996* (2017) at para 10.56.

<sup>41</sup> Victorian Law Reform Commission, *Report on Review of the Victims of Crime Assistance Act 1996* (2018) at para 5.184. (Although the VLRC also noted issues with the interim award application process.)

<sup>42</sup> Victorian Law Reform Commission, *Report on Review of the Victims of Crime Assistance Act 1996* (2018) at page 386, recommendation 71.

<sup>43</sup> Victorian Law Reform Commission, *Report on Review of the Victims of Crime Assistance Act 1996* (2018) at page 387, recommendation 73.

<sup>44</sup> Victorian Law Reform Commission, *Report on Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.198.

<sup>45</sup> Victorian Law Reform Commission, *Report on Review of the Victims of Crime Assistance Act 1996* (2018) at recommendation 80(d), page 425.

a reasonable time.<sup>46</sup> Under that legislation, the Victims of Crime Assistance Tribunal could consider special circumstances leading to this delay.<sup>47</sup> The VLRC noted the various interpretations in the caselaw of what is a “reasonable time”,<sup>48</sup> and uncertainty as to what constitutes “special circumstances”.<sup>49</sup> The VLRC considered that there should be no mandatory requirement for a victim to report the crime to the police.<sup>50</sup>

- [13.33] The VLRC’s Report led to the enactment of the Victims of Crime (Financial Assistance Scheme) Act 2022. Section 23 of the Act provides that an application must be made within three years of the crime, with exceptions permitted.<sup>51</sup> Section 29 of the Act imposes a duty on the scheme decision-maker to act expeditiously,<sup>52</sup> with subsection (2) stating that they must not delay in deciding an application because of related ongoing court proceedings.<sup>53</sup> Under section 31, an exception to the rule that the crime must be reported to the police is created for applicants with “special circumstances” or where the applicant is a person in a “special reporting category”.<sup>54</sup> The Financial Assistance Scheme Guidelines state that special circumstances are not defined in the Act but mean something “out of the ordinary” and lists various circumstances that include fear of retaliation or retraumatisation.<sup>55</sup>

#### (d) Submissions

- [13.34] In its Consultation Paper, the Commission expressed the view that the current practice of waiting for court proceedings to conclude before deciding an application for compensation under the scheme may be inefficient and cause financial hardship for victims. In this context, the Commission asked consultees

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<sup>46</sup> Victorian Law Reform Commission, *Report on Review of the Victims of Crime Assistance Act 1996* (2018) at paras 15.12 – 15.19.

<sup>47</sup> Sections 52 and 53 of the Victims of Crime Assistance Act 1996 (Victoria).

<sup>48</sup> Victorian Law Reform Commission, *Report on Review of the Victims of Crime Assistance Act 1996* (2018) at paras 15.13 – 15.15.

<sup>49</sup> Victorian Law Reform Commission, *Report on Review of the Victims of Crime Assistance Act 1996* (2018) at paras 15.17 – 15.19.

<sup>50</sup> Victorian Law Reform Commission, *Report on Review of the Victims of Crime Assistance Act 1996* (2018) at para 15.159.

<sup>51</sup> Section 23(1)(a) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>52</sup> Section 29 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>53</sup> Section 29(2)(a) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>54</sup> Section 31(2) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria). Section 73 of the Victims of Crime (Financial Assistance Scheme) Act 2022 provides that regulations may be passed prescribing special reporting categories of victims. No such regulations have been passed as of the date of publication of this Report.

<sup>55</sup> Victoria State Government, “Financial Assistance Scheme Guidelines” (Victims of Crime Financial Assistance Scheme 2025) at page 22.

whether they had any views or suggestions on how to better integrate these processes in a clear and efficient manner for victims.<sup>56</sup>

- [13.35] A number of submissions outlined the difficulties for victims with the current approach to sequencing. One consultee noted that the delays caused by the current approach may cause financial hardship for some victims, as they may need financial assistance as soon as possible after the incident to make up for the loss of earnings or pay for medical treatments.
- [13.36] However, another consultee submitted that any change to this approach should also consider the right to silence of an accused, the possibility of prejudicing a victim's evidence in criminal proceedings through the sharing of documentation, and disclosure obligations in criminal trials.

### **(e) Proposals for reform**

- [13.37] Having considered the recommendation made by Special Advisor Milquet to introduce upfront compensation payments, the concerns raised by consultees regarding difficulties experienced by victims waiting for compensation payments, and the fact that the Commission is recommending a rights-based, victim-centred approach to the proposed statutory scheme, the Commission is proposing a significant change in the sequencing of proceedings. Before arriving at this proposal, the Commission considered the balancing exercise required between the rights of a victim and the rights of a defendant, the risk of double compensation and other implications for court proceedings.
- [13.38] The Commission recommends that applications for compensation should be dealt with as expeditiously as possible and, as a general rule, without waiting for the conclusion of criminal or civil proceedings in respect of the same crime of violence giving rise to the harm, and without waiting for the conclusion of a criminal investigation. The main rationale for this is to ensure that victims receive timely payments, to avoid hardship, and to minimise secondary victimisation that may occur as a result of undue delays.
- [13.39] The Commission recognises that there may be situations where court proceedings may be affected if a decision on compensation under the statutory scheme has been made in advance of the conclusion of the court proceedings. This could include circumstances where the decision-maker believes that the publication of a decision on an application for compensation may prejudice a defendant or some other evidential consideration has arisen that may have an impact on a related criminal trial.

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<sup>56</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 221, question 7.4.

- [13.40] The Commission notes the strong protections for the right to a fair trial in Irish and European law.<sup>57</sup> This right includes the presumption of innocence, the right not to incriminate oneself and the right for the trial to be protected from prejudice insofar as is reasonably possible. The Commission is aware that the possibility of prejudice in civil or criminal proceedings may arise when the court process and compensation process run in parallel,<sup>58</sup> or when a decision is made that a person has been harmed because of a crime of violence before the conclusion of court proceedings on the same facts.
- [13.41] The Commission considers that the risk to the right to a fair trial, or a risk to the interests of justice more broadly, including the right to privacy of a victim, can be mitigated in three ways, as discussed also in the Chapter on Administration of the Statutory Body and Statutory Scheme. First, the Commission recommends that a decision could be published, and, in addition to the usual redactions to remove personal data, it could be further redacted to protect the anonymity of both the defendant and the victim. This might, for example, include removing references to any unique facts or circumstances leading up to, or forming part of, the crime of violence that might reveal the identity of the victim or the defendant. The statutory body could then make a non-publication order to prohibit the publication or broadcast of the redacted part of the decision which would, or would be likely to, identify the victim or defendant.
- [13.42] Second, the Commission recommends that a decision on compensation could be made but the publication of the decision could be delayed until after the conclusion of court proceedings, and the statutory body could make a non-publication order to prohibit the publication or broadcast of the decision which would, or would be likely to, identify the victim or defendant.
- [13.43] In order to provide some enforcement of or consequences for breach of the non-publication order, the Commission considers that the statutory body should be able to apply to a court for an appropriate order. In particular, where the statutory body believes a person may be about to breach or has breached a non-publication order made by the statutory body, the statutory body may apply to a court for such order as may be prescribed for the purposes of enforcing the non-publication order or determining the consequences of its breach.
- [13.44] Third, where redacting a decision or deferring publication of a decision will not be sufficient to protect a defendant's right to a fair trial or there is some other reason that making a decision on compensation in advance of court proceedings would be problematic, the Commission recommends that the statutory body may

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<sup>57</sup> The right to a fair trial is protected by Article 38.1° of the Constitution of Ireland, Article 6 of the European Convention on Human Rights and Article 47 of the Charter of Fundamental Rights of the European Union.

<sup>58</sup> Walsh, *Walsh on Criminal Procedure* 3rd ed (Round Hall 2025) at paras 39-63 to 39-68.

delay the decision on compensation. However, this should only occur where the statutory body considers that it would not be in the interests of justice to make a payment of compensation before the conclusion of court proceedings.

[13.45] Where the statutory body decides to postpone the consideration of an application, it could exercise its power to make an interim payment to the victim if necessary for urgent verifiable expenses. The Commission discusses the power to make interim payments in the Chapter on Types of Compensation.

[13.46] The Commission is of the view that redacting a published decision, or delaying the publication of a decision, on compensation should be the preferred approach by the statutory body so that most applications for compensation can be concluded irrespective of the status of court proceedings.

[13.47] The Commission is aware that this change to sequencing may result in a greater risk of victims receiving double payments. As noted above, the issue of double payments is discussed, along with the Commission's recommendations for the repayment and recovery of compensation payments, in the Chapter on Preventing Double Compensation.

**R. 13.1 The Commission recommends** that applications for compensation should be dealt with as expeditiously as possible and, as a general rule, the statutory body should not wait for the conclusion of a criminal investigation or the conclusion of criminal or civil court proceedings in respect of the same crime of violence giving rise to the harm before deciding on an application for compensation.

**R. 13.2 The Commission recommends** that where the statutory body has concerns regarding the interests of justice, including where it considers there may be a risk to the right to a fair trial, or the right to privacy:

- (1) a decision on compensation could be made and published, and, in addition to the usual redactions to remove personal data, it could be further redacted to protect the anonymity of both the defendant and the victim, such as by redacting any unique set of facts or circumstances that could identify the defendant or the victim, and the statutory body could prohibit the publication or broadcast of the redacted part of the decision which would, or would be likely to, identify the victim or defendant, or
- (2) a decision on compensation could be made but the publication of the decision could be delayed until after the conclusion of court proceedings, and the statutory body could prohibit the publication or broadcast of the decision which would, or would be likely to, identify the victim or defendant, or
- (3) where it would not be in the interests of justice to make a decision regarding compensation before the conclusion of court proceedings, and neither anonymising nor delaying the publication of a decision

would mitigate these concerns, the statutory body should postpone consideration of an application.

**R. 13.3 The Commission recommends** that where the statutory body believes a person may be about to breach or has breached a non-publication order made by the statutory body, the statutory body may apply to a court for such order as may be prescribed for the purposes of enforcing the non-publication order or determining the consequences of its breach.

### 3. Sharing of information with courts

#### (a) Introduction

[13.48] The proposed change in sequencing may mean that the statutory body receives requests to share the documentation it has received or generated in relation to a particular application for compensation as part of subsequent court proceedings. This may include requests for discovery (from parties in subsequent civil proceedings) and requests for disclosure (from the defendant or the prosecutor in subsequent criminal proceedings). The statutory body would be considered a third party or non-party for such requests.<sup>59</sup>

[13.49] Given that an individual's right to a fair trial includes making all relevant material that is helpful to their case available to the defence, the Commission has considered whether a defendant should be informed that a victim has applied for compensation under the statutory scheme. It has also considered whether documents in the possession or control of the statutory body, including the victim's completed application form, supporting documents such as medical reports, and records of evidence given at oral hearings (if any occurred), may need to be shared in certain circumstances with the defendant.

[13.50] The Commission is aware that requests for disclosure and discovery to the statutory body for the purpose of court proceedings may raise particular issues for victims in relation to secondary victimisation as well as to the protection of their privacy, dignity and personal integrity. The Commission has therefore considered how the statutory body should deal with such requests.

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<sup>59</sup> The Commission published a Report on Disclosure and Discovery in Criminal Cases in 2014. See Law Reform Commission, *Report on Disclosure and Discovery in Criminal Cases* (LRC 112-2014).



## (b) Disclosure in criminal proceedings

### (i) *Relevant law*

[13.51] The constitutional right to fair procedures requires prosecutions to be conducted fairly.<sup>60</sup> This requirement imposes a duty on the prosecution to make available all relevant evidence in its possession or procurement.<sup>61</sup> This is known as the duty of disclosure. Relevant evidence includes “any material which may be relevant to the case which could either help the defence or damage the prosecution”.<sup>62</sup>

[13.52] The Commission notes Directive 2012/13/EU regarding the right to information in criminal proceedings (the “Disclosure Directive”), which sets out the minimum standards for the right to information in criminal proceedings throughout the European Union.<sup>63</sup> Article 7(2) of the Disclosure Directive provides that:

“Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence.”<sup>64</sup>

[13.53] However, this right is not absolute and Article 7(4) provides that “access to certain materials may be refused if such access may lead to a serious threat to the life or the fundamental rights of another person”.<sup>65</sup>

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<sup>60</sup> *DPP v Tuite* (Court of Criminal Appeal, 2 May 1983) at page 11 (McCarthy J).

<sup>61</sup> *DPP v Tuite* (Court of Criminal Appeal, 2 May 1983) at page 11 (McCarthy J) and see Heffernan, *Evidence in Criminal Trials* 2nd ed (Bloomsbury Professional 2020) at paras 14.60 – 14.72. For a comprehensive discussion of the rules of disclosure in criminal cases see also *DPP v AM* [2025] IESC 16.

<sup>62</sup> *McKevitt v DPP* (Supreme Court, 18 March 2003) at pages 7 – 8 (Keane CJ).

<sup>63</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings [2012] OJ L 142/1. The Director of Public Prosecutions accepted that the Directive has direct effect in the case of *DPP v O’Sullivan* [2018] IESC 15 at para 58 (O’Malley J).

<sup>64</sup> The Directive states that the documents must be in the possession of a “competent authority” but does not define what a competent authority is for the purposes of this Directive. The Commission notes that references to a “competent authority” in the Victims’ Rights Directive were transposed as referring to An Garda Síochána and Fiosrú, the Office of the Police Ombudsman, in the Criminal Justice (Victims of Crime) Act 2017. Article 4 of the Victims’ Rights Directive provides that all victims of crime have a right to receive information from their first contact with a competent authority. Section 7 of the Criminal Justice (Victims of Crime) Act 2017 provides that victims have the right to certain information on first contact with An Garda Síochána or the Police Ombudsman.

<sup>65</sup> Article 7(4) of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings [2012] OJ L 142/1.

- [13.54] In 2014, the Commission made recommendations regarding the need for a statutory basis for third party or non-party disclosure in criminal trials in its Report on Disclosure and Discovery in Criminal Trials.<sup>66</sup> In that Report, the Commission recommended that a pre-trial hearing should take place to consider disputed disclosure requests, in other words, in situations where the DPP opposed the disclosure of certain information or documents.<sup>67</sup>
- [13.55] The Commission also made recommendations in its 2014 Report for additional factors to be considered by a court when deciding on a disclosure request for counselling records in sexual offence cases.<sup>68</sup> The Commission's recommendations are reflected, in part, in section 19A of the Criminal Evidence Act 1992, as amended.<sup>69</sup> This provision sets out the procedure for the disclosure of a victim's counselling records by a non-party to the defence in sexual offence cases.
- [13.56] The procedure provides that in prosecutions for sexual offences, the prosecutor must notify the defendant of the existence of any counselling records. However, in general, they cannot disclose the content of the record without permission from a court.<sup>70</sup> Either the prosecutor or defendant may make a disclosure application to the court,<sup>71</sup> which shall decide on the disclosure of the record in a disclosure hearing.<sup>72</sup> In such a hearing, the court shall consider the following factors:

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<sup>66</sup> Law Reform Commission, *Report on Disclosure and Discovery in Criminal Cases* (LRC 112-2014).

<sup>67</sup> Law Reform Commission, *Report on Disclosure and Discovery in Criminal Cases* (LRC 112-2014) at para 2.34.

<sup>68</sup> Law Reform Commission, *Report on Disclosure and Discovery in Criminal Cases* (LRC 112-2014) at para 2.38.

<sup>69</sup> Section 19A of the Criminal Evidence Act 1992, as inserted by section 39 of the Criminal Law (Sexual Offences) Act 2017. The Commission's recommendations have been partly reflected in section 19A(10) regarding the factors a court must consider in a disclosure hearing and section 19A(12)(b) regarding conditions a court may impose on a disclosure order. The ability of a victim to consent to disclosure under section 19A(17) did not form part of a recommendation made by the Commission. The Commission's recommendations regarding pre-trial preliminary hearings have been implemented in Part 2 of the Criminal Procedure Act 2021. However, its recommendation of a statutory provision providing for disclosure for non-parties is yet to be implemented, outside of the remit of section 19A.

<sup>70</sup> Section 19A(2) of the Criminal Evidence Act 1992, as inserted by section 39 of the Criminal Law (Sexual Offences) Act 2017.

<sup>71</sup> The defendant may make an application under section 19A(3) of the Criminal Evidence Act 1992, as inserted by section 39 of the Criminal Law (Sexual Offences) Act 2017. Where the defendant does not make an application and the prosecution believes it is in the interests of justice to do so, they may make an application under section 19A(5) of the Criminal Evidence Act 1992, as inserted by section 39 of the Criminal Law (Sexual Offences) Act 2017.

<sup>72</sup> Section 19A(8) of the Criminal Evidence Act 1992, as inserted by section 39 of the Criminal Law (Sexual Offences) Act 2017.

- the extent to which the record is necessary for the defendant to defend the charges against him;
- the probative value of the record;
- the reasonable expectation of privacy with respect to the record;
- the potential prejudice to the right to privacy of any person to whom the record relates;
- the public interest in encouraging the reporting of sexual offences;
- the public interest in encouraging complainants of sexual offences to seek counselling;
- the effect of the determination on the integrity of the trial process;
- the likelihood that disclosing, or requiring the disclosure of, the record will cause harm to the complainant including the nature and extent of that harm.<sup>73</sup>

[13.57] However, the legislation also permits a victim to consent to disclosure of their counselling records through a “waiver”.<sup>74</sup> When victims consent to the disclosure of their counselling records, there is no disclosure hearing and the court does not have the opportunity to weigh up the considerations outlined above against the right of the defendant to a fair trial.

[13.58] It is important to note that the section only applies to prosecutions for sexual offences and it covers only counselling records.

[13.59] The Commission notes that section 19A of the Criminal Evidence Act 1992 is under review at present. The Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026 proposes to amend this statutory provision by removing the ability of a victim to consent to the disclosure of counselling records in sexual offence cases, retaining a presumption of non-disclosure and, thereby, requiring a court hearing in all cases where such disclosure is requested. The Minister for Justice has secured cabinet approval to make further amendments to the Bill, potentially extending this requirement to all documents that raise privacy issues for a victim (such as medical records and child protection records).<sup>75</sup> It is not clear whether it is intended that the procedure would apply in all criminal cases. The

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<sup>73</sup> Section 19A(10) of the Criminal Evidence Act 1992, as inserted by section 39 of the Criminal Law (Sexual Offences) Act 2017.

<sup>74</sup> Section 19A(17) of the Criminal Evidence Act 1992, as inserted by section 39 of the Criminal Law (Sexual Offences) Act 2017.

<sup>75</sup> Department of Justice, Home Affairs and Migration, “Minister Jim O’Callaghan secures Government approval to introduce amendments to the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026” (4 February 2026) <<https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/press-releases/minister-jim-ocallaghan-secures-government-approval-to-introduce-amendments-to-the-criminal-law-and-civil-law-miscellaneous-provisions-bill-2026/>> accessed 23 March 2026.

Commission understands that these proposed amendments are, at time of writing, yet to be drafted.<sup>76</sup>

(ii) *DPP v AM*

- [13.60] The Supreme Court considered the rules of disclosure in criminal trials in the context of prosecutions for sexual offences in the case of *DPP v AM*.<sup>77</sup> The Commission notes the criticism by the Court of what it observed as the “routine” waiving by victims of their right to non-disclosure of their counselling records under section 19A.<sup>78</sup> The Court observed that section 19A does not expressly require a victim’s consent to disclosure to be in writing nor is there a requirement that the waiver be informed and/or only given following the opportunity to obtain independent legal advice.<sup>79</sup>
- [13.61] In its judgment, the Court considered the work of Dr Susan Leahy, who has emphasised that any consent to the disclosure of counselling records under section 19A should involve a robust, informed process, ideally supported by independent legal advice.<sup>80</sup> The Court noted Leahy’s proposal that section 19A should be extended to all personal records.<sup>81</sup> However, the Court observed that the absence of a statutory provision in this regard does not mean that the courts are unable to protect the privacy rights of victims as these are already protected under the Constitution.<sup>82</sup>
- [13.62] When outlining what it considers “should” happen when a victim’s consent is sought, the Court stated that there is a clear entitlement of a victim to review the records in question before consenting to their disclosure.<sup>83</sup> It stated that “proper

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<sup>76</sup> Department of Justice, Home Affairs and Migration, “Minister Jim O’Callaghan secures Government approval to introduce amendments to the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026” (4 February 2026) <<https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/press-releases/minister-jim-ocallaghan-secures-government-approval-to-introduce-amendments-to-the-criminal-law-and-civil-law-miscellaneous-provisions-bill-2026/>> accessed 23 March 2026.

<sup>77</sup> *DPP v AM* [2025] IESC 16.

<sup>78</sup> *DPP v AM* [2025] IESC 16 at para 66 (Collins J).

<sup>79</sup> *DPP v AM* [2025] IESC 16 at para 75 (Collins J).

<sup>80</sup> Leahy, *The Realities of Rape Trials in Ireland: Perspectives from Practice* (Dublin Rape Crisis Centre 2021) <<https://www.drcc.ie/assets/files/pdf/leahyrealitiesreport.pdf>> accessed 23 March 2026, as referred to in *DPP v AM* [2025] IESC 16 at para 79 (Collins J).

<sup>81</sup> Leahy, *The Realities of Rape Trials in Ireland: Perspectives from Practice* (Dublin Rape Crisis Centre 2021) <<https://www.drcc.ie/assets/files/pdf/leahyrealitiesreport.pdf>> accessed 23 March 2026, as referred to in *DPP v AM* [2025] IESC 16 at para 79 (Collins J). Leahy recommends the definition of “all personal records” as that term is defined in the Canadian Criminal Code (pages 34-35).

<sup>82</sup> *DPP v AM* [2025] IESC 16 at para 80 (Collins J).

<sup>83</sup> *DPP v AM* [2025] IESC 16 at para 88 (Collins J).

practice” requires that a victim should be informed of the records proposed to be disclosed, and be made aware of the contents of those records before being asked to give consent.<sup>84</sup>

[13.63] The Court emphasised that the DPP must be sensitive to the privacy interests of victims when making disclosure, including where the disclosure is from a non-party.<sup>85</sup> The Court suggested that if a prosecutor is uncertain as to whether disclosure is appropriate in the context of privacy concerns, such an issue may be resolved by a preliminary hearing, as provided for under Part 2 of the Criminal Procedure Act 2021.<sup>86</sup> In the context of such uncertainty, the Court was of the view that a trial judge would be in the best position to determine whether “the records in question are sufficiently material to warrant directing their disclosure”.<sup>87</sup>

[13.64] The Court stated that disclosure would obviously be ordered by a court if there would be a “real risk” of an unfair trial in its absence but otherwise a court must assess “whether disclosure is necessary in the interests of justice”.<sup>88</sup> The Court referenced the factors under section 19A(10), discussed above, as likely to be of significant assistance to a court in its determinations.<sup>89</sup> The Court acknowledged the “additional burden on courts and on the prosecuting authorities” that disclosure hearings may require but stated “that is unavoidable if the constitutional and statutory rights of victims are to be given concrete recognition and protection”.<sup>90</sup>

[13.65] The Court concluded by asserting that the threshold for disclosure for records in which the victim has a strong expectation of privacy is more exacting than relevance. The Court stated that:

“there are certain records – records in which a complainant or witness has a real expectation of privacy – the threshold for disclosure for which is more exacting. Something more than relevance ... is required.”<sup>91</sup>

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<sup>84</sup> *DPP v AM* [2025] IESC 16 at para 88 (Collins J).

<sup>85</sup> *DPP v AM* [2025] IESC 16 at para 81 (Collins J).

<sup>86</sup> *DPP v AM* [2025] IESC 16 at para 81 (Collins J).

<sup>87</sup> *DPP v AM* [2025] IESC 16 at para 81 (Collins J).

<sup>88</sup> *DPP v AM* [2025] IESC 16 at para 81 (Collins J).

<sup>89</sup> *DPP v AM* [2025] IESC 16 at para 81 (Collins J).

<sup>90</sup> *DPP v AM* [2025] IESC 16 at para 82 (Collins J).

<sup>91</sup> *DPP v AM* [2025] IESC 16 at para 81 (Collins J).

[13.66] Disclosure must be in the interests of justice, there must be a compelling basis for disclosure to be directed and a victim's consent to sharing their records must be informed.<sup>92</sup> The Court noted that:

"Informed consent requires at a minimum that the victim is informed of the records it is proposed to disclose and is aware of their contents before being asked to give consent."<sup>93</sup>

[13.67] The Court also commented that:

"The absence of any provision for independent legal advice for the victim as to whether to waive their rights is also problematic. Many complainants will lack the necessary resources to obtain such advice and so will have to make a decision on waiver without fully understanding the alternative court process or being in a position to make an informed judgment as to the likely outcome of that process if triggered."<sup>94</sup>

### *(iii) Comparative jurisdictions*

[13.68] Some jurisdictions provide specific rules for the admissibility of documents from their criminal injury compensation schemes. For example, the Financial Assistance Scheme in Victoria states that the following documents related to the financial assistance scheme are not generally admissible in legal proceedings:

- an application to the scheme,
- documents accompanying the application that were prepared for the purposes of the application,
- documents provided to the decision-maker that were prepared for the purposes of the application,
- documents prepared by the decision-maker related to the application.<sup>95</sup>

[13.69] There are a few exceptions to this rule, including where:

- there is a review of a decision made under the Scheme,
- there are proceedings regarding an offence committed contrary to the Scheme,
- there are proceedings regarding an offence of fraud or conspiracy,
- there are proceedings regarding an offence of perjury or another interference with the administration of justice, or

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<sup>92</sup> *DPP v AM* [2025] IESC 16 at para 134 (Collins J).

<sup>93</sup> *DPP v AM* [2025] IESC 16 at para 134 (Collins J).

<sup>94</sup> *DPP v AM* [2025] IESC 16 at para 134 (Collins J).

<sup>95</sup> Section 63(1) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

- where the victim consents to their admissibility in legal proceedings.<sup>96</sup>

[13.70] Another example exists in Queensland regarding the Victims Financial Assistance Scheme. Under this Scheme, neither the fact that a person has applied for financial assistance nor the decision of the decision-maker is admissible in a criminal prosecution of the crime of violence.<sup>97</sup>

[13.71] The Commission also notes the work of the Law Commission of England and Wales on evidence in sexual offences prosecutions. In its Consultation Paper, the Law Commission observed that in sexual offences cases, the fact of a claim for criminal injuries compensation is often the subject of defence disclosure requests and cited as evidence by the defence in criminal proceedings.<sup>98</sup> The defence, during cross-examination, can use the fact of a claim for compensation to suggest that the victim's allegation is false and for the purpose of financial gain.<sup>99</sup>

[13.72] In its Final Report, published in 2025, the Law Commission of England and Wales recommended that evidence of a criminal injuries compensation claim should only be admissible if it has substantial probative value in relation to an issue of substantial importance in the case, and its admission would not significantly prejudice the proper administration of justice.<sup>100</sup> The Law Commission recommended that a judge should consider the following in assessing whether admission would significantly prejudice the proper administration of justice:

- protection of a victim's legal rights, such as respect for their private life and dignity,
- the interests of justice, such as the defendant's right to a fair trial, and
- the risk of introducing or perpetuating myths or misconceptions at trial.<sup>101</sup>

[13.73] In December 2025, the UK Government stated in Parliament its intention to:

“introduce legislation providing a higher admissibility threshold for victims' compensation claim evidence in trials concerning sexual offences, providing that this evidence cannot be admitted unless it has substantial probative value. The fact that a victim has made a

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<sup>96</sup> Section 63(2) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>97</sup> Section 137 of the Victims of Crime Assistance Act 2009 (Queensland).

<sup>98</sup> Law Commission of England and Wales, *Consultation Paper on Evidence in Sexual Offences Prosecutions* (Consultation Paper 259, May 2023) at para 6.3.

<sup>99</sup> Law Commission of England and Wales, *Consultation Paper on Evidence in Sexual Offences Prosecutions* (Consultation Paper 259, May 2023) at para 6.3.

<sup>100</sup> Law Commission of England and Wales, *Final Report on Evidence in Sexual Offences Prosecutions* (HC 1156, Law Com No 420, July 2025) recommendation 24, at para 5.80.

<sup>101</sup> Law Commission of England and Wales, *Final Report on Evidence in Sexual Offences Prosecutions* (HC 1156, Law Com No 420, July 2025) recommendation 24, at para 5.82.

claim, and the outcome of this claim, are not sufficient grounds to insinuate that someone is bringing a case for the purposes of financial gain. This measure recognises that all victims of crime have a right seek compensation, and should not be unfairly stigmatised for doing so.”<sup>102</sup>

### (c) Discovery in civil proceedings

- [13.74] In civil proceedings, discovery is the procedure which enables the parties in the proceedings to seek production of relevant and necessary documentation that is in the possession or control of another party. In certain circumstances, a party in the proceedings may also request discovery from a person who is not a party in the proceedings. This is called third party or non-party discovery.<sup>103</sup> The party seeking discovery must first write to the non-party requesting that they provide the documents sought voluntarily.<sup>104</sup> If the non-party does not make the requested discovery, the party may apply to court for an order for discovery, provided the information is not available otherwise.<sup>105</sup>
- [13.75] The Commission notes the recently published General Scheme of the Civil Reform Bill 2025 which proposes to change the current rules for discovery, but still envisages a mechanism for non-party discovery in appropriate circumstances.<sup>106</sup>

### (d) Proposals for reform

- [13.76] In developing its proposals for reform in this area, the Commission has considered the current law, proposals for changing the law, comparative jurisdictions, stakeholder submissions, and what a victim-centred approach may require.

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<sup>102</sup> Alex Davies-Jones, House of Commons Debates (3 December 2025) vol 776 (HCWS1124) <<https://hansard.parliament.uk/Commons/2025-12-03/debates/25120341000010/SexualOffenceProsecutionsUs...>> accessed 23 March 2026.

<sup>103</sup> Order 31, rule 29 of the Rules of the Superior Courts 1986 provides for non-party or third party discovery.

<sup>104</sup> Order 31, rule 12(6) of the Rules of the Superior Courts 1986.

<sup>105</sup> Order 31, rule 12(1) of the Rules of the Superior Courts 1986, as amended by Rules of the Superior Courts (Discovery) 2009 (SI No 93 of 2009).

<sup>106</sup> General Scheme of the Civil Reform Bill 2025; see also Department of Justice, Home Affairs and Migration, *Minister Jim O’Callaghan publishes Civil Reform Bill to overhaul Judicial Review and streamline courts processes* (6 January 2026) <<https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/press-releases/minister-jim-ocallaghan-publishes-civil-reform-bill-to-overhaul-judicial-review-and-streamline-courts-processes/>> accessed 23 March 2026. The Bill does not explicitly provide for requests of voluntary discovery, and provides that a court may, at any time, direct the production of documents. See Head 6 of the General Scheme of the Civil Reform Bill 2025 regarding the production of documents by non-parties.



*(i) Reasons for disclosure or discovery*

- [13.77] A defendant in criminal proceedings or either party in civil proceedings may seek documents from the statutory body. One of the main reasons a defendant may seek documents is to test the evidence submitted against them in court proceedings, in other words to test whether a victim has been consistent in their description of the alleged crime of violence. As an applicant for state compensation is likely to give the statutory body a narrative account of how they sustained the harm they are seeking compensation for, a defendant may seek documents from the statutory body to compare the victim's account to the statutory body with their account in a civil or criminal trial to test for consistency.
- [13.78] The Commission considers that a prohibition on sharing documents provided to the statutory body for a compensation application, as is done in Queensland for example, would be unlikely to withstand constitutional scrutiny in Ireland. A complete prohibition could prevent the defendant from accessing material which may be relevant and necessary to ensure a fair trial. For example, if a victim gives a description of events to the statutory body which does not match the account they gave to An Garda Síochána, a court may consider the sharing of that evidence given to the statutory body to be necessary to ensure a fair trial.
- [13.79] There may be other information or other documents that a defendant seeks from the statutory body in order to strengthen their defence in court proceedings. This might include, for example, supporting documents for an application, such as medical records or the details of a compensation payment made to the victim.
- [13.80] Where there is any request to the statutory body for disclosure or discovery of documents or information in its possession, the Commission emphasises the importance of balancing the defendant's right to a fair trial with the victim's rights, including their rights to privacy, dignity and integrity. It makes proposals on how the statutory body should deal with such requests below.

*(ii) Obligation on the Director of Public Prosecutions to disclose the fact of a compensation application*

- [13.81] As noted above, the prosecution has a duty to disclose relevant evidence in its possession or procurement. Where a case involves a crime of violence, the Commission believes that this duty may include inquiring into whether an application for compensation has been made by the victim under the proposed statutory scheme. The Commission therefore considers that when preparing a case for prosecution, the Director of Public Prosecutions ("DPP") should make reasonable inquiries with the prosecuting Garda and/or statutory body regarding applications for compensation under the proposed statutory scheme.
- [13.82] Where a compensation application has been made, the Commission is of the view that there should be a general obligation on the DPP to disclose the fact of a compensation application to the defence, as part of its duty of disclosure.

However, the Commission considers that the DPP should not be obliged to disclose this fact where it considers that to do so would cause harm to the victim. The DPP should consider consulting with the victim before disclosing the fact of a compensation application in order to properly consider the nature and extent of the potential harm to the victim of disclosing the fact of a compensation application.

- [13.83] The Commission recommends that the DPP should be under an obligation to disclose to the defence the fact that an application for compensation was made, unless there is a serious risk that the likelihood of disclosing, or requiring disclosure of, the fact of the application will cause harm to the victim, and the nature and extent of the harm should be considered.

**R. 13.4 The Commission recommends** that the Director of Public Prosecutions should be under an obligation to disclose to the defence the fact that an application for compensation was made, unless there is a serious risk that the likelihood of disclosing, or requiring disclosure of, the fact of the application will cause harm to the victim. In making this decision, the nature and extent of the harm should be considered by the Director of Public Prosecutions.

*(iii) Voluntary, informed and written consent*

- [13.84] In the Chapter on Establishing a Statutory Scheme, the Commission recommends that the proposed statutory scheme should be rights-based and victim-centred. The Commission also recommends a number of guiding principles to accompany that scheme. One such principle is to ensure all victims are treated with dignity and respect. The Commission anticipates that it is likely a victim will be sharing information with the statutory body that may be deeply personal, including medical records, and victims may have a high expectation of privacy regarding this information. Therefore, it is vital that victims would be made aware that the information they share with the statutory body may be subject to a disclosure or discovery request and ultimately shared with the defendant in court proceedings. Being made aware of this eventuality may assist a victim in deciding what information to share with the statutory body. It should ensure that a victim is not caught off guard later in the process if a request and court order for discovery or disclosure is made.
- [13.85] The Commission has considered how best to protect a victim's right to privacy and dignity in the context of disclosure or discovery requests to the statutory body, with particular reference to the principles laid out in the case of *DPP v AM*, as summarised above.<sup>107</sup> Noting the importance attached to the requirement that a victim's consent to the sharing of private information is informed, the

<sup>107</sup> *DPP v AM* [2025] IESC 16.

Commission recommends that the information and assistive tier of the statutory body (as recommended in the Chapter on the Structure of the Statutory Body and the Application Process) would provide appropriate assistance to victims regarding disclosure and discovery requests. It suggests a number of procedural steps that should be taken by the statutory body, which are explored below.

- [13.86] First, the Commission is of the view that victims must be fully informed of the possibility of requests for disclosure or discovery of information and documents relating to their compensation claim at the outset of their application. The Commission considers that applicants to the statutory scheme should be made aware of the possibility of disclosure or discovery requests at the earliest stage possible. In the Chapter on Structure of the Statutory Body and the Application Process, the Commission recommends that the application form for compensation should highlight that all documents may be subject to a request for disclosure or discovery. Other information requested by a defendant may include whether the victim was successful in their compensation application, and if they were successful, the amount of compensation paid to the victim, including details regarding verifiable expenses and loss of earnings, or why the victim's application for compensation was refused. The fact that documents and such information may be subject to a request for discovery or disclosure should be explained to the victim by staff of the information and assistive tier of the statutory body, and the victim should have to acknowledge in writing that they understand what this means.
- [13.87] Second, the Commission recommends that in the absence of a court order, the statutory body should only share documents for court proceedings where a victim has voluntarily consented to the sharing of the documents. The Commission recommends that where a request for discovery or disclosure is made, the statutory body should put the victim on notice of the request as soon as practicable. Victims should be both made aware of any such requests as soon as they are made and told what information or documents have been requested.
- [13.88] Third, the Commission recommends that voluntary, informed and written consent from the victim should be required in order for details of an application for compensation or documents relevant to the victim's application for compensation in the possession of the statutory body to be shared with a defendant. Noting the emphasis in the case of *DPP v AM* on the need for informed consent,<sup>108</sup> the statutory body should give the victim an opportunity to review the documentation that is the subject of the request, including any notes or recordings of evidence given in oral hearings. Before the victim decides whether to give their consent, the information and assistive tier should explain the possible implications of sharing the documentation, such as the documentation being seen by the defendant, and the possibility that the victim

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<sup>108</sup> *DPP v AM* [2025] IESC 16.

may be asked questions regarding this documentation when they are giving evidence in court.

- [13.89] The Commission considered whether in sexual offence cases, where an applicant would have a high expectation of privacy, a court order should be mandatory before the statutory body could share counselling records or other documents it holds. If this was the case, the victim would not be given the opportunity to consent to the sharing of such information or documents.<sup>109</sup> The Commission is of the view that requiring a court hearing in all such cases may mean that victims would have to attend an additional court proceeding, where the risk of retraumatisation and secondary victimisation may be high. A victim may want the opportunity to consent to sharing documentation in order to avoid such a scenario, or where they have no issue with the defendant understanding the full impact of the crime of violence. In this regard, the Commission considered that removing a victim's ability to provide informed consent may impact the autonomy of the victim in the overall process.
- [13.90] The Commission also notes that requiring hearings in certain cases without giving the victim an opportunity to give their informed consent could result in a significant increase in applications for disclosure hearings. This may in turn impose a significant administrative burden on the courts, requiring additional resources. It may also create significant delays in court proceedings. Stakeholders have made clear to the Commission that delays can cause additional distress to victims of crime.
- [13.91] The Commission is aware that some victims may feel pressure to consent to sharing documents requested for court proceedings, arising from a concern that a decision not to consent may affect their application for compensation. To mitigate against this concern, the Commission recommends that the statutory body should make clear to a victim that a decision not to consent to a request for disclosure or discovery will have no adverse consequences on their application for compensation.
- [13.92] Finally, in the absence of a victim's voluntary, informed and written consent, the Commission recommends that disclosure or discovery of documents in the possession or control of the statutory body should require a court order. In these cases, the ordinary rules of discovery and disclosure will apply. As made clear in the case of *DPP v AM*, in addition to considering the rights of the defendant, the court will have to properly take into consideration the full spectrum of rights of the victim, including their constitutional, EU, European Convention on Human Rights ("ECHR"), statute and common law rights to privacy, dignity and integrity,

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<sup>109</sup> This might include cases where counselling records were submitted as a supporting document in a victim's application to the scheme.

when considering whether to make such an order.<sup>110</sup> The Commission notes the Supreme Court's observation that:

"compelled disclosure of such intensely private material directly and significantly intrudes upon the dignity of victims as well as their personal integrity, privacy and associated rights. Those rights are not lost simply because a person makes a complaint that they have been the victim of crime."<sup>111</sup>

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<sup>110</sup> *DPP v AM* [2025] IESC 16 at para 134 (Collins J).

<sup>111</sup> *DPP v AM* [2025] IESC 16 at para 134 (Collins J).

- R. 13.5 The Commission recommends** that victims must be fully informed of the possibility of requests for disclosure or discovery of documents relating to their compensation claim at the outset of their application, both in the application form and by staff of the information and assistive tier. (There is a related recommendation in the Chapter on the Structure of the Statutory Body and the Application Process).
- R. 13.6 The Commission recommends** that the information and assistive tier of the statutory body should provide appropriate assistance to victims regarding disclosure and discovery requests. (There is a related recommendation in the Chapter on the Structure of the Statutory Body and the Application Process).
- R. 13.7 The Commission recommends** that where there is a request for discovery or disclosure to the statutory body, the statutory body should only share documents for court proceedings where a victim has voluntarily consented in writing to the sharing of the documents.
- R. 13.8 The Commission recommends** that victims should be put on notice of the request for discovery or disclosure and should be shown the contents of the documents or information that are the subject of the request as soon as practicable.
- R. 13.9 The Commission recommends** that any consent given by the victim to the sharing of documents relevant to their application must be voluntary, informed and in writing before the statutory body can share such documents for court proceedings.
- R. 13.10 The Commission recommends** that, in the absence of a victim's voluntary, informed and written consent, such disclosure or discovery should require a court order.
- R. 13.11 The Commission recommends** that the statutory body should make clear to a victim that a decision not to consent to requests for disclosure or discovery will have no adverse consequences for their application for compensation. (There is a related recommendation in the Chapter on the Structure of the Statutory Body and the Application Process).

## 4. Testing evidence of an application for compensation in court proceedings

### (a) Introduction

- [13.93] As noted above, a person's right to a fair trial is protected under Article 38.1° of the Constitution, Article 6 of the ECHR, and Article 47 of the Charter of Fundamental Rights of the European Union. This right includes the right to test

evidence and cross-examine witnesses.<sup>112</sup> The constitutional right to cross-examine exists as “a guarantee [...] of basic fairness of procedures”.<sup>113</sup> This means that, should documentation from the statutory body, such as a victim’s application, be shared with courts as a result of a request for discovery or disclosure, a victim may be required to answer questions on such documents when they are giving evidence in court. Bearing in mind the potential for retraumatisation in such scenarios, even where a victim is giving evidence in court anyway on issues unrelated to their application for compensation, the Commission has considered whether there should be limitations or restrictions on the examination or cross-examination of a victim on documents related to their application for compensation.

[13.94] As a starting point, the Commission notes that the Irish courts have recognised that, in criminal proceedings, the rights of the defendant under Article 38.1° of the Constitution must be balanced with the rights of victims under Article 40.3 of the Constitution and rights under the ECHR.<sup>114</sup> This balancing exercise may warrant a departure from traditional cross-examination.<sup>115</sup> In fact, a trial judge now has a statutory discretion to prohibit a defendant from personally cross-examining a victim in cases involving sexual offences or violent offences.<sup>116</sup> Special measures also exist in Irish law to support victims of any criminal offence in giving evidence who are at risk of secondary victimisation, or retaliation,<sup>117</sup> such as the ability to give evidence via video link from outside the courtroom.<sup>118</sup>

## **(b) Comparative jurisdictions**

[13.95] In Victoria, in its Report on Review of the Victims of Crime Assistance Act 1996, the VLRC considered whether documents produced for applying to the state

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<sup>112</sup> *State (Healy) v Donoghue* [1976] IR 325 at pages 335-336 (Gannon J); *Kostovski v The Netherlands* App no 11454/85 (ECtHR 20 November 1989) at para 41; *Van Mechelen & Others v The Netherlands* App nos 21363/93, 21364/93, 21427/93 and 22056/93 (ECtHR 23 April 1997) at paras 59-60.

<sup>113</sup> *Re Haughey* [1971] IR 217 at 264 (Ó’Dalaigh CJ).

<sup>114</sup> *DPP v VE* [2021] IECA 122, [2023] 1 IR 376 at para 67 (Ní Raifeartaigh J).

<sup>115</sup> *DPP v VE* [2021] IECA 122, [2023] 1 IR 376 at paras 85–86 (Ní Raifeartaigh J).

<sup>116</sup> Section 14C(2) of the Criminal Evidence Act 1992, as inserted by section 36 of the Criminal Law (Sexual Offences) Act 2017) and amended by section 60(b)(i)(I), (II) of the Criminal Justice (Miscellaneous Provisions) Act 2023. See also section 14C(2A) of the Criminal Evidence Act 1992 as amended.

<sup>117</sup> Section 14AA of the Criminal Evidence Act 1992, as inserted by section 30 of the Criminal Justice (Victims of Crime) Act 2017.

<sup>118</sup> Section 13 of the Criminal Evidence Act 1992, as amended by section 30(b) of the Criminal Justice (Victims of Crime) Act 2017.

compensation scheme could be used in other legal proceedings, and if so, whether victims could be cross-examined on these documents.<sup>119</sup>

- [13.96] The VLRC noted stakeholder concerns regarding victims being subjected to cross-examination on their application documents during court proceedings.<sup>120</sup> In their submission to the VLRC, the Director of Public Prosecutions Victoria stated that victims have been cross-examined on their application to the state compensation scheme, with one case resulting in a re-trial and acquittal due to inconsistencies between the victim's evidence at trial and their application to the scheme.<sup>121</sup>
- [13.97] As stated above, the VLRC's Report led to the enactment of the Victims of Crime (Financial Assistance Scheme) Act 2022. Section 64 provides that a victim must not be cross-examined in legal proceedings on the content of a document arising from or related to an application to the scheme, unless the document is considered admissible under the relevant legislation.<sup>122</sup> The legislation also provides that where a victim has consented to the admission of a document, a court may disallow cross-examination on the contents of the document, where it considers it appropriate in the interests of justice.<sup>123</sup>
- [13.98] The Law Commission of England and Wales recommended that a similar procedure to the current framework for admitting sexual behaviour evidence be developed for an application to adduce criminal injuries compensation evidence.<sup>124</sup> It further recommended that this framework should apply to evidence that the defendant wants to introduce into the trial, as well as questions they wish to ask in direct examination and cross-examination.<sup>125</sup>

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<sup>119</sup> Victorian Law Reform Commission, *Report on Review of the Victims of Crime Assistance Act 1996* (2018).

<sup>120</sup> Victorian Law Reform Commission, *Report on Review of the Victims of Crime Assistance Act 1996* (2018) at para 14.130.

<sup>121</sup> Victorian Law Reform Commission, *Report on Review of the Victims of Crime Assistance Act 1996* (2018) at para 5.233.

<sup>122</sup> Section 64(1) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria). See the discussion above regarding the admissibility of documents in Victoria. Section 63 lists the following documents: a) an application; (b) a document accompanying an application that was prepared solely for the purposes of the application; (c) a document provided to the scheme decision maker or a member of staff in connection with an application that was prepared solely for the purposes of the application; (d) a document prepared by the scheme decision maker or a member of staff in connection with an application.

<sup>123</sup> Section 64(4) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>124</sup> Law Commission of England and Wales, *Final Report on Evidence in Sexual Offences Prosecutions* (HC 1156, Law Com No 420, July 2025) recommendation 25, at para 5.100.

<sup>125</sup> Law Commission of England and Wales, *Final Report on Evidence in Sexual Offences Prosecutions* (HC 1156, Law Com No 420, July 2025) recommendation 26, at para 5.101.



[13.99] An application to admit sexual behaviour evidence must be:

- made in writing, and
- include particulars of:
  - the evidence and questions the defendant wants to introduce,
  - the issue(s) in the case to which the applicant claims the evidence and questions relates, and
  - the exception to the prohibition under the legislation the applicant claims applies to the evidence.<sup>126</sup>

[13.100] An application for leave to adduce sexual behaviour evidence will be heard in private and without the complainant present.<sup>127</sup> In determining the application, a court must state its reasons for giving or refusing leave, and where it gives leave, the extent to which evidence may be adduced or questions asked in pursuance of the leave.<sup>128</sup>

### **(c) Proposals for reform**

[13.101] The Commission considers that in certain cases a victim may be required to answer questions about their application for compensation when it is relevant and necessary to ensure a fair trial. This may occur when they are giving evidence in court for other reasons. This means they may be questioned by the prosecutor or defendant on the information they have given to the statutory body, in addition to giving evidence about their recollection of the crime.

[13.102] The Commission recognises the high risk of retraumatisation and potential secondary victimisation of a victim when they are giving evidence in court. It also recognises that where a victim is examined or cross-examined on their application for compensation, there may be an additional risk of the perpetuation of harmful myths, or the promotion of misconceptions about financial motivation, for example. Therefore, the Commission makes a number of recommendations in an effort to reduce these risks and protect the victim's rights to dignity and privacy, while also respecting the defendant's right to a fair trial.

[13.103] First, the Commission recommends in the Chapter on the Structure of the Statutory Body and the Application Process that victims should be made aware of the possibility that, if they are giving evidence in subsequent or parallel court

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<sup>126</sup> Part 22 of the Criminal Procedure Rules 2025 (England and Wales); Law Commission of England and Wales, *Final Report on Evidence in Sexual Offences Prosecutions* (HC 1156, Law Com No 420, July 2025) at para 5.96.

<sup>127</sup> Section 43(1) of the Youth Justice and Criminal Evidence Act 1999 (England and Wales); Law Commission of England and Wales, *Final Report on Evidence in Sexual Offences Prosecutions* (HC 1156, Law Com No 420, July 2025) at para 5.94.

<sup>128</sup> Section 43(2) of the Youth Justice and Criminal Evidence Act 1999 (England and Wales); Law Commission of England and Wales, *Final Report on Evidence in Sexual Offences Prosecutions* (HC 1156, Law Com No 420, July 2025) at para 5.94.

proceedings, they may be examined or cross-examined on their application for compensation. This may occur as part of the defendant's efforts to test the evidence against them, such as by testing a victim's consistency in the narrative of the crime of violence. This should be explained to the victim by the staff of the information and assistive tier when their application is being processed.

[13.104] Second, the Commission recommends that examination or cross-examination of victims in civil or criminal proceedings about their application for compensation to the statutory body should require leave of the court. In considering whether to allow this line of questioning, the court in addition to the usual tests, which include relevance and probative value, should have regard to the desirability of facilitating access to statutory schemes for compensation, the appropriate protection of the victim's rights, including the rights to dignity and privacy, and the need to avoid the risk of retraumatisation of the victim, or secondary victimisation. Victims should only be subject to examination or cross-examination in relation to their application for state compensation in legal proceedings when it is necessary and appropriate.

[13.105] Third, the Commission is of the view that where a court permits examination or cross-examination of a victim in this context, it must order that such examination be conducted in a manner which minimises the potential for retraumatisation or secondary victimisation.

**R. 13.12 The Commission recommends** that victims must be fully informed of the possibility that they may be subject to examination or cross-examination on their application for compensation in subsequent court proceedings, both in the application form and by staff of the information and assistive tier. (This recommendation is reflected in the Chapter on the Structure of the Statutory Body and the Application Process).

**R. 13.13 The Commission recommends** that examination or cross-examination of victims in civil or criminal proceedings about their application for compensation to the statutory body should require leave of the court.

**R. 13.14 The Commission recommends** that in considering whether to allow such examination or cross-examination, the court, in addition to the usual tests which include relevance and probative value, should have regard to:

- (1) the desirability of facilitating access to statutory schemes for compensation,
- (2) the appropriate protection of the victim's rights, including the rights to dignity and privacy, and
- (3) the need to minimise the risk of retraumatisation or secondary victimisation.

**R. 13.15 The Commission recommends** that where a court permits examination or cross-examination of a victim on their application for state compensation, it must order that such examination be conducted in a manner which minimises the potential for retraumatisation or secondary victimisation.

# CHAPTER 14    OFFENDER COMPENSATION

## *Table of Contents*

|                                                                                    |            |
|------------------------------------------------------------------------------------|------------|
| <b>Chapter 14    Offender Compensation.....</b>                                    | <b>488</b> |
| 1. <i>Introduction.....</i>                                                        | <i>489</i> |
| 2. <i>What is offender compensation?.....</i>                                      | <i>490</i> |
| (a)    Voluntary payment by the offender .....                                     | 492        |
| (b)    Court-ordered compensation.....                                             | 493        |
| 3. <i>Challenges with section 6 compensation orders and proposals for reform..</i> | <i>495</i> |
| (a)    Lack of awareness of section 6 compensation orders.....                     | 495        |
| (b)    Hybrid nature of section 6 compensation orders.....                         | 502        |
| (c)    A duty on the courts to consider a section 6 compensation order.....        | 512        |
| (d)    Appropriate amount of compensation .....                                    | 521        |
| (e)    Enforcement.....                                                            | 528        |

## 1. Introduction

- [14.1] As outlined in the first Chapter of this Report, the Commission considers that offender compensation for a victim is preferable to state-funded compensation for a number of reasons. First, the offender caused the harm to the victim and therefore should be held responsible for compensating the victim for that harm, where possible. Second, in compensating the victim, the offender is not just redressing the financial losses of the victim but may also be demonstrating an acceptance of the harm caused and expressing remorse, which the Commission considers is positive for the victim and for society as a whole. Finally, state-funded compensation is intended to be available only where compensation from an offender is not available, reflecting the idea that the State is a 'payor of last resort'.
- [14.2] The Chapter begins by outlining how offender compensation operates within the criminal justice process, and examining the benefits to the victim (and to society) that follow from the offender bearing some or all of the cost of compensating the victim. Payments to victims of crime by offenders may be either voluntary or court-ordered. Both types of payment are considered in detail below and the advantages and disadvantages of both are discussed.
- [14.3] In Ireland, court-ordered offender compensation is provided for under section 6 of the Criminal Justice Act 1993 ("CJA 1993"). This provision allows the court, on conviction of any person of an offence, to order an offender to pay the victim compensation for any personal injury or loss resulting from the offence. These orders are referred to in this Report as 'section 6 compensation orders' or 'compensation orders'. In this Chapter, the challenges relating to section 6 compensation orders are considered in detail and the current law is discussed. The Chapter also outlines the approach adopted in other jurisdictions and the views of consultees.
- [14.4] The Commission decided to consider section 6 compensation orders in the context of this Report for two reasons. First, there appears to be a developing EU imperative for victims to receive a decision on compensation from the offender in the course of criminal proceedings, in order to reduce the burden on a victim and avoid the situation where a victim has to apply for compensation through multiple different processes.<sup>1</sup> Second, the Commission believes that the State compensation body should be a payor of last resort. This means that if compensation is available from any other source, including the offender, that other source should be the primary source of compensation for a victim. The

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<sup>1</sup> Article 16 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L 315/57 ("Victims' Rights Directive").

Commission recognises that there are currently a number of issues with section 6 compensation orders which contribute to such orders not being used regularly in practice. The Commission proposes reforms in this Chapter that are aimed at addressing these issues. The Commission intends that the proposed reforms will lead to:

- greater awareness of section 6 compensation orders among victims, legal practitioners, and judges;
- more orders being made where an offender has the financial means to compensate the victim, to better reflect the position of the state-funded statutory body as a payor of last resort;
- greater clarity as to the circumstances in which a section 6 compensation order should be made;
- guidance as to what level of compensation may be appropriate; and
- greater awareness around available avenues for the enforcement of section 6 compensation orders.

[14.5] The Commission's primary recommendation is that courts should be required to consider making a section 6 compensation order in all criminal cases where the victim has suffered any personal injury or loss as a result of the offence,<sup>2</sup> and judges should give reasons where they decline to make a section 6 compensation order. The Commission considers that this proposal will contribute to increasing the use of section 6 compensation orders in the criminal courts, in appropriate cases. The Commission recognises that it is possible that an increased awareness of section 6 compensation orders may have the collateral effect of increasing the number of voluntary compensation payments made by offenders to victims. Either way, more victims may benefit from offender compensation payments, which the Commission considers would be a positive outcome.

## 2. What is offender compensation?

[14.6] Within the criminal justice process, offender compensation involves an offender making a payment to the injured party (the victim), and serves as a "mechanism

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<sup>2</sup> Section 6(1) of the Criminal Justice Act 1993 currently applies to all offences where there has been personal injury or loss. The section provides: "[s]ubject to the provisions of this section, on conviction of any person of an offence, the court, instead of or in addition to dealing with him in any other way, may, unless it sees reason to the contrary, make (on application or otherwise) an order (in this Act referred to as a "compensation order") requiring him to pay compensation in respect of any personal injury or loss resulting from that offence (or any other offence that is taken into consideration by the court in determining sentence) to any person (in this Act referred to as the "injured party") who has suffered such injury or loss."

for providing financial redress to crime victims”.<sup>3</sup> Offender compensation can have benefits both for the victim and for society. According to Miers, offender compensation orders:

“may ... be seen as having a variety of beneficial impacts upon offenders: retributive (by depriving them of their assets so as to pay for the harm done); reparative (by requiring them to compensate the victim for the injuries they have caused); and rehabilitative (by drawing their attention to the pain and misery they have caused to another human being, and so to change for the better their attitudes towards themselves and to others).”<sup>4</sup>

[14.7] Offender compensation can be viewed by the victim as a genuine expression of remorse. It can also be seen as a public acknowledgement of wrongdoing, showing both society and the victim that the offender takes responsibility for the harm done.<sup>5</sup>

[14.8] There are a number of forms of offender compensation, including where a victim takes civil proceedings against an offender.<sup>6</sup> This Chapter will discuss two forms of offender compensation in the context of criminal proceedings:

(1) Voluntary payment by the offender, and

(2) Court-ordered offender compensation.

[14.9] The Commission considers that it is important to recognise the distinction between these two forms of offender compensation. Both serve specific purposes within the criminal justice system. The Chapter will focus on court-ordered offender compensation.

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<sup>3</sup> O'Malley, *Sentencing: A Modern Introduction* (Clarus Press 2025) at page 493.

<sup>4</sup> Miers, “Offender and state compensation for victims of crime: Two decades of development and change” (2014) 20(1) *International Review of Victimology* 145 at page 151.

<sup>5</sup> *DPP v Duffy* [2023] IESC 1.

<sup>6</sup> According to Murray J: “While there are no statistics or objective information as to the degree to which civil claims are brought following or arising from criminal convictions, it would appear to be a relatively uncommon occurrence, largely because, it would seem, the range of persons which come before the criminal courts are so often persons of little or no means, thus rendering the bringing of civil proceedings futile.” See *DPP v Lyons* [2014] IECCA 27 at para 63. The Commission also acknowledges that section 1(3) of the Probation of Offenders Act 1907 provides that a court may make a financial order on an offender where the court has made an order dismissing the charge against the accused or issuing a conditional discharge. The Commission has previously stated that this provision appears to have limited practical use given that the Act limits the order to twelve euro and it is likely that section 6 compensation orders under the Criminal Justice Act 1993 have effectively superseded the provision. See Law Reform Commission, *Report on the Court Poor Box: Probation of Offenders* (LRC 75-2005) at paras 3.71-3.72.

**(a) Voluntary payment by the offender**

- [14.10] An offender may voluntarily pay a sum of money to the victim during criminal proceedings to compensate them for the harm they have suffered as a result of the offence. If the court finds that a voluntary offer of compensation by the offender is a “genuine expression of remorse and acceptance of responsibility for the harm done”, this payment, whether accepted by the victim or not, will operate as a mitigating factor in sentencing.<sup>7</sup> This form of offender compensation is referred to in this Report as a “voluntary payment by the offender”. The Commission understands that voluntary payments by offenders are far more common in practice than the making of section 6 compensation orders.
- [14.11] Voluntary payments by the offender have been considered in detail in several cases in Ireland. In *DPP v Duffy*, O’Malley J, noted that “[i]t is apparent that the voluntary payment of compensation by offenders has long been a feature of the Irish sentencing process”,<sup>8</sup> finding that a voluntary payment will be a relevant mitigating factor in all cases where the court finds that it is a genuine expression of remorse and acceptance of responsibility of the harm done. The Court emphasised that the weight to be attached to a voluntary payment by the offender will “vary according to the court’s view of the genuineness of the offer and the degree of hardship it is likely to cause the accused, as well as all the other circumstances of the case”.<sup>9</sup>
- [14.12] However, the courts have repeatedly held that a voluntary payment by the offender to the victim will not allow the offender to buy their way out of imprisonment. Rather, a voluntary payment is one factor to be taken into account by a court when imposing a sentence.<sup>10</sup> In *DPP v McLaughlin*, the Court held that the fact that compensation was “offered and accepted is a factor which the court must take into account in arriving at a sentence which is fair and proportionate”,<sup>11</sup> but does not mean that if compensation is paid, a custodial sentence is to be excluded. In this case, the Court sentenced the offender, who had pleaded guilty to rape, to four years’ imprisonment with the last three years suspended.<sup>12</sup>

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<sup>7</sup> *DPP v Duffy* [2023] IESC 1 at para 94 (O’Malley J). This position was restated in the Sentencing Guidelines and Information Committee of the Judicial Council, *Report of the Sentencing Guidelines and Information Committee on the Application of Section 40 of the Domestic Violence Act 2018* (May 2025) at para 45.

<sup>8</sup> *DPP v Duffy* [2023] IESC 1 at para 79 (O’Malley J).

<sup>9</sup> *DPP v Duffy* [2023] IESC 1 at para 94 (O’Malley J).

<sup>10</sup> *DPP v McCabe* [2005] IECCA 90; *DPP v McLaughlin* [2005] IECCA 91; *DPP v Lyons* [2014] IECCA 27; *DPP v Duffy* [2023] IESC 1.

<sup>11</sup> *DPP v McLaughlin* [2005] IECCA 91 at pages 12 – 13 (Kearns J).

<sup>12</sup> *DPP v McLaughlin* [2005] IECCA 91.



- [14.13] Similarly, Kearns J held in *DPP v McCabe* that “there was no jurisprudence, principle or practice which rendered the payment of compensation to the victim of a sexual assault inconsistent with the imposition of a custodial sentence”.<sup>13</sup>
- [14.14] The Commission is aware that the law surrounding voluntary payments by offenders is relatively settled in Ireland, and does not consider that this form of offender compensation needs to be reformed. This Chapter will largely focus on section 6 compensation orders because the Commission acknowledges the problems arising with them in current practice and considers reform desirable for the benefit of victims. Increased use of section 6 compensation orders may help to ensure that the resources of the statutory body are used appropriately. It may also assist in aligning the Irish approach to offender compensation with the EU imperative to facilitate decisions on offender compensation as part of criminal proceedings. The Commission also notes, as stated above, that the recommendations made by the Commission in relation to section 6 compensation orders may have the collateral effect of increasing the number of voluntary compensation payments made by offenders to victims. The Commission considers this would also be a positive outcome of its recommendations because, whether through a section 6 order or a voluntary payment, more victims may benefit from offender compensation payments.

### **(b) Court-ordered compensation**

- [14.15] As noted above, court-ordered offender compensation in Ireland is provided for under section 6 of the CJA 1993.<sup>14</sup> Section 6 provides that on conviction, a judge can order the offender to pay the victim compensation for any personal injury or loss resulting from the offence, as follows:

“Subject to the provisions of this section, on conviction of any person of an offence, the court, instead of or in addition to dealing with him in any other way, may, unless it sees reason to the contrary, make (on application or otherwise) an order (in this Act

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<sup>13</sup> *DPP v McCabe* [2005] IECCA 90.

<sup>14</sup> In the Commission’s 1988 *Report on Rape and Allied Offences*, it recommended that there should be express statutory provision enabling a judge to order the accused on conviction of rape and allied offences to pay compensation to the victim in addition to the provision for penalties. This recommendation contributed to the introduction of section 6 compensation orders in the Criminal Justice Act 1993. See Law Reform Commission, *Report on Rape and Allied Offences* (LRC 24-1988) at page 22. The Commission also notes that in the case of a child offender, section 113 of the Children Act 2001 provides that where a court is satisfied of the guilt of a child and that the appropriate way of dealing with the case is to make a compensation order (whether in addition to or instead of any other order), it may order that the compensation be paid by the parent or guardian of the child instead of by the child. The court may not order that the compensation be paid by a parent or guardian unless it is satisfied that a wilful failure of the parent or guardian to take care of or to control the child contributed to the child’s criminal behaviour.

referred to as a “*compensation order*”) requiring him to pay compensation in respect of any personal injury or loss resulting from that offence (or any other offence that is taken into consideration by the court in determining sentence) to any person (in this Act referred to as the “*injured party*”) who has suffered such injury or loss.”<sup>15</sup>

[14.16] A court currently has discretion to make a section 6 compensation order instead of, or in addition to, dealing with an offender “in any other way”.<sup>16</sup> This means that decisions about compensating victims (by an offender) are made at the sentencing stage of criminal proceedings. A section 6 compensation order can be made by the court without an application being made by a victim.

[14.17] The making of a section 6 compensation order is not limited to any particular type of criminal offence, and can be made by the court in any case on conviction of a person of an offence where the victim has suffered personal injury or loss as a result of the offence.

[14.18] The Commission understands that section 6 compensation orders are not widely used in practice.<sup>17</sup> Reasons for this may include:

- a lack of awareness among victims and legal practitioners of the availability of section 6 compensation orders;
- irregular usage by sentencing judges;
- the hybrid nature of section 6 compensation orders, meaning that the orders blend aspects of both civil and criminal law which poses challenges for the decision-making process;
- the potentially insufficient financial means of the offender to satisfy a section 6 compensation order;
- the unclear status of section 6 compensation orders as a mitigating factor in sentencing; and
- issues relating to enforcement of these orders.

[14.19] These challenges and the Commission’s proposals for reform, aimed at addressing these challenges, are discussed in more detail below.

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<sup>15</sup> Section 6(1) of the Criminal Justice Act 1993.

<sup>16</sup> Section 6(1) of the Criminal Justice Act 1993. This section does not specify how a court can deal with an offender “in any other way”, but in practice this will usually involve a fine and/or a custodial sentence.

<sup>17</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at Chapter 7.

### 3. Challenges with section 6 compensation orders and proposals for reform

#### (a) Lack of awareness of section 6 compensation orders

##### (i) *Current law*

[14.20] The Commission considers that there may be a lack of awareness of the availability of section 6 compensation orders among victims and practitioners. This is despite a legislative mandate for victims to be informed about their right to seek court-ordered offender compensation. Under Article 4 of the EU Directive establishing minimum standards on the rights, support and protection of victims of crime ("Victims' Rights Directive"), victims have the right to receive information from the time of the first contact with a competent authority.<sup>18</sup> This information includes how and under what conditions they can access compensation.<sup>19</sup> In Ireland, section 7 of the Criminal Justice (Victims of Crime) Act 2017 ("Victims' Rights Act") implements Article 4 of the Victims' Rights Directive. This section provides that where a victim first contacts or is contacted by An Garda Síochána or Fiosrú, the Office of the Police Ombudsman ("Fiosrú"), in relation to an alleged offence, the Gardaí or Fiosrú are required to offer the victim information related to a number of areas, including the power of a court to make a compensation order under section 6 of the CJA 1993.<sup>20</sup> The victim must also be made aware of the Criminal Injuries Compensation Scheme under this section.<sup>21</sup>

[14.21] The Commission considers that information given on "first contact" to the victim is likely to be in the immediate aftermath of the crime. This information may not be fully absorbed by the victim, especially in traumatic circumstances, or may be forgotten by the time a prosecution takes place. This may be contributing to the under-use of section 6 compensation orders, and the Commission believes that

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<sup>18</sup> Victims' Rights Directive (2012/29/EU).

<sup>19</sup> Article 14(e) of Victims' Rights Directive (2012/29/EU).

<sup>20</sup> Section 7(1)(j) of the Criminal Justice (Victims of Crime) Act 2017. The Commission notes that the Sentencing Guidelines and Information Committee of the Judicial Council, in its May 2025 report on the sentencing guidelines regarding the application of section 40 of the Domestic Violence Act 2018 recommended that a sentencing judge should ensure that information about section 6 orders has been provided to a victim. See the Sentencing Guidelines and Information Committee of the Judicial Council, *Report of the Sentencing Guidelines and Information Committee on the Application of Section 40 of the Domestic Violence Act 2018* (May 2025). This report was reviewed and approved by the Board of the Judicial Council but has not been adopted/approved by the Judicial Council which is required in order for the report to have legal effect as clarified by the Supreme Court in *Delaney v PIAB [2024] IESC 10*. Although its contents do not constitute statutory guidelines, they have persuasive authority.

<sup>21</sup> Section 7(1)(i) of the Criminal Justice (Victims of Crime) Act 2017.

such information should be provided to victims again at additional stages of the criminal process to ensure that it is fully understood.

- [14.22] Section 6(2) of the CJA 1993 provides that the amount of the compensation shall be of such an amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the “convicted person, the injured party or the prosecutor”. This permits the court to hear any evidence and views of the victim when determining the amount of a compensation order.<sup>22</sup> Section 5(2)(a) of the CJA 1993 provides that a court, when imposing a sentence on an offender, must have regard to the effect of the offence on the victim and may receive evidence or submissions as to such an effect.<sup>23</sup> The “effect of the offence” referred to in this section should be read in light of section 5(1) of the CJA 1993, which provides that the effect of a crime should be taken into account in sentencing where the victim suffers “physical, mental or emotional harm, or economic loss” which was directly caused by the offence. The victim can outline the effect of the crime for the court in what is commonly referred to as a “victim impact statement”.
- [14.23] Victim impact statements give effect to Article 10 of the Victims’ Rights Directive,<sup>24</sup> which states that victims have a right to be heard and to give evidence in criminal proceedings.<sup>25</sup> They are an account, in a victim’s own words, of the effect that the crime has had on them.<sup>26</sup>
- [14.24] Victim impact statements can assist a court in making an appropriate section 6 compensation order when details of financial losses or economic consequences are included. Victims are currently given a form to fill out as part of their victim impact statement, which specifically provides space for outlining financial losses, any psychological impact and impact on their lives arising from the crime of violence. The statement provides a method for a victim to express their views and outline their losses to the court. This was demonstrated in a case where in her victim impact statement, a victim detailed the costs and losses amounting to €34,000 incurred by her and her family following the offence. Keane J had indicated his willingness “to make a compensation order under section 6 of the

<sup>22</sup> Section 6(2) of the Criminal Justice Act 1993.

<sup>23</sup> Section 5(2)(a) of the Criminal Justice Act states: “When imposing sentence on a person for an offence to which this section applies, a court shall take into account, and may, where necessary, receive evidence or submissions concerning, any effect (whether long-term or otherwise) of the offence on the person in respect of whom the offence was committed.”

<sup>24</sup> Article 10 Victims’ Rights Directive (2012/29/EU).

<sup>25</sup> Office of the Director of Public Prosecutions, *Guidelines for Prosecutors* (December 2019) <<https://www.dppireland.ie/app/uploads/2023/01/Guidelines-for-Prosecutors-5th-Edition-eng.pdf>> accessed 23 March 2026.

<sup>26</sup> Office of the Director of Public Prosecutions, *Making a Victim Impact Statement* (August 2022) at page 4 <<https://www.dppireland.ie/app/uploads/2024/04/ENG-Making-a-Victim-Impact-Statement-Sept-2022.pdf>> accessed 23 March 2026.

Criminal Justice Act 1993 in relation to the financial losses outlined in the victim impact statement”,<sup>27</sup> and he ultimately made a section 6 order for €38,000.

- [14.25] Victims also have a right to be informed by the Gardaí (or Fiosrú) of their right to give evidence or make submissions under section 5 of the CJA 1993.<sup>28</sup> In other words, they should be informed of their right to make a victim impact statement to the court during criminal proceedings. Victims are required to be informed of this at “first contact” which is potentially in the immediate aftermath of the crime. In addition, the prosecuting garda will usually remind the victim of their right to make a victim impact statement after a person has been convicted and a date for sentencing is set. The Commission understands, however, that victims are not always aware that outlining their financial losses in the victim impact statement can lead to a section 6 compensation order and therefore they may not outline such losses either fully or at all. Therefore, even where a court may be willing to make a section 6 compensation order, a victim may not be compensated fully for the harm they have suffered as a result of the offence, in the absence of evidence of their losses for the court.

*(ii) Comparative jurisdictions*

- [14.26] The Commission has considered the practice in other jurisdictions of how victims are informed of their right to compensation, and of their entitlement to outline to the court the losses they have suffered as a result of the offence.
- [14.27] In Northern Ireland, a victim can make a victim statement to the court outlining the impact of the offence on them and their family,<sup>29</sup> like in Ireland. This can include financial impact, including any money or property lost as a result of the crime, or inability to work.<sup>30</sup> Victims in Northern Ireland are entitled to ask the Public Prosecution Service about compensation orders provided for under section 14 of the Criminal Justice (Northern Ireland) Order 1994.<sup>31</sup> However, the onus is on the victim to pursue this information, rather than it being a right for the victim to receive this information. It is unclear how this operates if a victim is unaware of their right to do this, or is unaware of what orders are available to them.

<sup>27</sup> RTÉ News, “Galway man jailed for ‘persistent and deplorable’ sexual abuse” (24 February 2025) <<https://www.rte.ie/news/regional/2025/0224/1498621-galway-man-jailed-sexual-abuse/>> accessed 23 March 2026.

<sup>28</sup> Section 7(1)(k) of the Criminal Justice (Victims of Crime) Act 2017.

<sup>29</sup> Section 33 of the Justice Act (Northern Ireland) 2015.

<sup>30</sup> Northern Ireland Direct, “Victim personal statements” <<https://www.nidirect.gov.uk/articles/victim-personal-statements>> accessed 23 March 2026.

<sup>31</sup> Paragraph 102 of the Victim Charter (Northern Ireland). The Victim Charter was placed on a statutory footing by section 31 of the Justice Act (Northern Ireland) 2015.

- [14.28] In England and Wales, a statutory Code of Practice for Victims of Crime, known as the Victims' Code,<sup>32</sup> outlines the rights and services which must be provided to victims, and includes the right to be provided with information about compensation.<sup>33</sup> Victims have the right to be told by the police how to seek court-ordered compensation and may be asked to provide evidence of any loss or damage, for example receipts or quotes for repairing the damage caused during the crime.<sup>34</sup> Information can be given to victims throughout the criminal justice process, through a combination of service providers,<sup>35</sup> meaning this exchange of information is not confined to first contact. The Commission considers that this is a good example of a victim-centred approach because it emphasises the importance of keeping victims informed throughout the process, rather than just at first contact.
- [14.29] In England and Wales, victims must be offered an opportunity to make a victim personal statement.<sup>36</sup> Like in Ireland, victims can also outline any financial injury they have suffered as a result of the crime in their victim personal statement.<sup>37</sup> This statement can have an impact on whether the court will order compensation, or the amount ordered.<sup>38</sup>
- [14.30] In Canada, the court can adjourn proceedings to permit victims to indicate whether they are seeking restitution or to establish their losses and damages, if the court is satisfied that the adjournment would not interfere with the proper administration of justice.<sup>39</sup> Victims can outline that they are seeking restitution in

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<sup>32</sup> The Victims' Code (England and Wales) was established under the Domestic Violence, Crime and Victims Act 2004 (UK).

<sup>33</sup> Right 5 of the Victims' Code (England and Wales).

<sup>34</sup> Right 5.1 of the Victims' Code (England and Wales).

<sup>35</sup> The following organisations are required to deliver information about the Rights under the Victims' Code (England and Wales): Police and Crime Commissioners, all police forces in England and Wales, the British Transport Police, the Ministry of Defence Police, Police Witness Care Units, the Crown Prosecution Service, His Majesty's Courts and Tribunals Service, His Majesty's Prison and Probation Service, the National Probation Service, the Parole Board for England and Wales, the Criminal Cases Review Commission, the Criminal Injuries Compensation Authority, the UK Supreme Court, and Youth Offending Teams.

<sup>36</sup> Right 7 of the Victims' Code (England and Wales).

<sup>37</sup> *Joint Agency Guide to the Victim Personal Statement: A guide for all criminal justice practitioners* (2018) at para 32  
<<https://assets.publishing.service.gov.uk/media/5b991d3ee5274a1391b13978/joint-agency-guide-victim-personal-statement.pdf>> accessed 23 March 2026. The right to make a victim personal statement is provided for in the Victims' Code (England and Wales).

<sup>38</sup> *Joint Agency Guide to the Victim Personal Statement: A guide for all criminal justice practitioners* (2018) at para 44  
<<https://assets.publishing.service.gov.uk/media/5b991d3ee5274a1391b13978/joint-agency-guide-victim-personal-statement.pdf>> accessed 23 March 2026.

<sup>39</sup> Section 737.1(3) of the Criminal Code (Canada).

a form, and must also establish their losses in a form, the amount of which must be readily ascertainable.<sup>40</sup>

- [14.31] Under the Canadian Victims Bill of Rights, victims have the right, on request, to information about matters such as the investigation and proceedings, the criminal justice system generally, services and programs that are available, and certain information about the offender (such as details of any conditional release).<sup>41</sup> Although it is not explicitly stated within the Act whether victims have the right to information about restitution orders, it is reasonable to assume that this may be given alongside information related to proceedings generally. The burden is on the victim to request this information, like in Northern Ireland. However, the Commission notes that under the Criminal Code, as soon as possible after an offender is found guilty but before sentencing, the court is required to ask the prosecutor if reasonable steps have been taken to provide the victims with an opportunity to indicate whether they are seeking restitution for their losses and damages, the amount of which must be readily ascertainable.<sup>42</sup> The Commission believes that this is an important obligation on the courts, because it relieves the responsibility on the victim to seek compensation, and ensures that they are made aware of their right to claim compensation during the proceedings.
- [14.32] In Victoria, victims are entitled to receive information about their rights, but it is unclear when this information must be given.<sup>43</sup> A court can make a compensation order for such an amount as it sees fit.<sup>44</sup> Evidence can be given to the court by the victim, offender, or another person, to assist the court when determining whether to grant the application for compensation.<sup>45</sup> A victim can also make a victim impact statement to assist the court when determining the amount of a compensation order.<sup>46</sup> A court also has discretion whether or not to take into account an offender's means when making a compensation order.<sup>47</sup> The Commission is of the view that where additional statutory guidance is provided to courts, this adds clarity to the process, and can also assist the victim when

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<sup>40</sup> Section 737.1(4) of the Criminal Code (Canada).

<sup>41</sup> Sections 6, 7, and 8 of the Canadian Victims Bill of Rights Act 2015 (Canada).

<sup>42</sup> Section 737.1(2) of the Criminal Code (Canada).

<sup>43</sup> Section 16 of the Victims' Charter Act 2006 (Victoria). See also Victims of Crime Commissioner, *Victims' Charter Guidelines: A guide to assist agencies to comply with the Victims' Charter* (2023) at page 60.

<sup>44</sup> Section 85B(1) of the Sentencing Act 1991 (Victoria).

<sup>45</sup> Section 85G of the Sentencing Act 1991 (Victoria).

<sup>46</sup> Section 85F(2)(d) of the Sentencing Act 1991 (Victoria).

<sup>47</sup> Section 85H of the Sentencing Act 1991 (Victoria).

outlining their financial losses, ensuring they include all necessary information for the court.

*(iii) Submissions*

[14.33] In its Consultation Paper, the Commission asked consultees for information about how frequently section 6 orders are made in practice.<sup>48</sup> One consultee suggested that a dedicated research project may be needed to collect information in this area, due to the lack of available information on the use of section 6 compensation orders. The Commission considers that this may be helpful in the future, but confines its current recommendations to proposals for law reform based on currently available information. Another consultee suggested that the issuing of these orders depends on both the preference of the judge and the judge's assessment of the defendant's means. The Commission discusses the reasons that a court may or may not make a section 6 compensation order in further detail in section 3(c) of this Chapter. A consultee working in the courts system noted that in their experience, section 6 compensation orders are made rarely. However, no explanation was offered as to why this may be. The Commission is aware that some sentencing judges do make section 6 compensation orders regularly. However, the use of section 6 compensation orders appears to the Commission to depend on individual judges, which in itself demonstrates a concerning lack of consistency.

[14.34] The Commission also asked consultees: "How could [section 6 compensation] orders be improved, or measures to encourage offenders to provide adequate compensation be strengthened?"<sup>49</sup> One consultee suggested that it should be made mandatory that, on conviction of the offender, victims are told of the court's ability to make a section 6 compensation order. This highlights the need to keep victims informed at different stages of the process, rather than just at first contact. The Commission considers that this could improve victims' knowledge of their rights and contribute to a greater awareness among victims, prosecutors, and judges that there is a statutory mechanism for delivering compensation in criminal proceedings. This is also in line with the procedure in England and Wales, and in Canada, which the Commission considers are good models for a victim-centred approach.

*(iv) Proposals for reform*

[14.35] As noted above, the Commission understands that current awareness of the availability of section 6 compensation orders is low, which may be a contributing

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<sup>48</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 221, question 7.1.

<sup>49</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 221, question 7.3.



factor to their infrequent use in practice. Having considered the approach in other jurisdictions, and the views of consultees, the Commission believes that victims should be reminded of the court's power to make a section 6 compensation order and their right to make a victim impact statement beyond the "first contact" requirement of the Victims' Rights Act.<sup>50</sup>

- [14.36] As examined above, the approach to when and how information is communicated to victims about their right to compensation varies throughout jurisdictions. The Commission considers that a victim should be informed at various stages of the criminal process about their right to make a victim impact statement under section 5 of the CJA 1993,<sup>51</sup> and the court's power to make a compensation order under section 6 of the CJA 1993.<sup>52</sup> The Commission believes that the position in England and Wales, where victims are informed of their rights throughout criminal proceedings, and the position in Canada where there is an obligation on the judiciary to make sure that victims are aware of their right to seek compensation, are two potential models for improving awareness of section 6 compensation orders.
- [14.37] To increase the awareness of section 6 compensation orders, and, in turn, increase their use by the courts, the Commission recommends that there should be an explicit obligation on the Director of Public Prosecutions ("DPP") to ensure that victims are reminded of the court's ability to make a section 6 compensation order before a sentencing hearing, and of their right to give evidence or make submissions as to the losses arising from the crime in a victim impact statement. This would be in addition to receiving this information on first contact from the Gardaí (or Fiosrú), as required by the Victims' Rights Act. The Commission considers that this would help to ensure that victims are fully aware of their entitlements, without placing responsibility on them to seek out this information.
- [14.38] In addition, the Commission recommends that there should be a further obligation on the DPP after conviction but prior to sentencing, to certify to the court that the victim was informed at an appropriate stage about the court's power to make a section 6 compensation order, and about the victim's right to give evidence or make submissions as to the losses they have suffered in a victim impact statement. This obligation on the DPP should be contained in legislation. The Commission considers that it is important that this is done at a point that would allow sufficient time for the court to receive information about the losses

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<sup>50</sup> Section 7(1)(j) and (k) of the Criminal Justice (Victims of Crime) Act 2017.

<sup>51</sup> Section 5 of the Criminal Justice Act 1993. Section 7(1)(k) of the Criminal Justice (Victims of Crime) Act 2017 frames the ability to make submissions or give evidence contained in section 5 of the CJA 1993 as a "victim's right".

<sup>52</sup> Section 6 of the Criminal Justice Act 1993.

suffered by the victim, and would ensure victims are aware of their rights in good time.<sup>53</sup>

- R. 14.1 The Commission recommends** that the Criminal Justice Act 1993 be amended to place an explicit obligation on the DPP to ensure that victims are informed of the court's ability to make a section 6 compensation order, upon conviction and prior to sentencing of the offender, when they are invited to make their victim impact statement, in accordance with section 5 of the CJA 1993.
- R. 14.2 The Commission recommends** that the Criminal Justice Act 1993 be amended to place an explicit obligation on the DPP to ensure that victims are informed of their ability to outline their financial losses within their victim impact statements, before a sentencing hearing.
- R. 14.3 The Commission recommends** that the Criminal Justice Act 1993 be amended to place an explicit obligation on the DPP to certify to the sentencing court that the victim was informed at an appropriate stage of the court's ability to make a section 6 compensation order, upon conviction and prior to sentencing of the offender, as well as the victim's right to outline their losses in a victim impact statement, in accordance with section 5 of the CJA 1993.

## (b) Hybrid nature of section 6 compensation orders

### (i) *Current law*

[14.39] Section 6(1) of the CJA 1993 provides that a court can make a compensation order "on conviction of any person of an offence". This means that section 6 compensation orders are made during the sentencing process. Court-ordered offender compensation of this type presents a challenge because it involves aspects of two kinds of court proceedings: civil law and criminal law.<sup>54</sup> Section 6 compensation orders can be considered hybrid orders, as they are civil compensation orders that are available at the final stage of the criminal process. This creates challenges because a fundamental aspect of the Irish legal system is the separation of criminal and civil law matters. Criminal and civil jurisdictions are exercised separately in the Irish courts, involving different personnel, and they are subject to different procedural rules.

[14.40] According to McMahon and Binchy, "[t]he Criminal Justice Act 1993 should be regarded as a watershed as it reflects a wider cultural shift, discernible in the past

<sup>53</sup> The Commission considers that both the issue of timing, and the method of informing the sentencing court, may be addressed by Rules of Court.

<sup>54</sup> According to O'Malley J, section 6 compensation orders are, by their nature, problematic given the fact that they "implicitly blend the criminal jurisdiction of the sentencing court with the civil jurisdiction of a court considering a claim for damages". *DPP v Duffy* [2023] IESC 1 at para 86 (O'Malley J).

few decades, to blur the sharp boundaries between the criminal and the civil law".<sup>55</sup> In *DPP v Duffy*, O'Malley J outlined certain problems that can arise in relation to section 6 compensation orders due to their hybrid nature, including that:

- a sentencing judge must consider, within the sentencing process, matters that are irrelevant to that process such as a calculation of what the outcome of a civil claim might be;
- account must be taken of the means of the offender, which would be irrelevant in a civil claim;
- a final figure must be determined, and appropriate instalments set out if the total is not to be paid as a lump sum;
- the court must determine the appropriate criminal sanction, without reference to the anticipated payments as a mitigatory factor, unless they will cause "unusual hardship";<sup>56</sup>
- all of this must be decided without the benefit of the procedural machinery available in a civil claim, such as particulars and discovery, and with little or no oral evidence and cross-examination on these points;
- dealing with all of these aspects together may result in a blurring of the various decisions that fall to be made regarding the choice of an appropriate punishment and the fixing of figures for civil compensation; and
- it is possible that the court will not fully achieve the purposes of either the civil law (the provision of appropriate compensation, and therefore a conclusion to any dispute between the individuals concerned) or the purposes of the sentencing process (the imposition of a just sentence that takes account of the nature of the crime and the personal circumstances of the offender).<sup>57</sup>

[14.41] Section 6(1) of the CJA 1993 provides that the court can make a compensation order "instead of or in addition to" dealing with an offender in any other way. This suggests that a court can make a section 6 compensation order instead of a fine or a prison sentence. Arguably, this makes the purpose of section 6

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<sup>55</sup> McMahon and Binchy, *Law of Torts* 4th ed (Bloomsbury Professional 2013) at para 1.11.

<sup>56</sup> O'Malley J observes in *DPP v Duffy* that a section 6 compensation order cannot be a mitigatory factor unless it causes unusual hardship and, even then, cannot be more than marginally relevant to the sentence imposed. *DPP v Duffy* [2023] IESC 1 at para 84 (O'Malley J).

<sup>57</sup> *DPP v Duffy* [2023] IESC 1 at paras 86, 87 and 88 (O'Malley J).

compensation orders, and their role at sentencing, unclear. As summarised by O'Malley J in *DPP v Duffy*:

"The structure and wording of the Act do not make it entirely clear whether a compensation order should be seen as primarily punitive or compensatory. If an order is made, as the Act permits, 'instead of' dealing with the convicted person in any other way, then in my view it can only be seen as the sentence of punishment for the offence. However, the making of an order 'instead of' a different sentence may raise the possibility that a compensation order might have been made 'instead of' the imposition of a custodial sentence. That would, again, raise a question as to whether the accused has 'bought off' a prison sentence, and has therefore been treated more leniently than a person who does not have the means to pay compensation."<sup>58</sup>

[14.42] Despite these challenges, there is impetus at an EU level for victims to be able to obtain a decision on compensation during criminal proceedings, rather than through a separate civil process. Article 16 of the Victims' Rights Directive<sup>59</sup> provides for a victim's right to receive a decision on offender compensation in the course of criminal proceedings, unless the decision can be made in other legal proceedings:

"1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims."<sup>60</sup>

[14.43] The provision "except where national law provides for such a decision to be made in other legal proceedings", gives Member States some flexibility. This allowed Ireland to point to civil proceedings as a mechanism through which victims can receive a decision on compensation from the offender, in addition to section 6 compensation orders.

[14.44] The Victims' Rights Directive was incorporated into Irish law through the Victims' Rights Act 2017. The European Commission issued a guidance document on

<sup>58</sup> *DPP v Duffy* [2023] IESC 1 at para 83 (O'Malley J). See also *DPP v Lyons* [2014] IECCA 27.

<sup>59</sup> Victims' Rights Directive (2012/29/EU).

<sup>60</sup> Article 16 of the Victims' Rights Directive (2012/29/EU).

transposing the Victims' Rights Directive in 2013.<sup>61</sup> The European Commission encouraged Member States to consider the fact that because "compensation is intended to assist the victim in his/her recovery process, it is important that it is made available as soon as possible. Therefore, legal and administrative procedures should ensure that a decision on compensation is reached within a reasonable time in criminal proceedings".<sup>62</sup>

[14.45] Article 24 of the 2024 EU Directive on Combating Violence against Women and Domestic Violence<sup>63</sup> goes further than the Victims' Rights Directive in that it requires that victims can obtain a decision on compensation in the course of proceedings "where appropriate". The article provides that:

"1. Member States shall ensure that victims have the right to claim, in accordance with national law, full compensation from offenders for damages resulting from offences of violence against women or domestic violence.

2. Member States shall ensure, where appropriate, that victims are able to obtain a decision on compensation in the course of criminal proceedings."

[14.46] Recital 56 of this Directive connects this obligation with the need to ensure victims don't experience secondary victimisation. It states: "[i]n order to avoid secondary victimisation, victims should be able to obtain compensation in the course of criminal proceedings."<sup>64</sup> According to the EU Fundamental Rights Agency: "Secondary victimisation refers to the revictimisation of victims in their interactions with institutions when their particular needs are not recognised, respected or met."<sup>65</sup> If a victim is required to participate in multiple proceedings,

<sup>61</sup> European Commission, *DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA* (2013).

<sup>62</sup> European Commission, *DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA* (2013) at page 37.

<sup>63</sup> Article 24 of Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence ("Directive on Combating Violence Against Women"). The Commission notes that this Directive requires transposition by 2027 and has not yet, at the time of writing, been transposed into Irish law.

<sup>64</sup> Recital 56 of the Directive on Combating Violence Against Women (2024/1385/EU).

<sup>65</sup> Section 2 of the Criminal Justice (Victims of Crime) Act 2017 defines secondary victimisation as "victimisation that occurs indirectly through the response of institutions and individuals to the victim".

or experiences lengthy delays when seeking offender compensation, this could contribute to secondary victimisation.

[14.47] Taking into account the above, the Commission considers that despite their hybrid nature, and the challenges this can bring, section 6 compensation orders can play an important role in fulfilling victims' rights. A key rationale behind requiring decisions on compensation to be made during criminal proceedings is to save victims from having to take separate, lengthy, and often costly civil proceedings against offenders, at least where the amount of the likely award in civil proceedings is within the jurisdictional limits of the criminal court.<sup>66</sup> The District Court, for example, will only be able to order a compensation payment of up to €15,000 as that is the jurisdictional limit of that court.<sup>67</sup> Minimising the number of proceedings that victims have to engage with, when possible, can also save the victim from repeat exposure to the offender and from having to repeat the narrative of their experience on multiple occasions, which can risk retraumatisation.

[14.48] The Commission notes that in *DPP v Duffy*, the Supreme Court agreed with the Court of Criminal Appeal that a section 6 compensation order will generally not be mitigating unless it leads to "unusual hardship":

"The view of the Court of Criminal Appeal in *Lyons* would lead to the conclusion that the making of such an order is not, of itself, a mitigatory factor unless it causes unusual hardship and, even then, cannot be more than marginally relevant to the sentence imposed. I would agree with this view."<sup>68</sup>

[14.49] This can be contrasted with voluntary payments made to the victim by the offender, which are generally accepted to have weight in the sentencing process. Although a voluntary payment by the offender does not mean that an offender can "buy" a lighter sentence, it will be a relevant mitigatory factor in all cases, to be considered as part of the relevant personal circumstances of the offender.<sup>69</sup> According to O'Malley J:

"The relevance of the voluntary offer of compensation lies in its relevance to the assessment by the court of the personal

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<sup>66</sup> O'Malley, *Sentencing Law and Practice* 3rd ed (Roundhall 2016) at para 27-03.

<sup>67</sup> At the time of writing, the jurisdictional limits of the courts in personal injury cases are as follows: The District Court's upper jurisdictional limit is claims not exceeding €15,000. The Circuit Court's upper limit is for claims not exceeding €60,000. Any claim for higher damages comes within the jurisdiction of the High Court (or the Central Criminal Court in criminal cases). See <<https://www.courts.ie/explore/courts>> for further information.

<sup>68</sup> *DPP v Duffy* [2023] IESC 1 at para 84 (O'Malley J).

<sup>69</sup> *DPP v Duffy* [2023] IESC 1 at para 80 (O'Malley J).

circumstances of the offender. It represents a full acceptance by the offender, not only that he or she has committed a criminal offence, but that he or she is responsible for the harm done by that offence. It is usually beneficial to the injured party to know that responsibility is accepted and that some personal effort at reparation is being made. I would, further, accept that a voluntary offer should be seen as more significant if it is pitched at a level that will have a tangible effect on the lifestyle of the accused. That may be implicit even if, for example, the money has been raised by family and friends, since they may be in a position to exert pressure on the accused to change his ways. The offer can still be seen as evidence that the offender is remorseful and is willing to attempt to undo the harm to some extent. This is clearly relevant to the question of rehabilitation.”<sup>70</sup>

[14.50] The Commission recognises the distinct role voluntary payments play in the criminal justice process in Ireland, and therefore confines its recommendations for law reform to court-ordered compensation at sentencing.

*(ii) Comparative jurisdictions*

[14.51] In France, Germany, Northern Ireland, and New Zealand, the approach to compensation orders reflects the current situation in Ireland regarding the placement of section 6 compensation orders within the sentencing process. In France, a victim can file a civil suit during the criminal judgment in order to obtain compensation from the offender.<sup>71</sup> When the offence is punishable by imprisonment, the court can order, instead of or at the same time as the prison sentence, the penalty of reparation (which is comparable to a section 6 compensation order in Ireland).<sup>72</sup> Northern Ireland also provides that a court can make an order of compensation instead of, or in addition to, dealing with an offender in any other way.<sup>73</sup> Similarly, in Germany, a victim can “attach” a civil claim to a criminal case, in order to obtain compensation from the offender during criminal proceedings.<sup>74</sup> In New Zealand, courts can either impose a sentence of reparation, or make an order of reparation.<sup>75</sup> Both a sentence of

<sup>70</sup> *DPP v Duffy* [2023] IESC 1 at para 79 (O’Malley J).

<sup>71</sup> Article 2 of the Code of Criminal Procedure (France). A civil suit can be filed for damage caused by certain types of offences, namely “contraventions” or minor offences, “délits” or intermediate offences, and “crimes” or serious offences.

<sup>72</sup> Article 131-8-1 of the Penal Code (France).

<sup>73</sup> Section 14 of the Criminal Justice (Northern Ireland) Order 1994.

<sup>74</sup> Section 403 of the Code of Criminal Procedure (Germany).

<sup>75</sup> Section 12 of the Sentencing Act 2002 (New Zealand). A sentence of reparation is a sentence in its own right, whereas a reparation order can be made by the court instead of any other

reparation and an order of reparation are purely financial, requiring an offender to pay a sum of money to the victim as compensation for harm suffered as a result of the offence. A sentence of reparation<sup>76</sup> can be made either on its own or in addition to any other sentence.<sup>77</sup>

- [14.52] The Commission has also considered jurisdictions that outline different approaches to the role of compensation orders at sentencing, namely England and Wales, Victoria, and Canada. As noted previously, the making of a court-ordered compensation order can present difficulties in common law jurisdictions where criminal proceedings are held separately from civil proceedings. However, in England and Wales, this has been addressed by providing that court-ordered offender compensation can either be an order that is supplementary to sentencing (in legal terms, an ancillary order), or a sentence in its own right.<sup>78</sup> Compensation orders can also be combined with custodial sentences.<sup>79</sup>
- [14.53] Categorising compensation orders as ancillary orders decouples the making of a compensation order from the sentencing process, without the victim having to initiate separate civil proceedings. The Commission believes that this practice, if adopted in Ireland, could clarify the purpose of court-ordered compensation as being separate from the sentencing process and purely for the benefit of the victim.
- [14.54] Compensation orders in Victoria are supplementary to sentencing (in legal terms ancillary).<sup>80</sup> The Sentencing Advisory Council in Victoria examined whether or not compensation orders should become sentencing orders. It recommended that the hybrid nature of restitution and compensation orders should be kept.<sup>81</sup> When coming to this conclusion, the Sentencing Advisory Council found that the hybrid system, incorporating elements of both criminal and civil processes, had a number of practical benefits for victims, including:

- victims do not need to establish their loss before a separate judicial officer;

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sentencing measure. See sections 106, 108, and 110 of the Sentencing Act 2002 (New Zealand).

<sup>76</sup> Section 32 of the Sentencing Act 2002 (New Zealand).

<sup>77</sup> Section 12(2) of the Sentencing Act 2002 (New Zealand).

<sup>78</sup> Part 7, Chapter 2 and Chapter 3 of the Sentencing Act 2020 (England and Wales).

<sup>79</sup> Section 134(2) of the Sentencing Act 2020 (England and Wales) provides that where a compensation order is available, the court may make such an order whether or not it also deals with the offender for the offence in any other way.

<sup>80</sup> Section 85B of the Sentencing Act 1991 (Victoria).

<sup>81</sup> Sentencing Advisory Council, *Restitution and Compensation Orders Report* (2018) at page xiii.



- victims do not need to establish their loss to the criminal standard of proof (beyond reasonable doubt), but rather can satisfy the civil standard (on the balance of probabilities);
- victims do not need to pay the costs associated with bringing a claim in a civil court; and
- the process is faster and more streamlined than bringing a separate claim for civil damages.<sup>82</sup>

[14.55] The report found that “[v]ictims’ financial reparation is best achieved through the existing framework of restitution and compensation orders, sitting outside the purposes for which sentences are imposed, as ancillary orders, as well as through an appropriately funded and accessible state-funded compensation system.”<sup>83</sup> Adopting this approach means that compensation orders will not impact sentencing. The Commission shares the view of the Sentencing Advisory Council that separating section 6 compensation orders from the sentencing process (in legal terms, making section 6 compensation orders ancillary orders) could remedy the problems associated with the hybrid nature of section 6 compensation orders.

[14.56] The Commission also notes the position in Canada, where court-ordered offender compensation, known as a restitution order, forms part of the sentence given to an offender.<sup>84</sup> However, upon conviction of an offender, the court is required, *in addition to* any other measure imposed on the offender, to consider making a restitution order.<sup>85</sup> This means that a court cannot make a restitution order instead of a custodial sentence or fine. The Commission considers that this makes clear that an offender cannot buy their way out of prison through a compensation payment to a victim, which addresses one of the current problems with the wording of section 6 of the CJA 1993.

### (iii) Submissions

[14.57] Consultees were asked in the Consultation Paper whether section 6 compensation orders meet the objectives of the Victims’ Rights Directive in relation to compensation for victims from offenders.<sup>86</sup>

[14.58] One consultee stated that a court, in considering a section 6 compensation order, requires information from the offender and the victim in order to make a detailed assessment of financial figures, both of an appropriate compensation payment

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<sup>82</sup> Sentencing Advisory Council, *Restitution and Compensation Orders Report* (2018) at page 27.

<sup>83</sup> Sentencing Advisory Council, *Restitution and Compensation Orders Report* (2018) at page 36.

<sup>84</sup> Article 737.1(1) of the Criminal Code (Canada).

<sup>85</sup> Article 738(1) of the Criminal Code (Canada).

<sup>86</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 221, question 7.2.

and of the offender's means. They noted that victims (except in very limited circumstances in certain sexual offence prosecutions) do not have their own legal representation in criminal proceedings in Ireland. This consultee believed that this may be relevant to the question of meeting the objectives of the Victims' Rights Directive, which reflects many EU civil law systems, where victims may have legal representation and, in some jurisdictions, are a party to proceedings. The Commission considers the views of victims in further detail in section 3(a) of this Chapter.

- [14.59] Two submissions said that the delays in the criminal justice process generally mean that there is very little likelihood of the offender providing compensation under section 6 within a reasonable timeframe. They contended that this meant, in general, that section 6 is not compliant with the Victims' Rights Directive.
- [14.60] As stated above, the Commission considers that section 6 compensation orders, due to their hybrid nature, unclear purpose at sentencing, and likely delays for victims, are not operating effectively in practice. Therefore, the Commission makes proposals for reform below.

*(iv) Proposals for reform*

- [14.61] The Commission acknowledges that the hybrid nature of section 6 compensation orders has raised issues in practice for the courts, and that similar issues arise in other countries. The Commission favours the approach taken to compensation orders in England and Wales, Victoria, and Canada, in which offender compensation orders are considered separate orders (known as ancillary orders), sitting outside the sentencing process.<sup>87</sup> Section 6 currently permits the courts to make a compensation order upon conviction of an offender "instead of or in addition to dealing with him in any other way".<sup>88</sup> As noted above, this locates the making of compensation orders within the sentencing process.
- [14.62] The Commission can see the benefit of the decision on a section 6 compensation order being made post-conviction by the sentencing judge in order to minimise the amount of court proceedings a victim will have to attend. However, it considers that section 6 compensation orders should not be made instead of custodial orders as that opens the court to perceptions that an offender can "buy

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<sup>87</sup> The Commission observes that to remedy all of the issues raised by the hybrid nature of section 6 compensation orders as outlined above, while still complying with the EU imperative related to offender compensation, could involve a radical restructuring of the Irish legal system, a fundamental aspect of which is the separation of civil and criminal proceedings. The Commission considers that such a radical reform would impact the entire structure of the courts system in Ireland and is outside the scope of this Report. For this reason, it has limited its proposals for reform to procedural aspects of the legislative provisions related to court-ordered compensation, in order to make the existing system more effective.

<sup>88</sup> Section 6(1) of the Criminal Justice Act 1993.

their way" out of prison. On the other hand, there will be occasions where an offender has limited means and may only be able to afford either a fine or a compensation payment. In such situations, the Commission believes that a compensation order should be made rather than a fine, so that a victim can benefit from the payment.

- [14.63] Section 6(1) of the CJA 1993 currently provides that a court can make an order of compensation instead of, or in addition to, dealing with an offender in any other way. To ensure the making of a section 6 compensation order does not contribute to the reduction of a custodial sentence, or replace a custodial sentence entirely, the Commission recommends that "instead of" should be changed to "instead of a fine".
- [14.64] The Commission notes that section 6(7) of the CJA 1993 permits a court, where it has considered that it would be appropriate to both impose a fine and make a compensation order, to prioritise the compensation order if a convicted person does not have the means to both pay compensation to a victim and pay a fine. In such cases, the court may make the compensation order and not order the convicted person to pay the appropriate fine. The court must have regard to the offender's means when making this determination.<sup>89</sup> If the court decides it is appropriate, having regard to the offender's means that would remain after compliance with the section 6 compensation order, then the court can impose a fine.<sup>90</sup> The Commission considers that this section should be retained.
- [14.65] The Commission recommends that the court must first determine a sentence for the offender, and then can consider whether or not to make a section 6 compensation order. The court should make clear that the section 6 compensation order is not part of the sentence, even where the court decides to make a section 6 compensation order instead of a fine.
- [14.66] The Commission notes that the offender's means will be a relevant factor for the court when determining the amount of compensation to order under section 6(5)(a) of the CJA 1993. This is discussed further in section 3(c) of this Chapter.
- [14.67] The Commission also recommends that the current rule regarding section 6 compensation orders and mitigation should be retained, in other words a section 6 compensation order should generally not give rise to mitigation for sentencing purposes. A section 6 compensation order should be made in order to benefit a victim and not to benefit the offender.

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<sup>89</sup> Section 6(7)(b) of the Criminal Justice Act 1993.

<sup>90</sup> Section 6(7)(b) of the Criminal Justice Act 1993.

**R. 14.4 The Commission recommends** that section 6(1) of the Criminal Justice Act 1993 should be amended to add the wording “a fine”, after “instead of”. Section 6(1) should therefore read as follows:

- (1) Subject to the provisions of this section, on conviction of any person of an offence, the court, instead of a fine or in addition to dealing with him in any other way, may, unless it sees reason to the contrary, make (on application or otherwise) an order (in this Act referred to as a “*compensation order*”) requiring him to pay compensation in respect of any personal injury or loss resulting from that offence (or any other offence that is taken into consideration by the court in determining sentence) to any person (in this Act referred to as the “*injured party*”) who has suffered such injury or loss.

**R. 14.5 The Commission recommends** that there should be no change to the practice that section 6 compensation orders should not ordinarily be considered by the court as a mitigating factor to reduce the sentence that would otherwise be imposed by the sentencing court.

### (c) A duty on the courts to consider a section 6 compensation order

#### (i) *Current law*

[14.68] Section 6(1) of the CJA 1993 already provides that a judge can make a compensation order in any case on conviction of an offender where the victim has suffered any personal injury or loss as a result of the offence. Therefore, section 6 compensation orders are not limited to any particular category of offences. As noted previously, the Commission understands that section 6 compensation orders are not used regularly in practice despite their wide-ranging application. The Commission believes that one reason they are not used more often is the fact that the consideration of a section 6 compensation order remains at the court’s discretion.

[14.69] The Commission acknowledges that a section 6 compensation order will not be appropriate in all cases, and notes that the CJA 1993 limits the circumstances in which a compensation order should be made. For example, under section 6(5) of the CJA 1993, in determining whether to make a compensation order against a person, and in determining the amount of the compensation, the court must have regard to the means of the offender.<sup>91</sup> To determine this, the court has the power to require the offender to give evidence as to their means and financial commitments.<sup>92</sup> The Commission believes that this is an indication that the

<sup>91</sup> Section 6(5)(a) of the Criminal Justice Act 1993.

<sup>92</sup> Section 6(5) of the Criminal Justice Act 1993.

amount of the section 6 compensation order is intended to match the offender's means, in order to ensure that an offender will have the ability to fulfil the order.

[14.70] In *DPP v Lyons*, the court expressed the view that one reason section 6 compensation orders are not made more frequently may be because many of those who are charged with serious criminal offences have little or no means, rendering a section 6 compensation order of little use.<sup>93</sup> According to Murray J:

"...the Oireachtas clearly envisaged that a 'compensation order', as they are described in the section, should be made in appropriate cases, having regard to a person's means, 'instead of or in addition to' any other punishment. Clearly the Oireachtas intended that compensation orders should be available to compensate victims where that could be done to some degree in the light of the means of a convicted person."<sup>94</sup>

[14.71] In *DPP v Duffy*, referring to section 6 of the CJA 1993, the court stated that:

"The structure of the provision is such as to make it clear that the reparation envisaged is intended for the benefit of the injured party and must to at least some extent relate to the damage caused to that party. It does not depend on the attitude of the accused and can be made without his or her consent. However, its availability depends largely on the court's objective assessment of the accused's means."<sup>95</sup>

[14.72] O'Malley J expressed the view in *DPP v Duffy* that section 6 compensation orders are "best made in cases where both the quantum of damages and the means of the offender are reasonably ascertainable".<sup>96</sup> This approach was confirmed later in the judgment when the Court held that a section 6 compensation order is best made in circumstances where it is clear that "the injured party would be entitled to seek an award of damages in civil proceedings, the accused person has means and an order can be made without unduly prolonging the sentencing process".<sup>97</sup>

[14.73] Section 6 does not prevent compensation orders from being made when an offender is of limited means. In fact, it makes provision for the situation where offenders may not have sufficient means to make an upfront payment to a victim. Section 6(6) provides that a compensation order may provide for payment by

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<sup>93</sup> *DPP v Lyons* [2014] IECCA 27 at para 22 (Murray J).

<sup>94</sup> *DPP v Lyons* [2014] IECCA 27 at para 22 (Murray J).

<sup>95</sup> *DPP v Duffy* [2023] IESC 1 at para 82 (O'Malley J).

<sup>96</sup> *DPP v Duffy* [2023] IESC 1 at para 89 (O'Malley J).

<sup>97</sup> *DPP v Duffy* [2023] IESC 1 at para 97 (O'Malley J).

such instalments and at such times as the court considers reasonable in all the circumstances. The Commission notes that the court must assess the means of the offender in all cases when determining both whether to make a section 6 compensation order, and the amount of compensation to order.<sup>98</sup>

- [14.74] Section 6 of the CJA 1993 also provides a mechanism for the review of compensation orders. Section 6(8) permits the court, upon application by the offender or the victim, to review a section 6 compensation order that has not been fully complied with. On review, the court can reduce, increase, or vary the balance or instalments to be paid, within its jurisdictional limits, if the court is satisfied that there has been a change in the convicted person's financial circumstances. Before making any such order, the court must provide both the victim and the convicted person with an opportunity to be heard.<sup>99</sup> This permits the Court to revisit the amount of a section 6 compensation order if it is unsure whether the offender will have the means to fulfil the order or if the offender's circumstances change either positively or negatively.
- [14.75] Therefore, the courts are permitted to make a section 6 compensation order where an offender has limited means, including by providing that payments can be made in instalments.
- [14.76] The Commission does not consider that section 6 compensation orders should be made in all cases, especially where it appears to the court that the offender has no way of fulfilling such an order. An obligation to have regard to an offender's means is important to prevent an order being made that poses too heavy a financial burden on the offender and may lead to further offending to meet its requirements.<sup>100</sup> Equally, an offender or their family might feel under pressure to obtain money for compensation through burdensome loans which may lead to deprivation for the family.<sup>101</sup>
- [14.77] Similarly, a judge should not feel obliged to make a section 6 compensation order in circumstances where an accused might no longer be able to pay the expected compensation if a custodial sentence is imposed (for example because they will no longer be in employment). The Commission considers that a judge should impose a custodial sentence if appropriate, even where the practical effect

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<sup>98</sup> Section 6(5)(a) of the Criminal Justice Act 1993.

<sup>99</sup> Section 6(8) of the Criminal Justice Act 1993.

<sup>100</sup> Miers, *Criminal Injuries Compensation: State and Offender Compensation for Violent Crime* (Oxford University Press 2018) at page 266.

<sup>101</sup> Miers, *Criminal Injuries Compensation: State and Offender Compensation for Violent Crime* (Oxford University Press 2018) at chapter 8.

of this may be to eliminate or postpone an offender's ability to meet a compensation order.<sup>102</sup>

- [14.78] In addition, the Commission acknowledges that a key rationale for the existence of the Criminal Injuries Compensation Scheme is that it provides a way of compensating victims of crime where an offender does not have sufficient means and will not be able to compensate the victim. This means victims may still obtain compensation, even where an offender is unable to make such a payment.
- [14.79] The Commission also notes Murray J's observation in *DPP v Lyons*<sup>103</sup> that a blanket policy of never making section 6 compensation orders would be incompatible with the duty of the court. Murray J stated that the Oireachtas "clearly envisaged that a 'compensation order', as they are described in the section, should be made in appropriate cases, having regard to a person's means".<sup>104</sup> The Commission notes that there is no evidence of a blanket policy of never making section 6 compensation orders, but emphasises that limited means should not be an insurmountable obstacle to the making of an order. If the offender has limited means, the court should give consideration to making a section 6 compensation order but providing that compensation can be paid in instalments, in line with section 6(6) of the CJA 1993.
- [14.80] The Commission notes the legislature's intentions in providing for compensation orders in Irish law. During the Oireachtas debates on the Bill proposing section 6 compensation orders, compensation was highlighted as "a very important element of criminal justice".<sup>105</sup> It was noted that "insisting on the payment of compensation is the best way to make some restitution to the victim".<sup>106</sup> In fact, the then Minister for Justice stated during a Dáil debate on section 6 of the Bill that "the law will now be such that the making of a compensation order will be the norm rather than the exception".<sup>107</sup>
- [14.81] The Commission considers that the sentencing court's broad discretion to consider a section 6 compensation order warrants reconsideration. This is not to say that the court should not retain the discretion to make a section 6

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<sup>102</sup> See discussion in *DPP v Doherty* [2022] IECA 201 at para 22 (McCarthy J).

<sup>103</sup> *DPP v Lyons* [2014] IECCA 27 (Murray J) at para 22.

<sup>104</sup> *DPP v Lyons* [2014] IECCA 27 (Murray J) at para 22.

<sup>105</sup> Eamon Walsh, Dáil Éireann Debates (10 March 1993) vol 427 no 7 <<https://www.oireachtas.ie/en/debates/debate/dail/1993-03-10/speech/42/>> accessed 23 March 2026.

<sup>106</sup> Eamon Walsh, Dáil Éireann Debates (10 March 1993) vol 427 no 7 <<https://www.oireachtas.ie/en/debates/debate/dail/1993-03-10/speech/42/>> accessed 23 March 2026.

<sup>107</sup> Minister for Justice (Máire Geoghegan-Quinn), Dáil Éireann Debates (10 March 1993) vol 427 no 7 <<https://www.oireachtas.ie/en/debates/debate/dail/1993-03-10/speech/42/>> accessed 23 March 2026.

compensation order in appropriate circumstances, but rather that the discretion to consider or not consider an order could be circumscribed by particular requirements, such as the giving of reasons, as discussed in detail below.

*(ii) Comparative jurisdictions*

- [14.82] The approach varies across jurisdictions in relation to whether the consideration of a compensation order is mandatory, or left to the court's discretion, and in what circumstances it is appropriate for the court to make a compensation order where it has such a discretion.
- [14.83] A number of jurisdictions approach the issue in a similar way to Ireland. In France<sup>108</sup> and Germany<sup>109</sup> the court has discretion to make a compensation order, and does not have to give reasons where it does not make an order.
- [14.84] However, in Victoria,<sup>110</sup> New Zealand,<sup>111</sup> and Canada,<sup>112</sup> the courts must give reasons for not making a compensation order in a particular case. In Victoria, if a court decides to make a compensation order, it may, in determining the amount and method of payment of the compensation, take into account, as far as practicable, the offender's financial circumstances and the burden that the compensation payment will impose. However, this is not mandatory.<sup>113</sup> A court is not prevented from making a compensation order only because it has been unable to find out the financial circumstances of the offender.<sup>114</sup>
- [14.85] In 2018, the Victoria Sentencing Advisory Council examined compensation orders in the Sentencing Act 1991, and considered whether the court's discretion to have regard to the offender's means should be removed.<sup>115</sup> The Council ultimately recommended retaining a court's discretion to consider an offender's financial circumstances when making a compensation order, noting that:

“the reality is that a large proportion of offenders have limited financial resources. Removing a judicial officer's ability to consider the financial circumstances and prospects of the offender in determining a compensation order is likely to lead to more orders

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<sup>108</sup> Article 131-8-1 of the Penal Code (France).

<sup>109</sup> Section 406 of the Code of Criminal Procedure (Germany).

<sup>110</sup> Section 85J(1) of the Sentencing Act 1991 (Victoria).

<sup>111</sup> Section 12(3) of the Sentencing Act 2002 (New Zealand).

<sup>112</sup> Section 737.1(5) of the Criminal Code (Canada).

<sup>113</sup> Section 85H(1) of the Sentencing Act 1991 (Victoria).

<sup>114</sup> Section 85H(2) of the Sentencing Act 1991 (Victoria).

<sup>115</sup> Sentencing Advisory Council, *Restitution and Compensation Orders Report* (2018).



being made against offenders who have no realistic chance of making payment.”<sup>116</sup>

- [14.86] In England and Wales, the Sentencing Act 2020 provides for an order of compensation from an offender in criminal proceedings,<sup>117</sup> similar to section 6 of the CJA 1993. However, the Sentencing Council of England and Wales has made clear that in all cases, the court must consider whether to make a compensation order.<sup>118</sup> This means that a victim does not need to apply to seek compensation for the court to consider making an order.<sup>119</sup> According to Miers, the rationale behind the imposition of such a duty related to the UK government’s broad concern “that the criminal justice system was neither meeting its objectives with regard to the rehabilitation of offenders nor recognising the interests of victims of crime”.<sup>120</sup> This was coupled with a desire to reduce the financial burden of the state-funded Criminal Injuries Compensation Scheme.<sup>121</sup> In addition, the government wished to “move away from a culture of state compensation towards one of offenders making direct reparation for the harm they caused”.<sup>122</sup>
- [14.87] The position is similar in Canada. Under the Canadian Victims Bill of Rights Act 2015, every victim has the right to have the court consider making a restitution order (a form of compensation order) against the offender.<sup>123</sup>
- [14.88] In determining whether to make a compensation order against an offender, or the amount to be paid under such an order, the courts in England and Wales and also in Northern Ireland<sup>124</sup> must have regard to the offender’s means, so far as they appear or are known to the court.<sup>125</sup>

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<sup>116</sup> Sentencing Advisory Council, *Restitution and Compensation Orders Report* (2018) at para 4.123.

<sup>117</sup> Section 133 of the Sentencing Act (England and Wales).

<sup>118</sup> Sentencing Council, *Magistrates’ Court Sentencing Guidelines* and Sentencing Council, *Crown Court Sentencing Guidelines*. The Sentencing Council continues to update these sentencing guidelines.

<sup>119</sup> See also *R v Plackett* [2024] EWCA Crim 1205.

<sup>120</sup> Miers, *Criminal Injuries Compensation: State and Offender Compensation for Violent Crime* (Oxford University Press 2018) at page 240. See further Ministry of Justice, *Getting it right for victims and witnesses* (2012).

<sup>121</sup> Miers, *Criminal Injuries Compensation: State and Offender Compensation for Violent Crime* (Oxford University Press 2018) at page 240.

<sup>122</sup> Miers, *Criminal Injuries Compensation: State and Offender Compensation for Violent Crime* (Oxford University Press 2018) at page 240.

<sup>123</sup> Section 16 of the Canadian Victims Bill of Rights Act 2015 (Canada).

<sup>124</sup> Section 14(9) of the Criminal Justice (Northern Ireland) Order 1994.

<sup>125</sup> Section 135(3) of the Sentencing Act 2020 (England and Wales). For an example of how this operates in practice, see *R v York* [2018] EWCA Crim 2754.

[14.89] Notably, in England and Wales, a court must give reasons, on passing sentence, if it does not make a compensation order in a case where it has the power to do so.<sup>126</sup> The law is the same in Northern Ireland.<sup>127</sup> Over time, the judiciary in England and Wales has developed reasons for not making a compensation order in certain cases. Historically, the courts of England and Wales have determined that compensation orders are only appropriate in “simple and straightforward” cases where there are no real issues establishing a victim’s injuries and consequent losses, or the offender’s means.<sup>128</sup> The Court of Appeal of England and Wales has observed that compensation orders:

“should certainly not be used when there is any doubt as to the liability to compensate, nor should they be used when there is a real doubt as to whether the convicted man can find the compensation.”<sup>129</sup>

[14.90] In *R v Pola*, the Court of Appeal of England and Wales set out a detailed list of reasons describing when a compensation order should be made:

- There was a clear causal link between the conviction and the injury;
- Sufficient evidence of the gravity of the injury was available to the judge;
- The judge was satisfied that there was no more convenient or practicable alternative route available to the victim;
- The offender had sufficient means to satisfy the order;
- Priority was given to the compensation order over any other financial order;
- The order was just and proper having regard to the proven guilt of the offender.<sup>130</sup>

[14.91] The view of the courts in England and Wales in relation to when a compensation order is appropriate is largely similar to the view outlined by the Irish Supreme Court in *DPP v Duffy*. However, the Commission considers that the approach in England and Wales, which requires reasons for not making an order, adds clarity to the circumstances in which compensation orders will be made. Such clarity is important for both victims and offenders.

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<sup>126</sup> Section 55 of the Sentencing Act 2020 (England and Wales). See also *R v Plackett* [2024] EWCA Crim 1205.

<sup>127</sup> Section 14(1) of the Criminal Justice (Northern Ireland) Order 1994.

<sup>128</sup> See *Donovan* (1981) 3 Cr App R (S) 192; *R v Horsham Justices, ex parte Richards* [1985] 1 WLR 986; and *R v Kneeshaw* [1974] 2 WLR 432. This was reiterated recently in *R v ANZ* [2025] EWCA Crim 778 at para 27 (Fraser LJ).

<sup>129</sup> *R v Inwood* [1974] 1974) 60 Cr App R 70 at page 6 (Scarman LJ).

<sup>130</sup> *R v Pola* [2009] EWCA Crim 655 at para 35.

*(iii) Submissions*

- [14.92] In the Commission's Consultation Paper, consultees were asked how section 6 compensation orders could be improved. One consultee stated that where judges decline to make a section 6 compensation order, they should be required to give reasons for their decision. This is in line with the position in many of the jurisdictions discussed above. The Commission considers that an obligation to provide reasons would provide clarity for both victims and offenders as to when it is appropriate to make a section 6 compensation order.

*(iv) Proposals for reform*

- [14.93] The Commission considers that the current provision under section 6 of the CJA 1993 is not robust enough to encourage the use of section 6 compensation orders to become the norm in criminal cases, where appropriate. The Commission notes that the courts have the power to make a section 6 compensation order after a conviction for any offence, unlike the state-funded compensation scheme which is limited to crimes of violence. However, it is not mandatory for the courts to consider making a section 6 compensation order, and it appears that this power is not often used in practice. The courts have a broad discretion currently as to when they will make a section 6 compensation order, but it is not always clear why they decide not to make one. Taking into account the findings in *DPP v Duffy*, the approach in other jurisdictions, and the views of consultees, the Commission recommends that an obligation should be placed on the courts to consider the making of a section 6 compensation order in all criminal cases where the victim has suffered any personal injury or loss as a result of the offence.
- [14.94] In addition, courts should be obliged to give reasons as to why they have not made a section 6 compensation order in a particular case where the victim has suffered any personal injury or loss as a result of the offence. The Commission recommends that a non-exhaustive list of reasons should be introduced into the CJA 1993. The Commission notes that section 6(5) of the CJA 1993 provides that:

"In determining whether to make a compensation order against a person, and in determining the amount of the compensation, the court shall have regard—

(a) to his means, or

(b) in a case to which section 99 of the Children Act, 1908 (which empowers a court to require a parent or guardian to pay any fine, damages or costs imposed on or awarded against a child or young person), applies, to the means of the parent or guardian,

so far as they appear or are known to the court and for that purpose the court may require the convicted person or his parent or guardian, as the

case may be, to give evidence as to his means and financial commitments.”

[14.95] The Commission considers that the additional reasons it identifies below as potential reasons for not making a section 6 compensation order should be inserted into this section of the CJA 1993. These reasons should address the circumstances where it would not be appropriate to make a section 6 compensation order, in order to provide assistance to judges, predictability for victims, and further clarity for all interested parties as to when a compensation order is likely to be made.

[14.96] The Commission recommends that reasons for the court not making a section 6 compensation order, to be inserted into section 6(5) of the CJA 1993, could include the following:

- The means of the offender. For example, if the offender has no means, a section 6 compensation order will not be appropriate as the offender will be unable to fulfil the order.
- Noting that family members may end up providing the finances to fulfil a section 6 compensation order, the court can decline to make a section 6 compensation order if it may result in undue hardship for the offender or the offender’s dependants, or any other special circumstances would make it inappropriate.
- Circumstances where it would be too complicated for the court to assess an appropriate amount of compensation, and the expertise of a civil court is required to make this assessment.
- The offender has made a voluntary offer of compensation to the victim. A voluntary payment of compensation by the offender is generally regarded as a mitigating factor at sentencing in Ireland where the court finds that the offer of payment is a genuine demonstration of remorse. The Commission does not consider this practice warrants reform and the court may consider a section 6 compensation order would place an unfair burden on an offender if imposed in addition to a voluntary payment.<sup>131</sup>

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<sup>131</sup> According to O’Malley J: “if an accused person makes an offer of compensation and the sentencing court finds that there are realistic grounds for thinking that the offer does indeed reflect acceptance of responsibility, remorse and a prospect for rehabilitation, such a voluntary offer should not be converted into a s.6 order. To do so would mean depriving the accused of the mitigatory element”. *DPP v Duffy* [2023] IESC 1 at para 90 (O’Malley J).

- The view of the victim regarding the making of an order (for instance where the victim has sued, or intends to sue, for damages in civil proceedings).
- The making of a section 6 compensation order would not be in the interests of justice. For example, the court may cite the interests of justice where the court considers that making a section 6 compensation order would be unfair in the circumstances, or the impact on the offender of the order would be so negative as to impact on their fundamental rights.

- R. 14.6 The Commission recommends** that the Criminal Justice Act 1993 should be amended to place a duty on the sentencing court to consider making a section 6 compensation order on conviction of any person of an offence, where the victim has suffered any personal injury or loss as a result of the offence.
- R. 14.7 The Commission recommends** that where a court declines to make a compensation order under section 6 of the Criminal Justice Act 1993, where the victim has suffered any personal injury or loss as a result of the offence, it should provide reasons for not making such an order.
- R. 14.8 The Commission recommends** that the following reasons can be considered examples of valid reasons for not making such an order, and should be inserted into section 6(5) of the Criminal Justice Act 1993 as a non-exhaustive list:
- The means of the offender are insufficient to pay a section 6 compensation order;
  - A section 6 compensation order may result in undue hardship for the offender or the dependants of the offender, or any other special circumstances would make it inappropriate;
  - Identifying the appropriate measure of compensation is complex or not capable of summary assessment;
  - The offender has made a voluntary offer of compensation to the victim;
  - The victim is of the view that an order should not be made (for instance where the victim has sued, or intends to sue, for damages in civil proceedings); or,
  - Where the making of a section 6 compensation order appears to the court to not be in the interests of justice.

#### (d) Appropriate amount of compensation

##### (i) *Current law*

[14.97] Under section 6(2) of the CJA 1993, the amount of compensation payable under a compensation order shall be of such amount as the court considers

“appropriate”. The amount that an offender can be ordered to pay under a section 6 compensation order is limited by other provisions of the CJA 1993. When determining the amount of compensation to be ordered, the court must have regard to any evidence and to any representations that are made by or on behalf of the convicted person, the injured party or the prosecutor.<sup>132</sup> In addition, as discussed above, the court must take into account the offender’s means when determining the amount of a section 6 compensation order.<sup>133</sup> Such orders can also be paid in instalments.<sup>134</sup>

[14.98] The amount payable under a section 6 compensation order cannot exceed the full value of the compensation that a victim would be entitled to receive in a successful civil action, and, if the order is made in the District Court, the amount shall not exceed the amount of damages that the court is empowered to order in a civil case.<sup>135</sup> The CJA 1993 also provides that where a section 6 compensation order has already been made and damages are subsequently awarded in civil proceedings (which are more than the amount of the section 6 compensation order), then the victim will only be paid the additional amount – that is, the difference between the compensation payment and the payment awarded in the civil proceedings.<sup>136</sup> If the civil damages are less than the amount of the section 6 compensation order, then the victim will be required to pay back the offender the additional amount they received under the section 6 compensation order.<sup>137</sup> In addition, once an award of compensation is made in civil proceedings, then a section 6 compensation order will no longer have effect.<sup>138</sup> Section 9 of the CJA 1993 states that:

“Where —

- (a) a compensation order has been made in favour of a person,  
and
- (b) damages in respect of the injury or loss concerned fall to be  
assessed in civil proceedings,

then —

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<sup>132</sup> Section 6(2) of the Criminal Justice Act 1993.

<sup>133</sup> Section 6(5) of the Criminal Justice Act 1993.

<sup>134</sup> Section 6(6) of the Criminal Justice Act 1993.

<sup>135</sup> Section 6(2) of the Criminal Justice Act 1993.

<sup>136</sup> Section 9 of the Criminal Justice Act 1993.

<sup>137</sup> Section 9 of the Criminal Justice Act 1993.

<sup>138</sup> Section 9 of the Criminal Justice Act 1993.

(i) if the damages, as so assessed, exceed any amount paid under the compensation order, the damages awarded shall not exceed the amount of that excess, and

(ii) if any amount paid under the compensation order exceeds the damages, as so assessed, the court may order that the amount of the excess be repaid by that person to the person against whom the compensation order was made,

and, upon the award of damages or, as the case may be, the making of the order by the court, the compensation order shall cease to have effect.”

[14.99] This prevents the victim from being doubly compensated for the same injury or loss. Double compensation in the context of offender compensation is addressed in detail in the Chapter on Preventing Double Compensation in this Report.

[14.100] As noted above, section 6(5) of the CJA 1993 places a requirement on courts to take into account an offender’s means when determining whether to make a compensation order and in determining the amount of compensation to order. This requires an assessment of the offender’s means “so far as they appear or are known to the court”.<sup>139</sup> The court may, for that purpose, require the convicted person to provide evidence of their means and financial commitments.<sup>140</sup> There is no minimum amount of compensation that can be ordered under section 6, but, as noted above, the amount must not exceed the amount of compensation that would be awarded to the victim in civil proceedings.<sup>141</sup> However, as already discussed, the amount of compensation ordered will usually reflect what the offender can afford.

[14.101] The Commission observes that it may be difficult for the court to determine what would be an “appropriate” amount of compensation in a given case, without sufficient evidence. Section 6(2) of the CJA 1993 provides that in determining an appropriate amount of compensation, the court should have regard to any evidence and representations made by the victim, as well as the convicted person and prosecutor. The Commission considers that the victim’s evidence and representations can best be provided through a victim impact statement, which provides an opportunity for the victim to outline their verifiable losses and the broader impact of the crime on them, including their pain and suffering. The

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<sup>139</sup> Section 6(13) of the Criminal Justice Act 1993 provides that when a court is assessing the means of a person, it must take into account their financial commitments.

<sup>140</sup> Section 6(5) of the Criminal Justice Act 1993.

<sup>141</sup> Section 6(2) of the Criminal Justice Act 1993.

opportunity for a victim to provide evidence or make representations to the court is provided for under section 5 of the CJA 1993.

*(ii) Comparative jurisdictions*

[14.102] Common and civil law jurisdictions vary regarding how the court will calculate an appropriate amount of court-ordered compensation. Victims in France<sup>142</sup> and Germany<sup>143</sup> must provide supporting documents to the court outlining the damage they have suffered, to assist the court when assessing the amount of compensation to be ordered. This reflects the situation in Ireland under the CJA 1993 where victims can outline their losses to the court in a victim impact statement. Similarly, as outlined above, in Northern Ireland a court must take into account the means of the offender when determining an amount of compensation to order.<sup>144</sup> The victim can also outline their losses to the court in a victim statement.

[14.103] In Canada, as noted above, the court can adjourn proceedings to permit victims to indicate whether they are seeking compensation, or to establish their losses and damages, if the court is satisfied that the adjournment would not interfere with the proper administration of justice.<sup>145</sup> Victims must outline their losses in a form, and the amount of these losses must be readily ascertainable.<sup>146</sup> Further guidance to the court as to how to compensate particular forms of damage are outlined in section 738(1) of the Criminal Code. This guidance deals with matters such as how to calculate the amount of compensation for property loss or destruction, and what can be compensated where the offender's intimate partner or child is the victim.<sup>147</sup> The offender's financial means or ability to pay does not prevent the court from making a restitution order.<sup>148</sup> The Commission considers that the guidance offered to courts in Canada under the Criminal Code is instructive. However, the Commission believes that it is preferable that a court in Ireland would assess the relevant factors to make an appropriate section 6 compensation order without adjourning proceedings and, if an adjournment is necessary, it should not unduly prolong sentencing.<sup>149</sup>

<sup>142</sup> Article 420-1 of the Code of Criminal Procedure (France).

<sup>143</sup> Section 404(1) of the Code of Criminal Procedure (Germany).

<sup>144</sup> Section 14(9)(a) of the Criminal Justice (Northern Ireland) Order 1994.

<sup>145</sup> Section 737.1(3) of the Criminal Code (Canada).

<sup>146</sup> Section 737.1(4) of the Criminal Code (Canada).

<sup>147</sup> Section 738(1) of the Criminal Code (Canada).

<sup>148</sup> Section 739.1 of the Criminal Code (Canada).

<sup>149</sup> According to O'Malley J, section 6 compensation orders should be made in cases where "it is clear that the injured party would be entitled to seek an award of damages in civil proceedings, the accused person has means and an order can be made without unduly prolonging the sentencing process". *DPP v Duffy* [2023] IESC 1 at para 97 (O'Malley J).



[14.104] The Commission considers that other jurisdictions offer useful precedents for the Irish context. In New Zealand, a court cannot impose a sentence or an order of reparation if it would result in undue hardship for the offender or the offender's dependants, or if any other special circumstances would make it inappropriate.<sup>150</sup> In order to assess what damage has occurred, the court can order the preparation of a reparation report, which will include information on the nature and value of the victim's loss or damage, the financial capacity of the offender and the maximum amount that the offender is likely to be able to pay under a sentence of reparation.<sup>151</sup> The Commission believes it is useful for the court to be aware of a victim's losses in as much detail as possible, to ensure the amount of the compensation order will cover their losses to the extent possible.

[14.105] In Victoria, a court can make a compensation order for such an amount as it sees fit,<sup>152</sup> which may be made up of amounts:

“(a) for pain and suffering experienced by the victim as a direct result of the offence;

(b) for some or all of any expenses actually incurred, or reasonably likely to be incurred, by the victim for reasonable counselling services as a direct result of the offence;

(c) for some or all of any medical expenses actually and reasonably incurred, or reasonably likely to be incurred, by the victim as a direct result of the offence;

(d) for some or all of any other expenses actually and reasonably incurred, or reasonably likely to be incurred, by the victim as a direct result of the offence, not including any expense arising from loss of or damage to property.”<sup>153</sup>

[14.106] As noted above, evidence can be given to the court by the victim, offender, or another person, to assist the court when determining whether to grant the application for compensation.<sup>154</sup> A victim impact statement can assist the court when determining the amount of a compensation order,<sup>155</sup> and the court also has

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<sup>150</sup> Section 12(1) of the Sentencing Act 2002 (New Zealand).

<sup>151</sup> Section 33(1) of the Sentencing Act 2002 (New Zealand).

<sup>152</sup> Section 85B(1) of the Sentencing Act 1991 (Victoria).

<sup>153</sup> Section 85B(2) of the Sentencing Act 1991 (Victoria).

<sup>154</sup> Section 85G of the Sentencing Act 1991 (Victoria).

<sup>155</sup> Section 85F(2)(d) of the Sentencing Act 1991 (Victoria).

discretion whether or not to take into account an offender's means when making a compensation order.<sup>156</sup>

[14.107] In England and Wales, the amount of compensation that a court may order must be the amount that the court considers appropriate, having regard to any evidence and any representations that are made by or on behalf of the offender or the prosecution.<sup>157</sup> In determining the amount of compensation, the court must have regard to the offender's means, in so far as they appear or are known to the court.<sup>158</sup> However, in addition, the Sentencing Council have provided useful guidance to the courts when determining the amount of compensation, which the Commission believes offers clarity for all parties in proceedings.<sup>159</sup> The court can consider two types of loss: financial loss, and pain and suffering which includes interference with day-to-day activities. When assessing pain and suffering, the court can determine this "in light of all factors that appear to the court to be relevant, including any medical evidence, the victim's age and personal circumstances".<sup>160</sup> Like in Ireland, victims can also outline any financial injury they have suffered as a result of the crime in their victim personal statement.<sup>161</sup> This statement can have an impact on whether the court will order compensation, or the amount ordered.<sup>162</sup> In England and Wales, victims must be offered an opportunity to make a victim personal statement.<sup>163</sup>

[14.108] The Commission notes that the Sentencing Council in England and Wales also provides information on what compensation is usually offered for commonly encountered physical and mental injuries. The ranges are consistent with the amounts that can be recovered in civil claims. The seriousness of the victim's injuries and the effects of the injuries on the victim will determine the range of

<sup>156</sup> Section 85H of the Sentencing Act 1991 (Victoria).

<sup>157</sup> Section 135(2) of the Sentencing Act 2020 (England and Wales).

<sup>158</sup> Section 135(3) of the Sentencing Act 2020 (England and Wales).

<sup>159</sup> Sentencing Council, "Compensation" <<https://sentencingcouncil.org.uk/supplementary-information/compensation/>> accessed 23 March 2026.

<sup>160</sup> Sentencing Council, "Compensation" <<https://sentencingcouncil.org.uk/supplementary-information/compensation/>> accessed 23 March 2026.

<sup>161</sup> *Joint Agency Guide to the Victim Personal Statement: A guide for all criminal justice practitioners* (2018) at para 32 <<https://assets.publishing.service.gov.uk/media/5b991d3ee5274a1391b13978/joint-agency-guide-victim-personal-statement.pdf>> accessed 23 March 2026. The right to make a victim personal statement is provided for in the Victims' Code (England and Wales).

<sup>162</sup> *Joint Agency Guide to the Victim Personal Statement: A guide for all criminal justice practitioners* (2018) at para 44 <<https://assets.publishing.service.gov.uk/media/5b991d3ee5274a1391b13978/joint-agency-guide-victim-personal-statement.pdf>> accessed 23 March 2026.

<sup>163</sup> Right 7 of the Victims' Code (England and Wales).

compensation they can receive.<sup>164</sup> The ranges must be used in conjunction with the general guidance on compensation provided by the Sentencing Council, as explained above.

[14.109] The Commission believes that the additional guidance provided to the courts in Victoria, and in England and Wales, provides clarity and consistency in decision-making. In particular, the Commission considers that the guidance prepared by the Sentencing Council in England and Wales, allowing courts to have regard to what would be paid in civil proceedings when determining the amount of a compensation order, could be useful in the Irish context. In Ireland, this information is outlined in the Personal Injuries Guidelines, and the Commission believes that the court could have regard to these guidelines, alongside evidence of both victims' losses and offenders' means.

### *(iii) Submissions*

[14.110] The Commission asked in its Consultation Paper how section 6 compensation orders could be improved. One submission suggested that at sentencing, a judge could be informed of the amount of compensation which should be due to the victim (by referencing how much the Criminal Injuries Compensation Tribunal would pay for similar injuries), and then the judge could make a sentence which takes into account how much the offender can pay and that the shortfall will be paid by the State through the Scheme. The Commission notes, however, that the CJA 1993 makes clear that the amount of compensation ordered under section 6 must align with the amount a victim would be awarded in civil proceedings,<sup>165</sup> and not the amount that would be awarded by the Criminal Injuries Compensation Tribunal. However, the Commission recommends in the Chapter on Preventing Double Compensation that where the victim has been paid compensation by the statutory body, and the offender is later subject to a section 6 compensation order that is intended to cover the same losses or injury, the sentencing judge should be empowered to order that the section 6 compensation should be repaid directly to the State and be recoverable by the State if it is not repaid.

### *(iv) Proposals for reform*

[14.111] The Commission observes that assessing the appropriate amount of compensation for a victim may be challenging in the context of criminal proceedings. It can depend on a range of factors, including how well the victim has outlined their losses, the available means of the offender, and the extent to which the victim has suffered as a result of their injuries. The Commission believes

<sup>164</sup> Sentencing Council, "Compensation" <<https://sentencingcouncil.org.uk/supplementary-information/compensation/>> accessed 23 March 2026.

<sup>165</sup> Section 6(2) of the Criminal Justice Act 1993.

that the practices in England and Wales and in Victoria could provide useful precedents where additional guidance is given to the courts on what amount of compensation to order in particular circumstances, alongside any representations from the victim and offender, including an assessment of the offender's means. Such guidance can include, for example, the level of compensation awarded in civil proceedings for particular injuries, and the appropriate way to compensate a victim for pain and suffering.

[14.112] General compensation payments for pain and suffering, in particular, as discussed in the Chapter on Determining Fair and Appropriate Compensation, can be difficult to calculate in monetary terms. Pain and suffering cannot be assessed precisely in the same way as verifiable expenses through, for example, receipts and invoices. The Commission therefore recommends that the court should have regard to the Personal Injuries Guidelines when determining an appropriate amount for a section 6 compensation order. This will facilitate a compensation payment that can compensate the victim for pain and suffering as well as for verifiable expenses and loss of earnings, as may be appropriate.<sup>166</sup> The Commission believes that this would be appropriate because where the offender has the means to provide this level of compensation, it would be helpful for the victim not to have to take separate civil proceedings to obtain the full level of compensation they would otherwise be entitled to. This is the key rationale behind the EU imperative for victims to receive a decision on offender compensation in the course of criminal proceedings, as discussed above.

**R. 14.9 The Commission recommends** that the Criminal Justice Act 1993 should be amended to provide that courts should be empowered to have regard to the Personal Injuries Guidelines when determining the appropriate amount of compensation under a section 6 compensation order.

## (e) Enforcement

### (i) Current law

[14.113] The CJA 1993 provides enforcement mechanisms for section 6 compensation orders, which mirror the enforcement procedures for child maintenance orders under the Family Law (Maintenance of Spouses and Children) Act 1976 ("FLA 1976").<sup>167</sup> The payment of compensation under a section 6 compensation order

<sup>166</sup> The Judicial Council, *Personal Injuries Guidelines* (2021).

<sup>167</sup> Section 7(2)(c)(i), (ii) and (iii) of the Criminal Justice Act 1993 outlines specific modifications to provisions of the 1976 Act which should be made when these provisions apply to compensation orders. For example, references to "payments" include payments under a compensation order; references to the "maintenance creditor" include the injured party; references to an "antecedent order" include a compensation order; references to the "maintenance debtor" include the convicted person or his parent or guardian where

can be made by the offender to the District Court clerk, who then pays this to the victim.<sup>168</sup> Alternatively, payments can be taken directly from an offender's salary (in legal terms, an attachment of earnings order).<sup>169</sup> Or, if an offender does not pay the section 6 compensation order, the offender's goods can be sold in order to pay it (in legal terms, a warrant of distress and sale).<sup>170</sup>

[14.114] The Commission notes that the provisions of the FLA 1976 providing for enforcement are currently under review because of issues with their effectiveness. In 2024, the Department of Justice published a *Review of the Enforcement of Child Maintenance Orders*,<sup>171</sup> which outlined challenges with the law and multiple proposals for reform of the FLA 1976. Consultees to the Commission's Consultation on Compensating Victims of Crime raised problems with enforcement of section 6 compensation orders as a key obstacle to their effective use. The Commission considers that it is likely that this may be because of the same problems identified in the Department's review, such as delays and resource complaints, cumbersome information requirements, and limits on attachment of earnings orders.<sup>172</sup>

[14.115] Recommendations made by the Department's review in relation to enforcement include the following:

- Attachment orders should be promoted as a method of payment from the outset and should be automatically granted, without representation from the parties concerned, if the offender defaults;
- The possibility of linking attachment orders to the offender's PPSN should be examined further with the Department of Social Protection;

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appropriate; and in relation to periodical payments the reference to a "maintenance order" include a compensation order.

<sup>168</sup> Section 7(2)(a) of the Criminal Justice Act 1993 which relates to section 9(2), 9(4), 9(5) and 9(6) of the Family Law (Maintenance of Spouses and Children) Act 1976.

<sup>169</sup> Section 7(2)(b) of the Criminal Justice Act 1993 which relates to Part 3 of the Family Law (Maintenance of Spouses and Children) Act 1976.

<sup>170</sup> Section 7(2)(c) of the Criminal Justice Act 1993 which relates to section 29 of the Family Law (Maintenance of Spouses and Children) Act 1976.

<sup>171</sup> Department of Justice, *Review of the Enforcement of Child Maintenance Orders* (2024). An outline of enforcement mechanisms under the Family Law (Maintenance of Spouses and Children) Act 1976 is included at pages 14-17.

<sup>172</sup> Department of Justice, *Review of the Enforcement of Child Maintenance Orders* (2024) at pages 22-23.

- There should be information sharing between Revenue, the Department of Social Protection, the Department of Agriculture (for information on grants and subsidies), and the Courts Service;
- Deductions from social welfare, the offender's bank accounts, from government grants and subsidies and allowing for the recovery of arrears from tax refunds should be allowed;
- The courts should have the power to make third party discovery orders and to order banks/financial institutions to disclose account details of the parties;
- There should be a single enforcement procedure where the injured party makes an application and the judge can choose the most appropriate enforcement option based on the circumstances of the case;
- The number of enforcement options and penalties available to the courts for the enforcement of compensation orders should be increased;
- The court should have the power to freeze money and assets held by an offender;
- Where a court has made an order for arrears to be paid, the court should have the power to send the judgment to the Sheriff for enforcement;
- It should be possible to pay arrears from an offender's estate.<sup>173</sup>

[14.116] The Commission considers that these proposed reforms are sensible, and if implemented are likely to result in more effective and efficient enforcement of section 6 compensation orders.<sup>174</sup> The Commission recommends that if these recommendations have not been implemented in the Family Law (Maintenance of Spouses and Children) Act 1976 before section 6 of the Criminal Justice Act 1993 may be revised in line with the Commission's proposals, then the Government should consider amending section 7 of the Criminal Justice Act 1993 to directly reflect the recommendations of the Department's review, to ensure effective

<sup>173</sup> Department of Justice, *Review of the Enforcement of Child Maintenance Orders* (2024) at pages 49-60.

<sup>174</sup> The Minister for Justice indicated in October 2025 that reforms on foot of the review are ongoing. See Dáil Éireann, Written Answers – Court Orders (21 October 2025) <<https://www.oireachtas.ie/en/debates/question/2025-10-21/616/?highlight%5B0%5D=child&highlight%5B1%5D=maintenance>> accessed 23 March 2026.

enforcement of section 6 compensation orders. The Commission makes this recommendation in the expectation that there will be an increase in the making of section 6 compensation orders should the recommendations in this Chapter be implemented.

**R. 14.10 The Commission recommends** that if the recommendations contained in the Report by the Department of Justice's *Review of the Enforcement of Child Maintenance Orders* (2024) that are relevant to the enforcement of section 6 compensation orders have not been implemented in the Family Law (Maintenance of Spouses and Children) Act 1976 before the Criminal Justice Act 1993 is revised, in line with the recommendations on offender compensation in this Chapter, then the Government should consider amending section 7 of the Criminal Justice Act 1993 to directly reflect the recommendations in the *Review of the Enforcement of Child Maintenance Orders* (2024), in so far as they apply to section 6 compensation orders, to ensure effective enforcement of section 6 compensation orders.

# CHAPTER 15 PREVENTING DOUBLE COMPENSATION

|                   |                                                            |            |
|-------------------|------------------------------------------------------------|------------|
| <b>Chapter 15</b> | <b>Preventing Double Compensation</b>                      | <b>532</b> |
| 1.                | <i>Introduction</i>                                        | 535        |
|                   | (a) What is double compensation?                           | 535        |
|                   | (b) Double compensation under the current scheme           | 537        |
|                   | (c) Why is reform necessary?                               | 539        |
|                   | (d) Other sources of compensation                          | 539        |
|                   | (e) Proposal for reform                                    | 548        |
| 2.                | <i>Duty to inform the statutory body of other payments</i> | 549        |
|                   | (a) Current scheme                                         | 549        |
|                   | (b) Comparative jurisdictions                              | 552        |
|                   | (c) Proposal for reform                                    | 554        |
| 3.                | <i>Information regarding double payments</i>               | 557        |
|                   | (a) Current scheme                                         | 557        |
|                   | (b) Comparative jurisdictions                              | 558        |
|                   | (c) Proposal for reform                                    | 560        |
| 4.                | <i>Reductions of compensation payments</i>                 | 562        |
|                   | (a) Current scheme                                         | 562        |
|                   | (b) Comparative jurisdictions                              | 565        |
|                   | (c) Proposal for reform                                    | 567        |
| 5.                | <i>Repayment of compensation by the victim</i>             | 568        |
|                   | (a) Current scheme                                         | 569        |
|                   | (b) Models for repayment in Ireland                        | 569        |
|                   | (c) Comparative jurisdictions                              | 571        |
|                   | (d) Submissions                                            | 577        |
|                   | (e) Proposals for reform                                   | 577        |
| 6.                | <i>Direct recovery by the State</i>                        | 580        |
|                   | (a) Current scheme                                         | 581        |
|                   | (b) Relevant law                                           | 581        |
|                   | (c) Comparative jurisdictions                              | 581        |
|                   | (d) Proposal for reform                                    | 583        |







## 1. Introduction

- [15.1] This Chapter considers the interaction between payments of compensation from state-funded compensation schemes and payments of compensation from other sources. It discusses the concept of 'double compensation', meaning a payment made to an individual to cover expenses, losses or harm that have already been reimbursed by another source.<sup>1</sup> The Chapter examines the various sources of compensation that may be available to a victim of a crime of violence, when double compensation might occur, and how double compensation might be avoided. It does so by examining how these issues are currently dealt with in Ireland, and how they are dealt with in other jurisdictions, before suggesting proposals for reform.
- [15.2] The Commission emphasises that the statutory body should be a payor of last resort, meaning it should make payments of compensation when no other source of compensation is available. The Commission recommends that the statutory body should reduce a payment of compensation by the amount of any payment intended to cover the same expenses, losses or harm already paid to the applicant. It also recommends that if another payment for the same expenses, losses or harm is made to the applicant by another source after the payment by the statutory body, the State should be entitled to repayment of that amount.
- [15.3] The Commission raised the issue of double compensation in its Consultation Paper, but it did not ask a specific question on this issue. This is because the Tribunal currently waits for the conclusion of court proceedings before making decisions on payments of compensation under the existing scheme and therefore, issues of double compensation rarely arise. However, as the Commission is recommending that the statutory body may, in general, make payments of compensation before court proceedings are concluded (as discussed in the Chapter on Interaction with Court Proceedings), the number of double payments covering the same expenses, losses or harm may increase. It is, therefore, important to consider how double payments may be avoided or, if appropriate, recouped, in order to ensure that the State resources used to fund the proposed statutory scheme are used fairly and appropriately.

### (a) What is double compensation?

- [15.4] As highlighted throughout this Report, Article 12 of the European Union ("EU") Directive relating to compensation to crime victims ("Compensation Directive") requires that Member States operate national, state-funded compensation

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<sup>1</sup> The term "expenses, losses or harm" includes verifiable expenses, loss of earnings, and general compensation. These types of loss are explored in further detail in the Chapter on Types of Compensation.

schemes for victims of crimes of violence.<sup>2</sup> This requirement is based on a recognition by Member States that victims should be compensated for the harm caused to them by crimes of violence, and that offender compensation can be difficult and sometimes impossible to obtain – for example, where the perpetrator of the crime of violence is unknown.

- [15.5] However, the European Commission has acknowledged that victims may also seek payments from other sources covering the same expenses, losses or harm, including compensation from a known offender, benefits from different state bodies, sick leave benefit from employers, or insurance payments.<sup>3</sup> State compensation, in most Member States, is regarded as a last resort for financial support, once all other sources have been explored and have failed to provide satisfactory compensation or benefits to a victim.<sup>4</sup> Typically there are procedural and administrative limitations in place within compensation schemes to ensure victims seek payments from all other potential sources before applying to state compensation authorities.<sup>5</sup>
- [15.6] However, as discussed in the Chapter on Interaction with Court Proceedings, in her report to the European Commission President, Special Advisor Milquet has recommended a reversal of this approach. She recommended that Member States should provide victims with upfront payments that can later be reclaimed from other sources, where necessary to avoid double compensation.<sup>6</sup>
- [15.7] Milquet does not question the principle that the duty to compensate victims lies primarily with the offender. However, she emphasises the difficulties in obtaining offender compensation, including cost, time, enforcement, and potentially the lack of means of the offender. She states that upfront payments from the state will benefit victims by helping to avoid the risks of secondary victimisation from repeat exposure to an offender and by ensuring a victim only has to deal with

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<sup>2</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims [2004] OJ L 261/15 (“Compensation Directive”).

<sup>3</sup> European Commission, *Report from the Commission to the Council, The European Parliament and the European Economic and Social Committee on the application of Council Directive 2004/80/EC relating to compensation to crime victims* (SEC (2009) 495) at pages 8-9.

<sup>4</sup> This is known as the principle of “subsidiary application”. See Milquet, *Strengthening Victims’ Rights: from Compensation to Reparation for a new EU Victims’ Rights Strategy 2020-2025* (European Commission 2019) at page 15.

<sup>5</sup> Commission of the European Communities, *Green Paper on Compensation to Crime Victims* (2001) at page 16; Milquet, *Strengthening Victims’ Rights: from Compensation to Reparation for a new EU Victims’ Rights Strategy 2020-2025* (European Commission 2019) at page 15.

<sup>6</sup> Milquet, *Strengthening Victims’ Rights: from Compensation to Reparation for a new EU Victims’ Rights Strategy 2020-2025* (European Commission 2019) at pages 37-38.

one body when seeking compensation. She also emphasises that the choice to pursue an offender lies with the victim.<sup>7</sup>

- [15.8] A number of international instruments set out how double compensation may be avoided by states. For example, the Council of Europe's 1977 Resolution on the Compensation of Victims of Crime and 1983 Convention on the Compensation of Victims of Violent Crimes both allow deductions from state compensation where a victim has received compensation from another source.<sup>8</sup> This can occur at the time of the state compensation payment, or if there is a subsequent payment to the victim from another source intended to cover the same expenses, losses or harm, the state can claim that back.<sup>9</sup> This may be done by the state, or its relevant authority, taking on (in legal terms "subrogating") the person's right to claim compensation from other sources, such as from the offender in civil proceedings.<sup>10</sup> It is for individual states to determine what sources of compensation will constitute double compensation and what, if any, mechanism they use to reclaim later payments covering the same expenses, losses or harm.<sup>11</sup> The Commission's views on other sources of compensation in the context of the proposed statutory scheme are explored below.

### **(b) Double compensation under the current scheme**

- [15.9] The Criminal Injuries Compensation Scheme ("the current scheme") provides that an applicant may apply to the Criminal Injuries Compensation Tribunal ("the Tribunal") for a payment of compensation even if they would be entitled to apply for compensation from another source. However, the Tribunal will decide an application for compensation on the basis that there should be no double

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<sup>7</sup> Milquet, *Strengthening Victims' Rights: from Compensation to Reparation for a new EU Victims' Rights Strategy 2020-2025* (European Commission 2019) at pages 37-38.

<sup>8</sup> Council of Europe Resolution (77) 27 on the Compensation of Victims of Crime (Adopted by the Committee of Ministers on 28 September 1977, at the 275th meeting of the Ministers' Deputies); Article 9 of the Council of Europe, European Convention on the Compensation of Victims of Violent Crimes 1983 (ETS No 116).

<sup>9</sup> Council of Europe Resolution (77) 27 on the Compensation of Victims of Crime (Adopted by the Committee of Ministers on 28 September 1977, at the 275th meeting of the Ministers' Deputies); Article 9 of the Council of Europe, European Convention on the Compensation of Victims of Violent Crimes 1983 (ETS No 116).

<sup>10</sup> Council of Europe Resolution (77) 27 on the Compensation of Victims of Crime (Adopted by the Committee of Ministers on 28 September 1977, at the 275th meeting of the Ministers' Deputies); Article 10 of the Council of Europe, European Convention on the Compensation of Victims of Violent Crimes 1983 (ETS No 116).

<sup>11</sup> Council of Europe, *Explanatory Report to the European Convention on the Compensation of Victims of Violent Crimes* (Council of Europe, 1983) at page 9.

payments for the same expenses, losses or harm. It can either reduce or refuse a payment of compensation to ensure that there will be no double payment.<sup>12</sup>

- [15.10] The current scheme states that compensation will be reduced by the amount of social welfare benefits an applicant is entitled to as a result of the same injury, and by any sick leave payment that they are entitled to under an employment contract.<sup>13</sup> The payment of compensation may also be reduced by the amount already paid by (or on behalf of) the offender in compensation or in damages following a civil claim.<sup>14</sup>
- [15.11] It is possible that an applicant seeking compensation under the current scheme may receive compensation or damages in related civil proceedings (or in an out-of-court settlement) after the Tribunal has made a payment of compensation. Applicants may also receive compensation through voluntary or court-ordered compensation payments by an offender made in the context of a criminal prosecution.<sup>15</sup> The Tribunal can impose conditions on a payment of compensation, including its full or part repayment, if the applicant is paid compensation later from another source.<sup>16</sup>
- [15.12] In order to assess whether double compensation has occurred, the Tribunal may ask for information from other sources. For example, when applying to the current scheme, the Certificate of Authority attached to the application requires applicants to authorise certain parties to provide the Tribunal with relevant information.<sup>17</sup> The information to be provided in the application form and the authorisation under the Certificate of Authority are discussed in greater detail below.<sup>18</sup> While the Tribunal can gather information to assess double payment, there is no specific mechanism for direct recovery by the Tribunal provided for under the current scheme.

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<sup>12</sup> Paragraph 5 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>13</sup> Paragraph 14 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>14</sup> Paragraph 15 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>15</sup> This is discussed further in the Chapter on Offender Compensation.

<sup>16</sup> Paragraph 5 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>17</sup> Criminal Injuries Compensation Scheme, "Application Form (Non-Fatal Injury) Scheme of Compensation for Personal Injuries Criminally Inflicted" (updated 18 July 2025) at section 10(k) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-non-fatal-cases>> accessed 23 March 2026; see also the application form for fatal cases at section 13(k) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-fatal-cases>> accessed 23 March 2026.

<sup>18</sup> See sections 2(a) and 3(a) of this Chapter.

**(c) Why is reform necessary?**

[15.13] The Commission is of the view that double payment for the same expenses, losses or harm should be avoided as far as possible. Recognising that the issue of double compensation may arise in a greater number of cases due to the Commission's proposal that the statutory body should not wait for the conclusion of court proceedings before it makes a payment of compensation, the Commission has considered the issue of double compensation in depth. In this Chapter, the Commission recommends that the principle against double compensation should be retained, and makes some specific recommendations about how double payments can be avoided and recouped.

[15.14] The Commission has identified a number of questions which arise in this context, including the following:

- How to identify other sources of compensation that may constitute double payments;
- Whether there should be an obligation on applicants under the proposed statutory scheme to inform the statutory body of past or future payments and claims;
- Whether payments received by the victim from other sources may be deducted from an award made by the proposed statutory body to avoid double payment;
- Whether there should be provision for the recovery of payments, compensation or damages that an applicant may receive after the statutory body has made a payment of compensation; and
- In what circumstances, if any, should the State or the statutory body take on the applicant's rights to pursue the offender after a payment of compensation has been made.

[15.15] The Commission considers that the starting point for the statutory body should be that any potential source of alternative compensation for the victim should be considered their primary source of compensation. This does not mean that the statutory body should await a victim's pursuit of other sources of compensation before making a payment of compensation. Rather, it means that a victim should be made aware that subsequent payments intended to cover the same expenses, losses or harm will need to be repaid to the State. Therefore, while in terms of timing, the statutory body may pay compensation to the victim first, in terms of priority, the statutory body should remain a "payor of last resort".

**(d) Other sources of compensation**

[15.16] This section identifies other sources of compensation or benefits which may be available to a victim of a crime of violence. It discusses each source of compensation and gives examples of circumstances in which the Commission considers the issue of double payment may arise.

[15.17] As a general rule, the Commission considers that a payment which covers the same expenses, losses or harm as those covered by the proposed statutory scheme, would be a double payment. For example, where a victim receives compensation from another source such as an insurer to cover medical expenses for injuries received in an assault, this would constitute a double payment if the statutory body was to cover the costs of the same medical expenses within the payment of compensation to the victim. However, if the victim receives compensation from another source to cover a wallet stolen as part of the crime of violence, there will be no double compensation because the statutory scheme will not compensate a victim for the loss of property, such as a wallet.<sup>19</sup> The type of payments that the statutory body will make is covered in the Chapter on Types of Compensation.

*(i) Employment leave and social welfare payments*

[15.18] A victim of a crime of violence may receive employment illness leave benefits or social welfare assistance to cover their loss of earnings when they were not able to work because of their injury. As noted above, compensation will be reduced under the current scheme where a victim has received social welfare benefits for their injury.<sup>20</sup> The Tribunal will also consider payments by employers, such as illness leave benefits, in determining the amount of compensation to award to an applicant.<sup>21</sup>

[15.19] The Commission considers that where employment illness leave benefits or social welfare assistance payments are paid in addition to a compensation payment under the proposed statutory scheme, this would be a double payment.

[15.20] For example, where the victim has received benefits that cover some loss of earnings before receiving a compensation payment under the proposed statutory scheme, these payments should be deducted from their compensation payment. Where a victim receives a compensation payment under the proposed statutory

<sup>19</sup> The Commission recommends in the Chapter on Types of Compensation that the statutory body can only compensate a victim for property or equipment lost or damaged as a result of the crime of violence where the property is relied on by the victim as a physical aid, or, where it considers appropriate, the statutory body may compensate a victim for their clothing which was severely damaged in the course of the crime of violence.

<sup>20</sup> Paragraph 14 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>21</sup> Criminal Injuries Compensation Scheme, "Application Form (Non-Fatal Injury) Scheme of Compensation for Personal Injuries Criminally Inflicted" (updated 18 July 2025) at section 9 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-non-fatal-cases>> accessed 23 March 2026; see also the application form for fatal cases at section 11 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-fatal-cases>> accessed 23 March 2026.



scheme for their loss of earnings and they later receive benefits for this loss, this double payment should be recoverable by the State.

- [15.21] Therefore, the Commission recommends that employment leave and social welfare payments for the same expenses, losses or harm should be considered double payments.

**R. 15.1 The Commission recommends** that employment leave and social welfare payments for the same expenses, losses or harm should be considered double payments.

*(ii) Insurance payments*

- [15.22] A victim of a crime of violence may have insurance and their insurer may reimburse them for certain costs following the crime of violence, such as medical expenses to treat their injury.
- [15.23] As stated above, applicants must authorise certain parties to provide information to the Tribunal. This includes an applicant's insurance provider. The Tribunal has previously refused to make an award where an applicant's health insurer paid an expense on their behalf. The rationale was that the applicant "[was] not at a financial loss for this sum and [was] not obliged [...] to re-imburse [their] insurer".<sup>22</sup>
- [15.24] In England, Scotland and Wales, a payment from an insurance policy is not deductible from an award under the Criminal Injuries Compensation Scheme. However, this payment may be considered in relation to a special expenses payment.<sup>23</sup> A special expenses payment may be made where a victim has been unable to work for more than 28 weeks. This payment is intended to cover physical aids (such as adapted vehicles and wheelchairs) or costs for treatment.<sup>24</sup>
- [15.25] The Commission considers that where an insurer has paid a victim directly or reimbursed a victim for certain costs, these costs should not be paid again by the statutory body. This is because the victim will not have suffered a loss as they did not pay these expenses. However, where a victim was required to pay part of the

<sup>22</sup> Criminal Injuries Compensation Tribunal, Case Reference 51140 (20 February 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/51140-20-february-2023/>> accessed 23 March 2026.

<sup>23</sup> Paragraphs 55-56 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales); Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at page 33 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

<sup>24</sup> Criminal Injuries Compensation Authority, "Criminal injuries compensation: a guide" (updated 1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#special-expenses>> accessed 23 March 2026.

expense, or was not refunded in full by their insurer, the part of the expense not covered by the insurer should be covered by the proposed statutory scheme and should not be seen as a double payment.

- [15.26] Occasionally, a victim may receive a payment from their own insurer for the injury they sustained as a result of a crime of violence. Such payment arises on foot of a victim's own insurance policy separately put in place by a victim prior to their injury. In personal injury cases, a civil court does not take into account money paid out by a victim's insurer for their injuries when assessing damages.<sup>25</sup> Similarly, the Commission considers that where a victim has received such an insured payment from their insurance provider for their injury, this should not be seen as a double payment. This is because such policies have been separately funded by or on behalf of the victim.
- [15.27] The Commission has recommended that the statutory body may make payments of compensation for loss of earnings.<sup>26</sup> The Commission is of the view that any loss of earnings covered by an employer, or as part of income protection insurance, for example, should be considered double compensation. However, where an employer does not cover a victim's total loss of earnings, the shortfall could be included in a payment intended to cover loss of earnings under the proposed statutory scheme, where the statutory body considers it is fair and appropriate.
- [15.28] The Commission recommends that where a victim's verifiable expenses or any loss of earnings have been paid directly or refunded by their insurance provider, these expenses should not be recoverable again under the proposed statutory scheme. This does not apply to any sum payable in respect of the injury under a victim's own insurance policy.

**R. 15.2 The Commission recommends** that where a victim's verifiable expenses or any loss of earnings have been paid directly or refunded by their insurance provider, these expenses should be considered a double payment. This does not apply to a payment made under the victim's own insurance policy for the injury they sustained as a result of a crime of violence, which may be of the same nature as a general compensation payment.

### *(iii) Charitable payments and donations*

- [15.29] Victims, and in the case of fatal injuries, their survivors, may receive charitable payments or individual donations from extended family, friends, or the public to

<sup>25</sup> Section 2(a) of the Civil Liability (Amendment) Act 1964 (as amended).

<sup>26</sup> Compensation for loss of earnings is discussed in further detail in the Chapter on Types of Compensation.

help with financial losses which were sustained as a result of the crime of violence.

[15.30] In personal injuries cases in the civil courts, charitable gifts made to the plaintiff are not taken into account in the assessment of damages. There are two exceptions to this rule. These arise where the defendant is the donor of the gift and either:

- (a) the defendant has informed the plaintiff that they will apply to the court for the damages to be reduced by an amount equal to the gift, or
- (b) where the plaintiff is employed by the defendant, the gift consists of a series of payments that resemble the normal remuneration the plaintiff would be entitled to in the course of their employment.<sup>27</sup>

[15.31] Looking to other jurisdictions, in England, Scotland and Wales, donations received to fund funeral costs, including through crowdfunding from sites such as GoFundMe, are considered charitable donations. Charitable donations are not to be taken into account by claims officers when assessing the amount of compensation payments.<sup>28</sup> The California Victim Compensation Board has clarified that victims can receive both GoFundMe donations and compensation awarded by the Board, but that compensation cannot be used to reimburse expenses already paid for by donations.<sup>29</sup> In the Netherlands, the Criminal Injuries Compensation Fund (Schadefonds Geweldsmisdrijven) will assess the amount collected by crowdfunding in the case of a major incident to determine if it should be set off against a compensation payment by the Fund. This will depend on the purpose of the amounts collected.<sup>30</sup> The Fund will generally not deduct the amount received from crowdfunding, unless there is a clear overlap for

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<sup>27</sup> Section 2(2) of the Civil Liability (Amendment) Act 1964, as inserted by section 27(2) of the Civil Liability and Courts Act 2004.

<sup>28</sup> Paragraph 76 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales); Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at page 41 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

<sup>29</sup> California Victim Compensation Board, “California Victim Compensation Board Open Meeting Minutes” (16 March 2023) <<https://victims.ca.gov/meetings/march-16-2023/meeting-minutes-3-16-23/>> accessed 23 March 2026.

<sup>30</sup> Schadefonds Geweldsmisdrijven, “Policy Manual” (1 January 2026) at page 17 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026. This policy applies to “a violent crime – whether or not with a terrorist purpose – during which one or more innocent and random civilians have become victims (injured or deceased), and which violent crime has a substantial impact on society because, due to the threat expressed by the perpetrator, the civilian could have the feeling that he/she could just as easily have become a victim”.

specific payments of compensation, such as funeral expenses or loss of maintenance.<sup>31</sup>

- [15.32] The Commission recommends that since individual donations are entirely voluntary and are essentially an expression of an individual's sympathy with a victim or their family, such payments should not be considered double payments. The statutory body, therefore, should not reduce a payment of compensation by any amount received by a victim as a donation. In addition, the Commission recommends that the State should not claim back money from a victim where they receive an individual donation following a payment of compensation from the statutory body.

**R. 15.3 The Commission recommends** that individual donations to a victim should not be considered a double payment.

*(iv) Voluntary payments by the offender following a criminal prosecution*

- [15.33] As discussed in the Chapter on Offender Compensation, an offender may make a voluntary payment to a victim following a criminal prosecution. Both the amount of the payment and the decision to make the payment are matters for the offender. A victim may choose to accept or decline this offer of compensation. If a victim does accept an offer, there is no formal enforcement procedure. To mitigate against the possibility that the offender might not make the payment, the courts often structure sentencing to ensure that sentencing is not finalised until the payment has been made. This enables a sentencing court to monitor the payment of the promised amount to the victim.
- [15.34] In relation to the current scheme, if a voluntary payment by the offender is made prior to the Tribunal's award and exceeds the amount that would have been awarded under the current scheme, the Tribunal will make no award.<sup>32</sup> In *Decision 52897* (14 October 2022), the Tribunal considered an application where the offender had made an offer of compensation at sentencing and offered to make a further payment at the next hearing as his sentence was not yet finalised. This was confirmed by Gardaí in their report on the crime of violence being considered by the Tribunal. The payment exceeded the total expenses being claimed by the victim.<sup>33</sup> The Tribunal made no award, because compensation had

<sup>31</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 21 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>32</sup> In accordance with paragraphs 9 and 15 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>33</sup> Criminal Injuries Compensation Tribunal, Case Reference 52897 (14 October 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/52897-14-october-2022/>> accessed 23 March 2026.

been paid to the victim by the offender and the claim fell below the minimum award as provided for by the current scheme.<sup>34</sup>

- [15.35] The Commission notes in the Chapter on Offender Compensation that a voluntary payment by an offender may be considered by a court as a mitigating factor at sentencing. The Commission has considered whether a victim should have to repay a voluntary compensation payment from an offender, in light of the fact that the offender themselves may benefit from an offer of a voluntary payment by receiving a lesser sentence. The Commission also notes that voluntary payments by offenders are made in the context of criminal proceedings, as opposed to civil litigation. The voluntary payment made by the offender may be lower than the damages which would have been awarded by a court in a successful civil claim.
- [15.36] The Commission considers that a victim should not have to repay their payment of compensation from the statutory body in the event of a voluntary payment by the offender, unless their total amount of compensation is more than they would be likely to have received in civil proceedings. In other words, the payment of compensation by the statutory body and the voluntary payment from the offender together would have to be larger than the full amount a victim would have received in civil damages, before the statutory body will either reduce a payment of compensation (where the voluntary payment has already been made), or seek repayment (where the voluntary payment is made after the compensation payment has been made).
- [15.37] The Commission believes this to be an appropriate threshold due to the nature of these payments. These payments are made voluntarily by offenders, who decide the amount to offer a victim, and there is no requirement that this amount should reflect the actual expenses, losses or harm suffered by the victim. Voluntary payments by the offender are largely informal, and it may not always be clear what losses the voluntary payment is intended to cover.
- [15.38] Taking into account the above, the Commission recommends that a voluntary payment of compensation from an offender should be considered a double payment, but only to the extent that the total amount of compensation received would be in excess of the likely amount of damages that a victim would have received in a successful civil claim. The statutory body may reference the Personal Injuries Guidelines when assessing this, as well as any relevant contributory factors likely to affect an award. Voluntary payments from the offender are discussed in further detail in the Chapter on Offender Compensation.

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<sup>34</sup> Decision given having regard to paragraphs 5 and 9 of the of the Criminal Injuries Compensation Scheme (31 January 2025).

**R. 15.4 The Commission recommends** that a voluntary payment of compensation from an offender should be considered double payment, but only to the extent that the total amount of compensation received would be in excess of the likely amount of damages that a victim would have received in a successful civil claim. The statutory body may reference the Personal Injuries Guidelines when assessing this, as well as any relevant contributory factors likely to affect an award.

*(v) Court-ordered offender compensation*

- [15.35] As discussed in the Chapter on Offender Compensation, a court may make an order for compensation under section 6 of the Criminal Justice Act 1993. This is not a voluntary payment. The offender is ordered by the court to pay a specific amount of compensation to the victim. Currently, court-ordered offender compensation is less common in practice than voluntary payments by the offender.<sup>35</sup>
- [15.36] Under the current scheme, the Tribunal has taken the approach that court-ordered offender compensation constitutes double payment and has indicated that it will deduct such payments from its awards. For example, the offender in *Decision 50785* (13 May 2022) was convicted and ordered to pay compensation to the victim.<sup>36</sup> In considering the victim's application, the secretariat of the Tribunal wrote to the applicant's legal representative informing them that any compensation received from the offender would be deducted from a Tribunal award in accordance with paragraph 15 of the current scheme.<sup>37</sup>
- [15.37] Given that a key rationale for state compensation is to compensate a victim where compensation from an offender is not forthcoming, the Commission considers that court-ordered compensation would be a double payment, when intended to cover the same expenses, losses or harm as an application to, or payment from, the proposed statutory scheme. Mechanisms for recovery of court-ordered compensation are discussed later in this Chapter.
- [15.38] The Commission recommends that court-ordered compensation payments under section 6 of the Criminal Justice Act 1993 should be considered double payments, where they cover the same verifiable expenses and loss of earnings. This is

<sup>35</sup> For further discussion of offender compensation see the Chapter on Offender Compensation.

<sup>36</sup> Criminal Injuries Compensation Tribunal, Case Reference 50785 (13 May 2022) at para 6 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/50785-13-may-2022/>> accessed 23 March 2026.

<sup>37</sup> Criminal Injuries Compensation Tribunal, Case Reference 50785 (13 May 2022) at para 11 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/50785-13-may-2022/>> accessed 23 March 2026.

because the Commission considers a victim should not be compensated twice for the same loss.

[15.39] The Commission also recommends that court-ordered compensation payments under section 6 of the Criminal Justice Act 1993 should be considered double payment where they are intended as a general compensation payment, but only to the extent that the total amount of compensation received would be in excess of the likely amount of damages a victim would have received in a successful civil claim. The statutory body may reference the Personal Injuries Guidelines when assessing this, as well as any relevant contributory factors likely to affect an award.

**R. 15.5 The Commission recommends** that court-ordered compensation payments under section 6 of the Criminal Justice Act 1993 should be considered double payment, where they cover the same verifiable expenses or loss of earnings.

**R. 15.6 The Commission recommends** that court-ordered compensation payments under section 6 of the Criminal Justice Act 1993 should be considered double payment where they are intended as a general compensation payment, but only to the extent that the total amount of compensation received would be in excess of the likely amount of damages a victim would have received in a successful civil claim. The statutory body may reference the Personal Injuries Guidelines when assessing this, as well as any relevant contributory factors likely to affect an award.

#### *(vi) Civil proceedings*

[15.39] Victims may also choose to pursue civil proceedings arising out of injuries caused by the crime of violence, for example against the perpetrator themselves or a person or body that may also be liable.<sup>38</sup> However, this can only happen where the offender can be identified and will only be effective where the offender has the funds to pay damages in a successful civil claim,<sup>39</sup> or where there is a relevant policy of insurance or a liable third party who has means to pay. Additionally, victims may not have the resources to pursue a civil claim. These factors mean that civil proceedings against perpetrators of crimes of violence are not very common.

[15.40] The Tribunal considers that a payment made following civil proceedings is double compensation and will reduce or refuse an award on this basis. For example, in *Decision 50949* (3 October 2022), the applicant received a settlement that

<sup>38</sup> For example, if the crime occurred in a nightclub, the nightclub owners might also be sued for negligence where they could have prevented the crime.

<sup>39</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at para 1.60.

included legal costs and other expenses from High Court personal injury proceedings. The Tribunal concluded that the applicant had already successfully obtained compensation for their injuries and made no award.<sup>40</sup>

[15.41] As with a section 6 compensation order, the Commission considers that any award of compensation received by a victim following civil proceedings for the same expenses, losses or harm covered by an application to the statutory body should be considered double payment. If the compensation award is received before an application to the statutory body is made or decided upon, the statutory body may reduce the amount received in the civil case from its payment of compensation, or it may refuse to make a payment of compensation if the victim's application is intended to cover the same expenses, losses or harm that have already been compensated. If the compensation award following civil proceedings is received by the victim after the statutory body has made a payment, the State may seek repayment of the state-funded payment made by the statutory body.

[15.42] The Commission recommends that awards of compensation arising from civil proceedings for the same expenses, losses or harm should be considered double payment.

**R. 15.7 The Commission recommends** that awards of compensation arising from civil proceedings for the same expenses, losses or harm should be considered double payments.

### (e) Proposal for reform

[15.43] In order to avoid double payments by the statutory body, the Commission recommends that the statutory scheme should provide as follows:

(1) If the harm is inflicted in the circumstances set out in the scheme and any person would be entitled to claim compensation (whether statutory or non-statutory), damages or an insurance payment, otherwise than under the scheme for the expenses, losses or harm, they will not be prohibited from also claiming compensation under the scheme.

(2) The statutory body will decide the claim on the basis that no payment under the scheme should result in compensation being paid twice. The body is to be considered a payor of last resort, even where a payment to a victim may be made by the statutory body before a payment to the victim covering the same expenses, losses or harm from another payor.

<sup>40</sup> Criminal Injuries Compensation Tribunal, Case Reference 50949 (3 October 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/50949-3-october-2022/>> accessed 23 March 2026.



(3) As a general rule, all subsequent double payments to a victim for the same expenses, losses or harm covered by their compensation payment should, in principle, be recoverable to avoid a situation where a victim is compensated twice for the same expenses, losses or harm. Charitable payments, individual donations, and general compensation payments for injury from the victim's own insurers should be exceptions to this rule.

**R. 15.8 The Commission recommends** that the statutory scheme should provide as follows:

- (1) If the harm is inflicted in the circumstances set out in the scheme and any person would be entitled to claim compensation (whether statutory or non-statutory), damages or an insurance payment, otherwise than under the scheme for the expenses, losses or harm, they will not be prohibited from also claiming compensation under the scheme.
- (2) The statutory body will decide the claim on the basis that no payment under the scheme should result in compensation being paid twice. The statutory body is to be considered a payor of last resort, even where a payment to an applicant may be made by the statutory body before a payment to the applicant covering the same expenses, losses or harm from another payor.
- (3) As a general rule, all subsequent double payments to a victim for the same expenses, losses or harm covered by their compensation payment should, in principle, be recoverable to avoid a situation where a victim is compensated twice for the same expenses, losses or harm. Individual donations, and general compensation payments for injury from the victim's own insurers should be exceptions to this rule.

## 2. Duty to inform the statutory body of other payments

[15.44] The Commission has considered what, if any, obligations should be placed on an applicant to inform the statutory body of any past and/or future payments or claims. This section discusses the requirements for informing the Tribunal of other payments as set out in the current scheme. It then examines the duty to inform the relevant body of other payments in comparative jurisdictions, before setting out the Commission's analysis and recommendations on such a duty.

### (a) Current scheme

[15.45] The current scheme requires the applicant to inform the Tribunal of other compensation awards: "it is a matter for the applicant to inform the Tribunal of the conclusion of any criminal or civil proceedings and any compensation

awarded”.<sup>41</sup> The application forms (for fatal and non-fatal injuries) under the current scheme have a section on “Legal Proceedings and Related Compensation”, where the applicant must indicate:

- if criminal legal proceedings in relation to the incident have taken place, are ongoing or are due to take place;
- if they have already received compensation either from, or on behalf of the offender and/or any compensation arising from any criminal legal proceedings;
- if they have taken any civil legal proceedings concerning the incident or if they plan to do so – where proceedings have been taken or are being taken, the applicant is asked to indicate if the proceedings are pending, ongoing or have concluded;
- if they have already received any compensation arising from any civil legal proceedings.<sup>42</sup>

[15.46] The application form for non-fatal injuries also contains a section on “Particulars of Any Earnings Lost/Employment Details/Social Welfare Payments” which states that:

“the Scheme provides that there may be no double compensation in respect of awards. The Tribunal will take into account social welfare payments and employer payments and reduce the award accordingly. Written confirmation will be required from a variety of sources (employer, Revenue, Department of Social Protection, Department of Agriculture) in respect of information provided in this section.”<sup>43</sup>

<sup>41</sup> Criminal Injuries Compensation Scheme, “Your questions answered” (updated 8 September 2025) at question 13 <<https://www.gov.ie/en/publication/6edbc-criminal-injuries-compensation-scheme-your-questions-answered/#what-double-compensation-is-and-how-it-affects-you>> accessed 23 March 2026.

<sup>42</sup> Criminal Injuries Compensation Scheme, “Application Form (Non-Fatal Injury) Scheme of Compensation for Personal Injuries Criminally Inflicted” (updated 18 July 2025) at section 6 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-non-fatal-cases>> accessed 23 March 2026; see also the application form for fatal cases at section 7 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-fatal-cases>> accessed 23 March 2026.

<sup>43</sup> Criminal Injuries Compensation Scheme, “Application Form (Non-Fatal Injury) Scheme of Compensation for Personal Injuries Criminally Inflicted” (updated 18 July 2025) at section 9 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-non-fatal-cases>> accessed 23 March 2026; see also the application form for fatal cases at section 11 <<https://www.gov.ie/en/criminal->

[15.47] At the end of this application form, there is a Certificate of Authority, which applicants to the current scheme are required to complete and sign. It states:

"I understand that the Tribunal will decide the claim on the basis that no payment under the scheme should result in compensation being duplicated and so may decide either to make no award or to make a reduced award. I also understand that the Tribunal may also decide that an award will be subject to conditions as to its repayment in whole or in part in the event of compensation being received from another source. I have, therefore, informed the Tribunal of any ongoing or planned legal proceedings and any other compensation which has been, or is due to be, provided to me, arising from any legal proceedings concerning the incident which is the subject of my claim."<sup>44</sup>

[15.48] The Certificate of Authority requires applicants to agree to provide "all reasonable assistance" which the Tribunal may require in their assessment of the applicant's claim.<sup>45</sup> Applicants must also notify the Tribunal of any change in their circumstances, such as changes to the information provided regarding other payments.<sup>46</sup>

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[injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-fatal-cases](https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-fatal-cases) > accessed 23 March 2026.

<sup>44</sup> Criminal Injuries Compensation Scheme, "Application Form (Non-Fatal Injury) Scheme of Compensation for Personal Injuries Criminally Inflicted" (updated 18 July 2025) at section 10(d) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-non-fatal-case>> accessed 23 March 2026; see also the application form for fatal cases at section 13(d)

<<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-fatal-cases>> accessed 23 February 2026.

<sup>45</sup> Criminal Injuries Compensation Scheme, "Application Form (Non-Fatal Injury) Scheme of Compensation for Personal Injuries Criminally Inflicted" (updated 18 July 2025) at section 10(g) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-non-fatal-cases>> accessed 23 March 2026; see also the application form for fatal cases at section 13(g)

<<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-fatal-cases>> accessed 23 February 2026.

<sup>46</sup> Criminal Injuries Compensation Scheme, "Application Form (Non-Fatal Injury) Scheme of Compensation for Personal Injuries Criminally Inflicted" (updated 18 July 2025) at section 10(a) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-non-fatal-cases>> accessed 23 March 2026; see also the application form for fatal cases at section 13(a)

<<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-fatal-cases>> accessed 23 March 2026.

## (b) Comparative jurisdictions

### (i) *England, Scotland and Wales*

[15.49] The Criminal Injuries Compensation Scheme in England, Scotland and Wales expects that victims have taken all reasonable steps to obtain other forms of compensation available to them before applying to the scheme. This includes social security benefits, insurance payments, and damages or compensation.<sup>47</sup>

[15.50] A claims officer may defer the determination of an application until they are satisfied that the applicant has done this.<sup>48</sup> Factors for determining whether it is reasonable for an applicant to pursue other payments include:

- the applicant's age or mental or physical capacity,
- the nature or impact of the offence,
- intimidation by the accused or people connected to the accused,
- the ability of the offender to compensate the applicant,
- any advice received by the applicant in relation to the chance of success of another claim, and
- the applicant's ability to afford the legal costs of another claim.<sup>49</sup>

[15.51] All applicants to the scheme are under an obligation to inform a claims officer of any claim or other proceedings that may give rise to compensation in respect of the same injury.<sup>50</sup> A claims officer may require an applicant to provide information in relation to their eligibility for a payment from another source for the same expenses, losses or harm.<sup>51</sup> Where an applicant has made another claim or initiated proceedings, they will be under an obligation to keep the claims officer informed of any progress of this claim or proceedings.<sup>52</sup> Where an applicant has not pursued compensation from any other source before applying

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<sup>47</sup> Criminal Injuries Compensation Authority, "Criminal injuries compensation: a guide" (updated 1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#effect-of-other-payments-on-an-award>> accessed 23 March 2026.

<sup>48</sup> Paragraph 98(b) of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>49</sup> Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at pages 62-63 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

<sup>50</sup> Paragraph 91(c) of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>51</sup> Paragraph 92(d) of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>52</sup> Paragraph 91(c) of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

for the scheme, they will be required to give reasons as to why they have not applied.<sup>53</sup>

[15.52] If an applicant accepts an award of compensation under the scheme, they will be asked to give an undertaking that they will inform the Criminal Injuries Compensation Authority about any damages, settlement or other compensation they receive for the same injury.<sup>54</sup>

*(ii) Northern Ireland*

[15.53] A victim applying to the Northern Ireland Criminal Injuries Compensation Scheme may be required by the Secretary of State to detail any steps they have taken, or plan to take, to pursue damages or compensation for the same injury as their application to the scheme. An application to the scheme may be paused until these details have been provided or until the victim has made all attempts at recovery.<sup>55</sup>

*(iii) California*

[15.54] Victims who have received compensation from the California Victim Compensation Board must themselves, or through their legal representatives, notify the Board within 30 days of filing civil proceedings,<sup>56</sup> or an insurance claim, or if they receive crime related reimbursements.<sup>57</sup> When notifying the Board, the victim or their legal representative must include:

- the names and addresses of all parties named or their legal representatives in the lawsuit,
- the kind of claim or action brought,
- the full title of the case, the name of the court, the country the lawsuit is filed, and the case or docket number, and
- if the case has settled, a copy of the settlement documents.<sup>58</sup>

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<sup>53</sup> Criminal Injuries Compensation Authority, "Criminal injuries compensation: a guide" (updated 1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#effect-of-other-payments-on-an-award>> accessed 23 March 2026.

<sup>54</sup> Criminal Injuries Compensation Authority, "Criminal injuries compensation: a guide" (updated 1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#effect-of-other-payments-on-an-award>> accessed 23 March 2026.

<sup>55</sup> Paragraph 50(1) of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009) (Northern Ireland).

<sup>56</sup> Section 13963(e) of the California Government Code.

<sup>57</sup> California Victim Compensation Board "Repayment" <<https://victims.ca.gov/for-victims/responsibility-for-repayment/>> accessed 23 March 2026.

<sup>58</sup> California Victim Compensation Board "Repayment" <<https://victims.ca.gov/for-victims/responsibility-for-repayment/>> accessed 23 March 2026.

[15.55] Legal representatives who pay out compensation from a settlement may be held liable for the loss and subject to litigation. The Board may also notify the State Bar.<sup>59</sup>

*(iv) Victoria*

[15.56] Applicants to the Financial Assistance Scheme in Victoria are required to include details in their application of assistance, payments or compensation from other schemes for the same loss. This includes applications they have made, or are going to make in the future, to other schemes.<sup>60</sup>

*(v) New South Wales*

[15.57] An approval of victims' financial support under the Victims Support Scheme in New South Wales is subject to:

- the applicant notifying the Commissioner of Victims Rights of any amount they have already received from other sources for the same injury, and
- the applicant notifying the Commissioner of Victims Rights of any money received in the future from other sources for the same injury.<sup>61</sup>

**(c) Proposal for reform**

[15.58] As noted above, applicants are required in the application forms to the current scheme to inform the Tribunal of other compensation or payments that they expect to receive or apply for to cover the same expenses, losses or harm. This is also a common requirement in the schemes in other jurisdictions. As addressed in the Chapter on Administration of the Statutory Body and Statutory Scheme, the Commission believes that this requirement should be replicated in the proposed statutory scheme, and strengthened by including a statutory duty or undertaking.

[15.59] The Commission recommends that there should be a duty on victims to inform the proposed statutory body of past payments covering the same expenses, losses or harm, and any alternative avenues they are considering for future compensation. This declaration should be made as part of their application

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<sup>59</sup> *Miller v Rau* (1963) 216 Cal App 2d 68; *Siciliano v Fireman's Fund* (1976) 62 Cal App 3d 745; California Victim Compensation Board "Repayment" <<https://victims.ca.gov/for-victims/responsibility-for-repayment/>> accessed 23 March 2026.

<sup>60</sup> Section 22 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria); Victoria State Government, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 98 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 23 March 2026.

<sup>61</sup> Section 48(2)(a) and (2A) of the Victims Rights and Support Act 2013 (New South Wales).

form.<sup>62</sup> There should also be a duty on the victim to inform the statutory body of any future payment covering the same expenses, losses or harm as the payment of compensation made by the statutory body. This information is required to identify any future double payments to the victim. This undertaking could be provided for in the Certificate of Authority for the statutory scheme, as discussed in the Chapter on Structure of the Statutory Body and the Application Process.

- [15.60] The Commission recommends that a duty to inform the statutory body should also be placed upon a victim's legal representative if the victim has legal representation for any other related claim for compensation in civil proceedings. The victim's legal representative must inform the statutory body in writing of any additional claims for compensation by the victim for the same expenses, losses or harm or any other payments to the victim covering the same expenses, losses or harm as an application to the statutory body, once the legal representative becomes aware to the best of their knowledge that the victim has applied to the statutory body, following reasonable enquiry.
- [15.61] As recommended in the Chapter on the Structure of the Statutory Body and the Application Process, the Commission recommends that should an applicant have taken or intend to take civil proceedings against the offender for the same crime of violence, the applicant should inform the statutory body of the details of their legal representatives. The applicant would also be asked to give their consent to contact from the statutory body to their legal representatives seeking any information on separate compensation payments intended to cover the same expenses, losses or harm as applied for under the statutory scheme. The Commission further recommends that should a victim's legal representative fail to give this information to the statutory body, they may be referred to the appropriate regulatory body by the State body (or recovery mechanism) responsible for recovering double payments.
- [15.62] In addition, legal representatives should be required to issue an undertaking to the statutory body that they will retain any subsequent double payments from court proceedings where settlement proceeds or compensation have been paid directly to them, and they will repay the State on behalf of the victim once received.

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<sup>62</sup> In the Chapter on the Structure of the Statutory Body and the Application Process, the Commission recommends that application forms should contain a certificate of authority, and makes recommendations about what this should provide for.

**R. 15.22 The Commission recommends** that applicants should be required to inform the proposed statutory body of:

- (1) past payments, including damages, settlement or other compensation covering any expenses, losses or harm suffered as a result of the crime of violence,
- (2) any alternative avenues they are considering for compensation, and
- (3) and make an undertaking to inform the statutory body of any payment they receive in the future covering the same expenses, losses or harm they have already been compensated for by the statutory body.

This declaration and undertaking should be made as part of the application form to the statutory body. (This recommendation is also in the Chapter on the Structure of the Statutory Body and the Application Process).



- R. 15.23 The Commission recommends** that the application form should include provision for the applicant to give consent to the statutory body contacting their legal representatives for any information on separate compensation payments intended to cover the same expenses, losses or harm as applied for under the statutory scheme and potentially for an appropriate undertaking regarding repayment. (This recommendation is also in the Chapter on the Structure of the Statutory Body and the Application Process).
- R. 15.24 The Commission recommends** that a duty to inform the statutory body should be placed upon a victim's legal representative, if the victim has legal representation for their application to the statutory scheme or for any other related claim for compensation in civil proceedings. The victim's legal representative must inform the statutory body by way of writing of any additional claims for compensation by the victim for the same expenses, losses or harm or any other payments to the victim covering the same expenses, losses or harm as an application to the statutory body once the legal representative becomes aware to the best of their knowledge that the victim has applied to the statutory body, following reasonable enquiry.
- R. 15.25 The Commission recommends** that should a victim's legal representative fail to give this information to the statutory body, they may be referred to the appropriate regulatory body by the State body (or recovery mechanism) charged with recovering double payments.
- R. 15.26 The Commission recommends** that legal representatives should be required to issue an undertaking to the statutory body that, where possible, they will retain any subsequent double payments resulting from court proceedings made to them, and repay the State once monies are received by them.

### 3. Information regarding double payments

- [15.63] The Commission considers that information sharing between relevant bodies about double payments will be necessary to avoid such payments. First, it is necessary to consider what, if any, information sharing or information gathering powers the statutory body should have in order to make an assessment of double payments. Second, it is necessary to consider what information should be shared by the statutory body with a court during civil or criminal proceedings.
- [15.64] This section discusses the Tribunal's information gathering powers. It then examines information sharing in comparative jurisdictions, before setting out the Commission's analysis and recommendations.

#### (b) Current scheme

- [15.65] The Certificate of Authority attached to the application form of the current scheme requires that applicants authorise a number of parties to provide the Tribunal with information that might be relevant to their application, where this is

requested by the Tribunal. Listed parties include the Department of Social Protection, the applicant's employer, health insurance provider, and "any other relevant parties".<sup>63</sup> As noted above, in practice, the Tribunal will contact the Department of Social Protection about the amount of social welfare benefits received by applicants following a crime of violence, in order to determine an award.<sup>64</sup>

### (c) Comparative jurisdictions

#### (i) *England, Scotland and Wales*

- [15.66] Guidance for the Criminal Injuries Compensation Scheme in England, Scotland and Wales states that claims officers must gather information about other payments in order to establish whether there has been double payment.<sup>65</sup> As stated above, a claims officer may require an applicant to provide information about their eligibility for other payments. For example, where an applicant has received a payment from another compensation scheme, the claims officer should request a copy of the decision letter explaining the payment.<sup>66</sup>
- [15.67] However, the guidance states that there may be cases where an applicant has limited information or they do not have the ability to get more information. In this case, the claims officer should consider whether they can obtain information about the other payment as they have the power to "direct enquiries and make the necessary arrangements to allow the proper consideration of an

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<sup>63</sup> Criminal Injuries Compensation Scheme, "Application Form (Non-Fatal Injury) Scheme of Compensation for Personal Injuries Criminally Inflicted" (updated 18 July 2025) at section 10(k) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-non-fatal-cases>> accessed 23 March 2026; see also the application form for fatal cases at section 13(k) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/services/criminal-injuries-compensation-scheme/#application-form-fatal-cases>> accessed 23 March 2026.

<sup>64</sup> For example, see Criminal Injuries Compensation Tribunal, Case Reference 51563 (26 August 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/51563-26-august-2022/>> accessed 23 March 2026.

<sup>65</sup> Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at page 48 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

<sup>66</sup> Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at page 49 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

application".<sup>67</sup> For example, they may contact the police or the applicant's solicitor if the applicant is taking a civil claim.<sup>68</sup>

(ii) *Northern Ireland*

[15.68] The Northern Ireland Criminal Injuries Compensation Scheme requires applicants to consent to enquiries. This consent is obtained in the application form and allows Compensation Services, who administer the Scheme, to verify information with the police, doctors, employers, or anyone else of relevance.<sup>69</sup>

(iii) *Victoria*

[15.69] The Victorian Law Reform Commission recommended in its Report on the Review of the Victims of Crime Assistance Act 1996 that the decision-maker of the Financial Assistance Scheme should be provided with:

"the power to investigate and obtain information to assist in determining, at the time of making an award, whether to reduce the amount of assistance provided to a victim, equivalent to any assistance, payment, compensation or damages that the victim has received from any other source".<sup>70</sup>

[15.70] This recommendation led to scheme decision-makers being granted powers to gather information for the purpose of performing their functions, such as determining amounts of assistance to be paid. These powers include:

- obtaining information and documents from any person,
- requesting applicants to provide any information or documents relevant to the application, and
- requiring any person, other than an applicant, to provide relevant information or documents.<sup>71</sup>

<sup>67</sup> Paragraph 90 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales); Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at page 61 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

<sup>68</sup> Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at pages 48-49 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

<sup>69</sup> Department of Justice, *A Guide to the Northern Ireland Criminal Injuries Compensation Scheme* (2009) at para 3.5 <<https://www.nidirect.gov.uk/sites/default/files/2025-01/guide-criminal-injuries-compensation-scheme-2009%20latest.pdf>> accessed 23 March 2026.

<sup>70</sup> Victorian Law Reform Commission, *Report on the Review of the Victims of Crime Assistance Act 1996* (July 2018) at page 447.

<sup>71</sup> Section 56 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

*(iv) New South Wales*

- [15.71] The Victims Support Scheme in New South Wales states that any damages awarded in civil proceedings must be assessed independently. This means that a court must not consider whether the victim has made an application under the Victims Support Scheme when considering the amount of damages to award.<sup>72</sup>

**(d) Proposal for reform**

- [15.72] The Commission believes that the statutory body requires powers to share and/or gather information in order to make an assessment of double payment. It sees merit in the situation in Victoria where the scheme decision-maker can obtain information and documents from any person and request applicants and other persons to provide any relevant information or documents relevant to their application. Providing such a power to the statutory body would enable it to make official inquiries of the Department of Social Protection, the Courts Service, health insurers, and other relevant bodies, in order to assess whether there has been a double payment. The Commission makes recommendations regarding information sharing between the statutory body and non-state bodies in the Chapter on Administration of the Statutory Body and Statutory Scheme.
- [15.73] The Commission recommends that the statutory body should have the power to request information from any person or body that it considers appropriate in relation to payments made for the same expenses, losses or harm, before making a payment of compensation. This power should only be used where the applicant has consented to the sharing of their personal information where necessary for the processing of their application, or other lawful purpose, including for assessing double payment in the Certificate of Authority in the application form, as recommended in the Chapter on the Structure of the Statutory Body and the Application Process. The relevant person or body should be obliged to comply with this request, subject to the Data Protection Act 2018 and any other applicable data protection law, as long as there is a legal basis for such sharing.<sup>73</sup>
- [15.74] Where an applicant has received a payment of compensation under the proposed statutory scheme, the Commission considers that this fact could be shared with a court hearing civil or criminal proceedings for the same crime of violence. The Commission recommends that the statutory body should have a statutory basis for sharing information with a court, such that the court can then order an offender to pay the State directly, where appropriate. This would include the fact that a payment of compensation was made, the amount of the payment, and

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<sup>72</sup> Section 55(2) of the Victims Rights and Support Act 2013 (New South Wales); see also section 43 of the Victims Rights and Support Act 2013 (New South Wales).

<sup>73</sup> The Commission addresses information sharing between various bodies and the GDPR implications in more detail in its *Report on A Regulatory Framework for Adult Safeguarding* (LRC 128-2024 Vol 2) at Chapter 16.

detail regarding what verifiable expenses and loss of earnings were paid by the statutory body. However, any such information shared should be done in a trauma-sensitive manner and a court may always exercise its discretion to ensure that such information is not shared in open court, should it consider it necessary to protect the victim from either secondary victimisation or retraumatisation. The Commission discusses the sharing of information and documents by the statutory body with a court in the context of discovery or disclosure requests in the Chapter on Interaction with Court Proceedings.

- [15.75] The purpose of this information sharing is not to impact on the amount of damages awarded in civil proceedings or the amount of a section 6 compensation payment, but rather to allow the court to take any measures it considers appropriate to ensure the repayment or recovery of any double payment by the State. The issues of repayment and recovery are explored in more depth below.<sup>74</sup>
- [15.76] The Commission considers that a court should make its own order for compensation or damages without reference to the amount paid in a compensation payment by the statutory body. The damages awarded by a court in civil proceedings or compensation ordered by a court to be paid by an offender in criminal proceedings should not be reduced by the amount of the compensation payment already paid to the victim. However, because the statutory body will be the payor of last resort, the Commission is recommending that the State should be repaid for any double payments directly from the offender.

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<sup>74</sup> See sections 5 and 6 of this Chapter.

- R. 15.14 The Commission recommends** that the statutory body should have the power to request information from any person or body that it considers appropriate in relation to payments made for the same expenses, losses or harm, before making a payment of compensation. This power should only be used where the applicant has consented to such a request in the Certificate of Authority in the application form. (A related recommendation can be found in the Chapter on the Structure of the Statutory Body and the Application Process).
- R. 15.15 The Commission recommends** that the statutory body should have a statutory basis for sharing information with a court, such that the court can then order an offender to pay the State directly where appropriate. This would include the fact that a payment of compensation was made, the amount of the payment, and detail regarding what verifiable expenses and loss of earnings were paid by the statutory body.

## 4. Reductions of compensation payments

- [15.77] The Commission considered what reductions the statutory body should be empowered to make to avoid double payments to applicants. The Commission believes that past payments covering the same expenses, losses or harm should be deducted from a payment of compensation. Looking at practices in other jurisdictions, some compensation bodies also reduce compensation awards by expected *future* payments, for example future social protection or insurance payments that the applicant may be eligible for or entitled to.
- [15.78] This section discusses the provision for the reduction of compensation awards under the current scheme. It then explores models for reduction in other jurisdictions. Finally, it outlines the Commission's recommendations about whether, and in what circumstances, the statutory body can or should deduct from (or reduce) a payment of compensation.

### (a) Current scheme

- [15.79] As stated above, the current scheme provides that an award may be reduced where compensation has already been received from another source, such as social welfare benefits, sick leave payments, or offender compensation.<sup>75</sup>
- [15.80] Before the Tribunal began publishing its decisions in 2021, the question of how the Tribunal assessed double payments and reduced awards accordingly was raised in the courts. The High Court, in *State (Hayes) v Criminal Injuries Compensation Tribunal*, highlighted the lack of clear rules regarding how social welfare benefits were being assessed by the Tribunal, and subsequently deducted

<sup>75</sup> See section 1(b) of this Chapter for a discussion of double compensation under the current scheme.

from compensation awards.<sup>76</sup> In *Gavin v Criminal Injuries Compensation Tribunal*, the High Court held that the Tribunal must give reasons where it decides to reduce an award of compensation.<sup>77</sup>

[15.81] Decisions that have been published by the Tribunal provide insight into assessments and reductions in awards where there have been double payments. The Tribunal has stated in many of its decisions that it requires evidence or documentation of social welfare benefits in order to conduct its assessment of compensation:

“It is observed that without evidence of the expenses incurred, particulars of miscellaneous expenses or any documentation relating to employment-related income since the incident, there is no information upon which the Tribunal can base an assessment of compensation, having regard to the value of any social welfare benefits received by the applicant.”<sup>78</sup>

[15.82] In *Decision 50719* (13 May 2022), the applicant confirmed that he was in receipt of disability benefit because of the injuries suffered in the crime of violence and he had a medical card. The Tribunal made no award in these circumstances because the applicant had received more social welfare benefits than he had lost in loss of earnings, as verified by a statement from the Department of Social Welfare and a letter from his employer.<sup>79</sup> Where the applicant in *Decision 52615* (23 July 2022) was out of work for three months and received illness benefit for his loss of earnings, no award was made as the remaining loss fell below the minimum amount that can be awarded by the Tribunal under the current scheme.<sup>80</sup>

[15.83] In *Decision 53641* (13 July 2022), which was an appeal hearing before the Tribunal, the applicant confirmed in his evidence that he had received disability allowance payments from the Department of Social Protection as he was not employed when the crime of violence occurred. The applicant also stated that all of his medical costs had been covered by his medical card, and he failed to

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<sup>76</sup> *State (Hayes) v Criminal Injuries Compensation Tribunal* [1982] ILRM 210.

<sup>77</sup> *Gavin v Criminal Injuries Compensation Tribunal* [1997] 1 IR 132.

<sup>78</sup> For example, see Criminal Injuries Compensation Tribunal, Case Reference 51078 (11 May 2022) at para 33 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/51078-11-may-2022/>> accessed 23 March 2026.

<sup>79</sup> Criminal Injuries Compensation Tribunal, Case Reference 50719 (13 May 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/50719-13-may-2022/>> accessed 23 March 2026.

<sup>80</sup> Criminal Injuries Compensation Tribunal, Case Reference 52615 (23 July 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/52615-23-july-2022/>> accessed 23 March 2026.

submit any evidence of expenses which were not covered by the social welfare benefits. Therefore, the Tribunal held that he was not entitled to any compensation under the current scheme.<sup>81</sup>

- [15.84] Compensation received by the applicant from the offender, or on behalf of the offender, will also be deducted from an award. In correspondence, the Tribunal alerts applicants to the provisions of the current scheme which require the Tribunal to make deductions.<sup>82</sup> Where previous payments have been made covering the same losses or injury, the amount of compensation paid by the offender will be deducted from the overall sum awarded by the Tribunal.<sup>83</sup> Where the offender compensation is in excess of the expenses claimed by the applicant under the current scheme, no award will be made.<sup>84</sup>

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<sup>81</sup> Criminal Injuries Compensation Tribunal, Case Reference 53641 (13 July 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/53641-13-july-2022/>> accessed 23 March 2026.

<sup>82</sup> This happened for example in Criminal Injuries Compensation Tribunal, Case Reference 51905 (21 October 2022) at para 18 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/51905-21-october-2022/>> accessed 23 March 2026 and Criminal Injuries Compensation Tribunal, Case Reference 51975 (21 October 2022) at para 18 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/51975-21-october-2022/>> accessed 23 March 2026.

<sup>83</sup> For example, Criminal Injuries Compensation Tribunal, Case Reference 52819 (6 July 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/52819-6-july-2022/>> accessed 23 March 2026; Criminal Injuries Compensation Tribunal, Case Reference 54338 (2 August 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/54338-2-august-2022/>> accessed 23 March 2026; Criminal Injuries Compensation Tribunal, Case Reference 52916 (22 February 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/52916-22-february-2023/>> accessed 23 March 2026; Criminal Injuries Compensation Tribunal, Case Reference 54652 (6 April 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/54652-6-april-2023/>> accessed 23 March 2026.

<sup>84</sup> See Criminal Injuries Compensation Tribunal, Case Reference 54443 (20 July 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/54443-20-july-2022/>> accessed 23 March 2026; Criminal Injuries Compensation Tribunal, Case Reference 51563 (26 August 2022) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/51563-26-august-2022/>> accessed 23 March 2026; Criminal Injuries Compensation Tribunal, Case Reference 54892 of the Criminal Injuries Compensation Tribunal (15 June 2023) <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/54892-15-june-2023/>> accessed 23 March 2026.



## (b) Comparative jurisdictions

### (i) *The Netherlands*

[15.85] In the Netherlands, the Criminal Injuries Compensation Fund is the body responsible for compensating victims of “intentionally committed violent crime or sexual crime” who have suffered serious physical or psychological injuries.<sup>85</sup>

[15.86] If an applicant is reimbursed, even in part, from another source, then the Fund can deduct this from their compensation payment. This is called a settlement.<sup>86</sup> Compensation that may be deducted includes compensation paid by the offender, an employer (where the crime was committed at work), or under a third-party liability insurance policy.<sup>87</sup>

### (ii) *England, Scotland and Wales*

[15.87] Under the Criminal Injuries Compensation Scheme in England, Scotland and Wales, an award may be withheld or reduced where the applicant:

- (a) receives or is awarded a payment from a different scheme which compensates people for injuries;<sup>88</sup>
- (b) receives an order for damages from a civil court;
- (c) agrees the settlement of a damages claim; or
- (d) receives a compensation order or offer made during criminal proceedings.<sup>89</sup>

[15.88] Claims officers are required to deduct the amount of compensation an applicant is entitled to, even in cases where they have not yet received the payment from the other source. An example of this could be where an offender has not yet paid compensation after being ordered to do so by a court.<sup>90</sup>

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<sup>85</sup> Schadefonds Geweldsmisdrijven, “Policy Manual” (1 January 2026) at page 4 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>86</sup> Section 6(2) of the Violent Crimes Compensation Fund Act (Wet schadefonds geweldsmisdrijven) (the Netherlands).

<sup>87</sup> Schadefonds Geweldsmisdrijven, “Policy Manual” (1 January 2026) at page 21 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>88</sup> Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at page 49 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

<sup>89</sup> Paragraph 85(1) of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>90</sup> Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at page 46 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

[15.89] These reductions will be calculated after any benefits recoverable under social security legislation have been deducted.<sup>91</sup> A special expenses payment under the scheme may also be reduced or withheld to take account of social security benefits or an insurance payment.<sup>92</sup>

[15.90] However, guidance for the scheme emphasises that another payment will only be deductible if there are overlapping, “like-for-like” components between the scheme award and the other payment.<sup>93</sup>

*(iii) Northern Ireland*

[15.91] Awards under the Northern Ireland Criminal Injuries Compensation Scheme may be reduced where the victim has received, or is currently or will be entitled to any of the following:

- (a) a criminal injury compensation award in Great Britain;
- (b) a compensation award or similar payment from a country outside of the United Kingdom;
- (c) an order of a civil court for the payment of damages;
- (d) an order of a criminal court for payment of personal injuries; or
- (e) a settlement of a claim for damages and/or compensation.<sup>94</sup>

*(iv) Victoria*

[15.92] In its Report on the Review of the Victims of Crime Assistance Act 1996, the Victorian Law Reform Commission distinguished between past and future payments from other sources. It proposed a mandatory power to reduce an award for past payments and a discretionary power to reduce an award for future payments.<sup>95</sup>

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<sup>91</sup> Paragraph 85(2) of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales); Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at pages 51-55 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

<sup>92</sup> Paragraphs 54 and 55 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>93</sup> Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at pages 46-47 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

<sup>94</sup> Paragraph 49 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>95</sup> Victorian Law Reform Commission, *Report on the Review of the Victims of Crime Assistance Act 1996* (July 2018) at page 447.

[15.93] Following these recommendations, the Victims of Crime (Financial Assistance Scheme) Act 2022 states that the decision-maker of the Financial Assistance Scheme must consider the following and reduce the amount of financial assistance accordingly:

- any damages that the person has recovered in the courts for the loss, expense or other matter;
- any compensation, assistance or payments that the applicant received for the loss, expense or other matter; and
- any amount of financial assistance awarded to the applicant as a train driver following a fatal incident.<sup>96</sup>

[15.94] The scheme decision-maker may consider the following and reduce the amount of financial assistance accordingly:

- any damages the person is reasonably likely to recover in the courts for the loss, expense or other matter;
- any compensation, assistance or payments of any kind under any scheme, that the person is reasonably likely to receive for the loss, expense or other matter; and
- any payments under any insurance policy or superannuation scheme that the person is reasonably likely to receive for the loss, expense or other matter.<sup>97</sup>

[15.95] “Reasonably likely” means that there must be a real chance the victim will receive the other payment and not just that they may be eligible for the other payment.<sup>98</sup>

### **(c) Proposal for reform**

[15.96] As a general rule, the Commission considers that verifiable expenses, loss of earnings or general compensation payments should not be covered twice. Where a victim has received a payment from another source for a certain expense, loss or harm and claims this expense under the proposed statutory scheme, the statutory body should deduct this expense from the compensation payment. This is the standard approach adopted by most schemes in other jurisdictions regarding the compensation of victims of crimes of violence.

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<sup>96</sup> Section 18(1)(a) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>97</sup> Section 18(1)(b) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria); Victoria State Government, “Financial Assistance Scheme Guidelines” (30 June 2025) at page 98 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 23 March 2026.

<sup>98</sup> Victoria State Government, “Financial Assistance Scheme Guidelines” (30 June 2025) at pages 98-99 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 23 March 2026.

[15.97] While the Commission considered the approaches taken in Victoria and Northern Ireland for reducing compensation payments based on future payments that a victim is likely to receive, it is not recommending that such a power be granted to the statutory body. There are potential payments that a victim might subsequently receive that are too uncertain or cannot be quantified when the statutory body is making its payment of compensation. For example, the offender of the crime of violence may or may not be prosecuted. A section 6 compensation order may or may not be made by a court, and where made, such an order may or may not actually be complied with. Equally, civil proceedings may or may not be taken by the victim. If taken, these proceedings may not succeed and even if they do succeed, the court decision may not result in an actual payment, where an offender may not have the means to make the payment. Where the issue of a double payment arises following the payment of compensation under the proposed statutory scheme, this may be solved by repayment by the victim or recovery by the State from another source. This is explored in more detail below.

[15.98] As addressed above, the Commission recommends that any payments to the applicant received in advance of a payment of compensation by the statutory body that are intended to cover the same expenses, losses or harm should be deducted from the applicant's payment, if the statutory body considers that the compensation would otherwise constitute a double payment. If the amount previously received by the applicant exceeds the amount of the payment that the statutory body intended to make, no payment should be made.

**R. 15.16 The Commission recommends** that any payments to the applicant received in advance of a payment of compensation by the statutory body that are intended to cover the same expenses, losses or harm should be deducted from the applicant's payment, if the statutory body considers that the payment would otherwise constitute a double payment. If the amount previously received by the applicant exceeds the amount of the payment that the statutory body intended to make to cover the same expenses, losses or harm, no payment should be made by the statutory body.

## 5. Repayment of compensation by the victim

[15.99] The Commission has considered how the State may recover the money paid to an applicant by the statutory body where the applicant later receives a payment from another source covering the same expenses, losses or harm.

[15.100] This section identifies certain gaps in the current scheme regarding the repayment of double compensation. It then explores existing models for recouping double payments in this jurisdiction and discusses the mechanisms used in other jurisdictions for the repayment of double compensation by victims

of crime. The discussion concludes with the Commission's recommendations on this issue, as well as a discussion of options for a repayment mechanism.

### **(a) Current scheme**

[15.101] As stated above, paragraph 5 of the current scheme provides that the Tribunal may "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".<sup>99</sup>

[15.102] This power has been exercised by the Tribunal. For example, the applicant in Decision 53859 (28 June 2023) had been awarded an amount of compensation by the offender in criminal proceedings and only part of this compensation had been paid to the applicant at the time of their application. The Tribunal deducted the amount that had been paid by the offender from the applicant's award and made the applicant's award conditional "on its whole or part repayment in the event that the offender convicted of the applicant's assault pays any further sums due and owing to the applicant by [court order]". The Tribunal specified that this repayment should be made within 21 days of the applicant receiving it from the offender.<sup>100</sup>

### **(b) Models for repayment in Ireland**

#### *(i) Recovery of Benefits and Assistance Scheme*

[15.103] In 2002, the Commission recommended in its Report on Section 2 of the Civil Liability (Amendment) Act 1964 that the Government should consider establishing a reimbursement scheme in respect of awards of damages.<sup>101</sup> Following this recommendation, the Recovery of Benefits and Assistance ("RBA") Scheme came into operation on the 1st of August 2014.<sup>102</sup> The RBA is a statutory scheme administered by the Department of Social Protection and allows the Department to recover certain illness-related social welfare payments, where the same costs are later covered by a "compensator". This might include a payment from an

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<sup>99</sup> See section 1(b) of this Chapter for a discussion of double compensation under the current scheme.

<sup>100</sup> Criminal Injuries Compensation Tribunal, Case Reference 53859 (28 June 2023) at paras 21-23 <<https://www.gov.ie/en/criminal-injuries-compensation-scheme/publications/53859-28-june-2023/>> accessed 23 March 2026.

<sup>101</sup> Law Reform Commission, *Report on Section 2 of the Civil Liability (Amendment) Act 1964: The Deductibility of Collateral Benefits from Awards of Damages* (LRC 68-2002) at para 5.110.

<sup>102</sup> Part 11B of the Social Welfare Consolidation Act 2005, as inserted by sections 13 and 14 of the Social Welfare and Pensions Act 2013; Social Welfare and Pensions Act 2013 (Sections 13 and 14) (Commencement) Order 2014 (SI No 308 of 2014).

insurer, a compensation award following civil proceedings or an order or settlement arising from the Personal Injuries Assessment Board.<sup>103</sup>

[15.104] Before paying the injured person their compensation payment, a compensator (a person or body liable for the injury, for example, an insurer) must apply to the RBA section of the Department for a statement of recoverable benefits. The RBA section will then issue a statement specifying the amount of recoverable benefits and assistance paid to the injured person for their injury. The compensator must then pay the Minister for Social Protection an amount equivalent to the specified benefits that were paid to the injured person.<sup>104</sup>

[15.105] A number of compensation schemes, tribunals, and redress boards have been explicitly excluded from the RBA scheme, including the Criminal Injuries Compensation Tribunal.<sup>105</sup>

*(ii) Repayment of compensation under the Malicious Injuries Act 1981*

[15.106] Under the Malicious Injuries Act 1981, people may receive compensation when their property has been maliciously damaged or when they have lost property during a riot.<sup>106</sup> Where compensation has been awarded under this Act, it may be recovered if a double payment has occurred.<sup>107</sup> This is the case where there has been, or there is subsequently, a payment of compensation that was not considered at the time the award was made. In such circumstances, the person who was compensated must notify the relevant local authority and pay back the compensation to that local authority.<sup>108</sup> The court may order the person to pay the damages awarded, or agreed, into court.<sup>109</sup> A payment into court is where a person pays money to the court, which will hold it for another person, in this case, the local authority. If a person fails to reimburse the local authority, the local

<sup>103</sup> Section 343M(1)(a) of the Social Welfare Consolidation Act 2005, as inserted by section 13 of the Social Welfare and Pensions Act 2013, describes the application of the Recovery of Benefits and Assistance Scheme. See also Department of Social Protection, "Recovery of Benefits and Assistance Scheme" (updated 7 September 2022) <<https://www.gov.ie/en/department-of-social-protection/services/recovery-of-benefits-and-assistance-scheme/>> accessed 23 March 2026.

<sup>104</sup> Department of Social Protection, "Recovery of Benefits and Assistance (RBA) Scheme: Operational Guidelines" (updated 23 January 2025) <<https://www.gov.ie/en/department-of-social-protection/publications/operational-guidelines-recovery-of-benefits-and-assistance-rba-scheme/>> accessed 23 March 2026.

<sup>105</sup> Section 343M(2) of the Social Welfare Consolidation Act 2005 (as amended).

<sup>106</sup> Sections 5 and 6 of the Malicious Injuries Act 1981, as amended by sections 2 and 4 of the Malicious Injuries (Amendment) Act 1986.

<sup>107</sup> Section 19 of the Malicious Injuries Act 1981.

<sup>108</sup> Section 19(1)(a) of the Malicious Injuries Act 1981.

<sup>109</sup> Section 19(2) of the Malicious Injuries Act 1981.

authority can recover this debt in court.<sup>110</sup> Any payment recovered shall be paid into the Central Fund.<sup>111</sup>

*(iii) Interaction between section 6 compensation orders and civil compensation under the Criminal Justice Act 1993*

[15.107] Section 9 of the Criminal Justice Act 1993 deals with the interaction between a section 6 compensation order and damages in civil proceedings.<sup>112</sup> It provides that where the damages assessed in the civil proceedings exceed the amount paid under the section 6 compensation order, the damages awarded in the civil proceedings will be limited to the difference between the section 6 compensation order and the damages.<sup>113</sup>

[15.108] The same section provides that if the amount paid under the section 6 compensation order is greater than the damages assessed in the civil proceedings, the court may order that the difference should be repaid by the victim to the offender.<sup>114</sup> This demonstrates that there is precedent in Irish law for a court to order a victim to make a repayment of compensation.

[15.109] Section 9 also states that when the award of damages or court order has been made, the section 6 compensation order shall no longer have effect.<sup>115</sup>

**(c) Comparative jurisdictions**

*(i) England, Scotland and Wales*

[15.110] The Criminal Injuries Compensation Authority (via a claims officer) may require a victim to repay their award or part of their award, where they have received social security benefits, insurance payments, compensation or damages.<sup>116</sup> It is emphasised in guidance for claims officers of the scheme that this is a discretionary power. A claims officer must consider whether it is reasonable in all the circumstances to require repayment of an award by an applicant. Some factors for a claims officer to consider include:

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<sup>110</sup> Section 19(6) of the Malicious Injuries Act 1981.

<sup>111</sup> Section 7 of the Malicious Injuries (Amendment) Act 1986.

<sup>112</sup> See also Order 33, rule 7 of the District Court Rules and Form 33.13, Schedule B. Section 6 compensation orders are discussed in detail in the Chapter on Offender Compensation.

<sup>113</sup> Section 9(b)(i) of the Criminal Justice Act 1993.

<sup>114</sup> Section 9(b)(ii) of the Criminal Justice Act 1993.

<sup>115</sup> Section 9 of the Criminal Justice Act 1993.

<sup>116</sup> Paragraph 110 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales). See also paragraphs 54, 55 and 85 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

- the length of time between the award under the scheme and the other payment being made,
- whether the applicant is experiencing significant financial hardship, and
- the applicant's age and health.<sup>117</sup>

[15.111] Where a claims officer decides not to require repayment, they must document their reasons for making this decision. This is because the scheme is meant to be one of last resort.<sup>118</sup>

[15.112] Where a claims officer decides to require repayment, they will notify a victim in writing of their decision.<sup>119</sup> The amount to be repaid is the same amount which could have been deducted from their award if this payment had been made before the award under the scheme.<sup>120</sup> The victim may respond within 30 days of receiving the notice.<sup>121</sup> The claims officer will then inform the victim of the final decision on the repayment by writing to them.<sup>122</sup> The Criminal Injuries Compensation Authority may take court action to recover these funds.<sup>123</sup>

### *(ii) Northern Ireland*

[15.113] Where a victim has been compensated under the Northern Ireland Criminal Injuries Compensation Scheme and subsequently receives another payment for the same injury, they will be required to repay the award (up to the amount of the other payment).<sup>124</sup> Payments which may be repaid include:

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<sup>117</sup> Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at page 72 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

<sup>118</sup> Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at page 72 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

<sup>119</sup> Paragraph 111 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>120</sup> Criminal Injuries Compensation Authority, *Criminal Injuries Compensation Scheme 2012 – Internal guidance* (updated 2 March 2026) at page 72 <<https://www.gov.uk/guidance/cica-scheme-guidance#full-publication>> accessed 23 March 2026.

<sup>121</sup> Paragraph 112 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>122</sup> Paragraph 113 of the Criminal Injuries Compensation Scheme 2012 (amended) (England, Scotland and Wales).

<sup>123</sup> Criminal Injuries Compensation Authority, "Criminal injuries compensation: a guide" (updated 1 May 2025) <<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide#effect-of-other-payments-on-an-award>> accessed 23 March 2026.

<sup>124</sup> Paragraph 50(2) of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).



- a criminal injury compensation award in Great Britain (England, Scotland and Wales);
- a compensation award or similar payment from a country outside of the United Kingdom (England, Scotland, Wales and Northern Ireland);
- an order of a civil court for the payment of damages;
- an order of a criminal court for payment in respect of personal injuries; or
- a settlement of a claim for damages and/or compensation.<sup>125</sup>

[15.114] Repayments made for criminal injuries that happened in Northern Ireland are paid to the Ministers of the Northern Ireland Executive.<sup>126</sup>

*(iii) France*

[15.115] Once a victim in France has been compensated by the Crime Victims' Compensation Board, the Fonds de Garantie des Victimes (Guarantee Fund for Victims) will request reimbursement from the offender.<sup>127</sup>

[15.116] The Guarantee Fund for Victims may also intervene to help victims of a minor bodily injury or certain property damage to recover compensation owed to them by the offender.<sup>128</sup> The Crime Victims' Compensation Recovery Assistance Service helps victims to recover compensation awarded by the court after a criminal trial. When victims make a referral to this Service, the victim is authorising the Service to handle the collecting of the compensation owed to them by the offender.<sup>129</sup> To be eligible for this recovery assistance, the victim must:

- have a final court decision;
- not have been compensated by the offender within the two months following this decision;

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<sup>125</sup> Paragraph 49 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>126</sup> Paragraph 51 of the Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).

<sup>127</sup> Fonds de Garantie des Victimes, "The missions of compensation of FGTI" <<https://www.fondsdegarantie.fr/en/fgti-2/the-missions-of-compensation/>> accessed 23 March 2026.

<sup>128</sup> Fonds de Garantie des Victimes, "The missions of compensation of FGTI" <<https://www.fondsdegarantie.fr/en/fgti-2/the-missions-of-compensation/>> accessed 23 March 2026.

<sup>129</sup> Fonds de Garantie des Victimes, "Assistance in Recovering Damages Awarded by a Criminal Court (SARVI)" <<https://www.fondsdegarantie.fr/en/sarvi-2/>> accessed 23 March 2026.

- have submitted their claim within one year of the final court decision; and
- not have been compensated by the Crime Victims' Compensation Board.<sup>130</sup>

[15.117] If a victim is eligible for the Service, the Service will pay the victim in part or in full (depending on how much a court awarded them) within two months of their application. The Service will then pursue the offender for payment of the compensation and impose a penalty.<sup>131</sup> To recover this debt, the Service uses the means available to it under the law. However, recovery is limited by the offender's ability to pay. This procedure excludes victims from hiring a bailiff themselves to recover the debt.<sup>132</sup>

*(iv) California*

[15.118] The California Victim Compensation Board is entitled to a legal right or interest (in legal terms, a lien) on any judgment, award, or settlement received by the victim for the same costs or losses.<sup>133</sup> Where a victim or their legal representative ignores their obligation to repay the California Victim Compensation Board, it will pursue all legal remedies available where an overpayment has occurred.<sup>134</sup> This may include the California Franchise Tax Board recovering the money through garnishment. Any payment recovered is deposited back into the State's Restitution Fund.<sup>135</sup>

*(v) The Netherlands*

[15.119] Where a victim of crime in the Netherlands receives another form of compensation after receiving a payment from the Criminal Injuries Compensation Fund, the Fund will recover this money from the victim. The Fund will inform the victim of this decision and the amount to be refunded. This applies to

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<sup>130</sup> Fonds de Garantie des Victimes, *Compensation Booklet: The Crime Victims' Compensation Recovery Assistance Service (SARVI)* (August 2020) at pages 3-4 <[https://www.fondsdegarantie.fr/wp-content/uploads/2020/08/EN-Livret-indemnisation-SARVI\\_AOUT2020\\_EP.pdf](https://www.fondsdegarantie.fr/wp-content/uploads/2020/08/EN-Livret-indemnisation-SARVI_AOUT2020_EP.pdf)> accessed 23 March 2026.

<sup>131</sup> Fonds de Garantie des Victimes, *Compensation Booklet: The Crime Victims' Compensation Recovery Assistance Service (SARVI)* (August 2020) at page 4 <[https://www.fondsdegarantie.fr/wp-content/uploads/2020/08/EN-Livret-indemnisation-SARVI\\_AOUT2020\\_EP.pdf](https://www.fondsdegarantie.fr/wp-content/uploads/2020/08/EN-Livret-indemnisation-SARVI_AOUT2020_EP.pdf)> accessed 23 March 2026.

<sup>132</sup> Fonds de Garantie des Victimes, "Assistance in Recovering Damages Awarded by a Criminal Court (SARVI)" <<https://www.fondsdegarantie.fr/en/sarvi-2/>> accessed 23 March 2026.

<sup>133</sup> Section 13963(b) of the California Government Code (California).

<sup>134</sup> California Victim Compensation Board "Repayment" <<https://victims.ca.gov/for-victims/responsibility-for-repayment/>> accessed 23 March 2026.

<sup>135</sup> Section 13963(f) of the California Government Code (California).

compensation received from the perpetrator, an employer, or an insurance provider.<sup>136</sup>

[15.120] If a criminal court in the Netherlands has ordered a compensation payment from the offender, the Central Judicial Collection Agency will collect the compensation from the perpetrator. This Agency notifies the Criminal Injuries Compensation Fund of orders for compensation payments for violent crimes on a periodic basis. The Fund will then examine whether any payments by offenders are due to victims who have been compensated by them and will notify the Agency. The Agency will then transfer the duplicative payment to the compensation body instead of the victim and the Fund will inform the victim of this decision.<sup>137</sup>

(vi) *Victoria*

[15.121] The Victorian Law Reform Commission, in its Report on the Review of the Victims of Crime Assistance Act 1996, noted stakeholders' concerns regarding the lack of clarity about when repayment provisions may be used.<sup>138</sup> Therefore, it recommended that revised legislation should provide that:

- (a) after an award is made, a victim may be required to repay the award (in whole or in part) if the victim receives any assistance, payment, compensation or damages from any other source;
- (b) in determining whether a repayment should be required, the scheme decision maker must have regard to the following factors:
  - i. the amount or type of any subsequent assistance, payment, compensation or damages received;
  - ii. any other circumstances that the scheme decision maker considers relevant, including the victim's specific circumstances.

[15.122] In making this recommendation, the Victorian Law Reform Commission stressed the need to balance the sustainability of the scheme against the administrative and financial burdens that repayments may place on victims. It also recommended that guidelines be produced and made publicly available which detail the

<sup>136</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 21 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>137</sup> Schadefonds Geweldsmisdrijven, "Policy Manual" (1 January 2026) at page 22 <<https://schadefonds.nl/wp-content/uploads/2025/12/Policy-Manual-Schadefonds-Geweldsmisdrijven-1-January-2026-1.pdf>> accessed 23 March 2026.

<sup>138</sup> Victorian Law Reform Commission, *Report on the Review of the Victims of Crime Assistance Act 1996* (July 2018) at page 449.

circumstances in which a victim may be required to repay an award and the factors to be considered when determining repayment.<sup>139</sup>

[15.123] Under the Victims of Crime (Financial Assistance Scheme) Act 2022, the scheme decision-maker has the power to require victims to repay assistance in certain circumstances. This can arise, for example, where the victim receives a payment from another scheme for the same type of assistance. The scheme will only require repayment after considering the following:

- the victim's circumstances and the impact the repayment will have on the victim,
- the amount of assistance that may need to be repaid,
- the circumstances leading to the potential repayment, including whether there was any dishonesty involved, and
- any other relevant circumstances.

[15.124] Where the scheme decision-maker decides that a victim is to repay assistance, it will notify the victim in writing and advise of the amount to be repaid, the reasons for repayment, when the payment is due, and how the payment can be made.<sup>140</sup> Victims may apply for an internal review of a decision about repayment.<sup>141</sup> Money which has not been repaid as required by the scheme decision-maker may be recovered as a debt due to the State of Victoria.<sup>142</sup>

#### *(vii) New South Wales*

[15.125] Under the Victims Support Scheme in New South Wales, the Commissioner of Victims Rights may give the approval of financial support or a recognition payment. This approval may be subject to the condition that it would be repaid, in whole or in part, under circumstances set out in the notice of determination.<sup>143</sup> The approval of victims support is subject to a similar condition, where an applicant must repay any future amount from other sources for the same injuries, expenses and losses on demand to the Commissioner.<sup>144</sup>

<sup>139</sup> Victorian Law Reform Commission, *Report on the Review of the Victims of Crime Assistance Act 1996* (July 2018) at pages 450-451.

<sup>140</sup> Section 51 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria); Victoria State Government, "Financial Assistance Scheme Guidelines" (30 June 2025) at page 100 <<https://www.victimsofcrime.vic.gov.au/sites/default/files/2025-06/Financial-Assistance-Scheme-Guidelines-30-June-2025-1.pdf>> accessed 23 March 2026.

<sup>141</sup> Section 45 of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>142</sup> Section 50(5) of the Victims of Crime (Financial Assistance Scheme) Act 2022 (Victoria).

<sup>143</sup> Section 48(1)(c) of the Victims Rights and Support Act 2013 (New South Wales).

<sup>144</sup> Section 48(2)(b) of the Victims Rights and Support Act 2013 (New South Wales).

### (d) Submissions

[15.126] In its Consultation Paper, the Commission discussed the interaction between court-ordered compensation and State compensation under the current scheme. The Commission asked:

“Could the compensation order at the conclusion of the criminal trial operate notionally in favour of the victim, with provision for the order in fact to operate in favour of the state criminal injuries compensation fund, so that the cost of compensation is not unnecessarily borne by the taxpayer?”<sup>145</sup>

[15.127] One submission stated that any compensation ordered by the judge or offered by the offender could be paid directly to the compensation body. This would not require a victim to wait until the conclusion of criminal proceedings to receive a decision on their compensation application, and would prevent the risk of double payment. Another submission responding to this proposal stated that restructuring the compensation process would shift the onus of pursuing payment from individual victims to the State.

### (e) Proposals for reform

[15.128] The Commission considers that applicants to the proposed statutory scheme should be liable to repay to the State any relevant payment, compensation or damages received after a payment is received from the statutory body, where double payment occurs. As outlined above, payments, compensation or damages are relevant if they are intended to cover the same expenses, losses or harm as the payment of compensation made by the statutory body.

[15.129] The Commission considers that the statutory body should have the power to impose conditions on payments of compensation, such as a condition on the applicant to inform the statutory body of future double payments, and to repay such payments if they are made directly to the applicant. As discussed above, the power to decide that an award may be subject to conditions as to its repayment is provided for at paragraph 5 of the current scheme. This is also the case in New South Wales, where the Commissioner of Victims Rights may approve financial support or a recognition payment on the condition of repayment, should the victim receive a subsequent payment from another source.

[15.130] The Commission has considered various options for the recovery of double payments by the State. The Commission does not consider it practical to recommend that the statutory body itself should be tasked with recovering subsequent payments to the victim that constitute double payments. This function

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<sup>145</sup> Law Reform Commission, *Consultation Paper on Compensating Victims of Crime* (LRC CP 67-2022) at page 221, question 7.4.

can be considered to be beyond its remit and would require additional targeted resources, as well as particular expertise.

- [15.131] The Commission considers that another State body should be responsible for pursuing repayments, with the cooperation of the statutory body. The Commission notes that in other jurisdictions, such as the Netherlands and in California, the recovery function lies with external bodies, namely the Central Judicial Collection Agency and the California Franchise Tax Board.
- [15.132] The Commission considers that an agency or body could operate under the Minister for Justice with responsibility for recouping double payments, in a similar manner to the RBA scheme outlined above. Once the statutory body, or any other source, receives information that a victim has been in receipt of a double payment, it could inform the other agency or Minister for Justice, and it would then be the other agency's or Minister's prerogative to choose whether it is sufficiently cost- and resource- efficient to pursue recoupment.
- [15.133] In drafting provisions for a recovery mechanism, the Government will need to identify precisely by whom proceedings to recover may be instituted, in what circumstances repayments will be sought, and what time limit will be prescribed for bringing such proceedings. The recovery mechanism should be adequately tasked and resourced to pursue and oversee repayments to the State where double payments have occurred.
- [15.134] Additionally, the duty on applicants to the statutory body to provide reasonable assistance, as proposed in the Chapter on Other Eligibility Requirements, should include requiring a victim's reasonable assistance as the State seeks recovery of double payments.
- [15.135] As discussed in the Chapter on Funding the Statutory Scheme, the Commission recommends that the statutory body should be funded through central funds in order to ensure predictability of funding streams. Given that amounts available to the statutory body from recovered double payments will be uncertain, the Commission considers that recovered payments should be made to a central State fund rather than directly to the statutory body.
- [15.136] In order to facilitate the repayment of double payments to the State, both criminal and civil courts should be empowered to order that offender compensation due to the victim, either under a section 6 compensation order or resulting from civil proceedings, should instead be paid directly to the State if the statutory body has already paid out compensation to a victim. This should only occur in relation to the amount of offender compensation that constitutes double payment because it is intended to cover the same expenses, losses or harm as the payment of compensation made by the statutory body.
- [15.137] The Commission notes the legislative precedents for recovery of double payment provided by section 9 of the Criminal Justice Act 1993 in relation to the interaction

between section 6 compensation orders and civil damages, and the mechanisms for recovery provided by the Malicious Injuries Act 1981 and the RBA Scheme, as discussed further below. The Commission is of the view that the mechanism provided for in section 9 of the Criminal Justice Act 1993 could be adapted to recover double payments under the proposed statutory scheme. Such a mechanism could provide that where compensation or damages exceed the amount paid to a victim under the proposed statutory scheme, a court may order the difference to be repaid to the State.

[15.138] If a recovery mechanism is adopted, the statutory body should be empowered to co-operate with the State in any action it may wish to take to pursue recovery of double payments. Such co-operation would include providing details of the application made, the amount of the payment of compensation granted, and any information it has regarding double payments to the victim. This would be necessary for a State recovery mechanism to be practical and effective.

[15.139] Therefore, the Commission recommends that the Government consider creating a recovery mechanism, adequately resourced, to pursue the recovery of double compensation from other sources. In addition, the Commission recommends that the State should have the power to bring proceedings to recover any double payment, where the victim or offender has failed to fulfil a request to repay the State.

[15.140] The Commission is of the view that pursuit of a victim for repayment of double compensation may not always be appropriate for a number of reasons. For example, the victim may no longer have access to the money, the amount of a double payment may be very small, or the pursuit of payment may trigger retraumatisation for the victim. The Commission agrees with the Victoria Law Reform Commission that there is a need to balance the sustainability of the scheme against the administrative and financial burdens that repayments may place on victims. In this regard, the Commission sees merit in the approach in Victoria, which provides that certain factors must be considered before deciding to require repayment from a victim.

[15.141] Therefore, the Commission recommends that the Government should consider adopting similar factors when providing for a repayment mechanism. These factors should be considered before pursuing repayment by victims. Factors could include:

- (1) the victim's circumstances and the impact that repayment will have on the victim from a trauma-informed perspective;
- (2) the amount of compensation that may need to be repaid;
- (3) the circumstances leading to the potential repayment, including whether there was any dishonesty involved; and
- (4) any other relevant circumstances.

- R. 15.17 **The Commission recommends** that the statutory body should have the power to impose a condition on any payment of compensation requiring the applicant to repay any part of the payment that is the subject of a future double payment. This power should extend to specifying the possible source of such payment.
- R. 15.18 **The Commission recommends** that the statutory body should not be charged with the function of seeking the recovery of double payments.
- R. 15.19 **The Commission recommends** that the Government consider creating a recovery mechanism, adequately resourced, to pursue the recovery of double payments from other sources. This could consist of an agency or body that could operate under the Minister for Justice with responsibility for recouping double payment, once it becomes aware that a person has received a double payment.
- R. 15.20 **The Commission recommends** that the State should have the power to bring proceedings to recover any double payment, where the victim has failed to fulfil a request to repay the State.
- R. 15.21 **The Commission recommends** that civil courts should be explicitly empowered to order that civil damages should be repaid directly to the State to the extent that they are intended to cover the same expenses, losses or harm as a payment of compensation that has already been made by the statutory body.
- R. 15.22 **The Commission recommends** that the sentencing judge should be empowered to order that section 6 compensation orders should be repaid directly to the State to the extent that they are intended to cover the same expenses, losses or harm as a payment of compensation that has already been made by the statutory body.
- R. 15.23 **The Commission recommends** that the Government should consider adopting the following factors to be considered before pursuing repayment by victims:
- (1) the victim's circumstances and the impact that repayment will have on the victim from a trauma-informed perspective;
  - (2) the amount of compensation that may need to be repaid;
  - (3) the circumstances leading to the potential repayment, including whether there was any dishonesty involved; and
  - (4) any other relevant circumstances.

## 6. Direct recovery by the State

[15.142] The final issue that the Commission considered is in what circumstances, if any, the State should take on (in legal terms "subrogate") the right of an applicant to take a claim against an offender or other body for the expenses, losses or harm incurred as a result of the crime of violence when the statutory body has made a payment and the victim decides not to pursue the offender through the courts.



[15.143] This section identifies the lack of provision for the transfer of applicants' rights under the current scheme, the law on the transfer of rights, and how this is used in other jurisdictions. The section concludes with the Commission's proposals for reform regarding direct recovery by the State.

#### **(a) Current scheme**

[15.144] As discussed throughout this Chapter, the current scheme is clear that double payment is prohibited and may be required to be repaid.<sup>146</sup> However, no provision is made for direct recovery by the State of compensation from the offender or any other person or body that may be liable to compensate the victim.

#### **(b) Relevant law**

[15.145] The Commission, in its Report on Section 2 of the Civil Liability (Amendment) Act 1964, discussed the concept of "subrogation" – the transfer of rights to take a legal claim – in the context of insurance contracts. It described subrogation by insurance companies as the company "stepping into the shoes" of the plaintiff, and recovering money from the defendant.<sup>147</sup>

[15.146] In the context of compensating victims of crime, the Council of Europe's European Convention on the Compensation of Victims of Violent Crimes 1983 provides for state subrogation in Article 10.<sup>148</sup> This provides that a State or the relevant authority may take on the rights of the person compensated to pursue a legal claim against the offender for the amount of compensation paid.

#### **(c) Comparative jurisdictions**

##### *(i) California*

[15.147] Under the California Government Code, the California Victim Compensation Board is entitled to seek reimbursement by taking on the applicant's right to bring a legal claim. The Board shall be transferred the rights of victims to the extent of any compensation granted by the Board. These rights are against the offender or any person liable for the losses suffered by the victim, including insurers.<sup>149</sup>

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<sup>146</sup> Paragraph 5 of the Criminal Injuries Compensation Scheme (31 January 2025).

<sup>147</sup> Law Reform Commission, *Report on Section 2 of the Civil Liability (Amendment) Act 1964: The Deductibility of Collateral Benefits from Award of Damages* (LRC 68-2002) at para 1.67.

<sup>148</sup> Article 10 of the Council of Europe, European Convention on the Compensation of Victims of Violent Crimes 1983 (ETS No 116). Ireland did not ratify this Convention, but the Commission considers it is an authoritative statement of general practice. Article 10 states: "[t]he State or the competent authority may be subrogated to the rights of the person compensated for the amount of the compensation paid."

<sup>149</sup> Section 13963(a) of the California Government Code (California). Section 11580.2 of the Insurance Code (California).

*(ii) Victoria*

[15.148] Under the Victims of Crime (Financial Assistance Scheme) Act 2022, an applicant's right to pursue a claim may be transferred to the State of Victoria.<sup>150</sup> A successful applicant to the scheme may assign to the State their right to recover damages or compensation for the same injury or death, from any other person via civil proceedings.<sup>151</sup> Funds received through this mechanism of an amount up to the assistance paid to the applicant must be paid into the Consolidated Fund.<sup>152</sup> Any additional funds must be paid to the applicant.<sup>153</sup>

[15.149] This action for recovery may be taken by the scheme decision-maker on behalf of the State. However, they may refuse to take recovery action where:

- (a) the scheme decision maker considers that:
  - i. there is a risk to the safety of any person if the action is taken or continued; or
  - ii. there is no reasonable chance of success; or
- (b) in any other circumstances that the scheme decision maker considers relevant.<sup>154</sup>

*(iii) New South Wales*

[15.150] Under the Victims Support Scheme in New South Wales, approval for financial support or a recognition payment may be given by the Commissioner of Victims Rights, subject to conditions.<sup>155</sup> One condition is the transfer of the applicant's right to pursue any entitlement they have to damages that may be awarded in civil proceedings.<sup>156</sup>

[15.151] The scheme also provides for the transfer of rights in respect of victim support payments. After payment of the support, the applicant's right to commence or maintain civil proceedings is transferred to the State to the extent of the amount of support that was paid.<sup>157</sup> This provision does not affect a person's right to

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<sup>150</sup> Section 42 of the Victims of Crime (Financial Assistance Scheme) Act 2022.

<sup>151</sup> Section 42(1) of the Victims of Crime (Financial Assistance Scheme) Act 2022.

<sup>152</sup> Section 42(2)(a) of the Victims of Crime (Financial Assistance Scheme) Act 2022.

<sup>153</sup> Section 42(2)(b) of the Victims of Crime (Financial Assistance Scheme) Act 2022.

<sup>154</sup> Section 42(3) of the Victims of Crime (Financial Assistance Scheme) Act 2022.

<sup>155</sup> Section 48(1) of the Victims Rights and Support Act 2013 (New South Wales).

<sup>156</sup> Section 48(1)(b) of the Victims Rights and Support Act 2013 (New South Wales). The Commission notes that the body these rights are transferred to is not specified.

<sup>157</sup> Section 55(3) of the Victims Rights and Support Act 2013 (New South Wales).

commence or maintain civil proceedings.<sup>158</sup> The State's right to bring proceedings will no longer exist after a court order is confirmed.<sup>159</sup>

[15.152] Part 5 of the Victims Rights and Support Act 2013 concerns recovery of victim support payments from offenders after conviction. It allows the Commissioner of Victims Rights to recover money from a convicted offender, where the victim has received financial support under the Act.<sup>160</sup>

[15.153] In this case, the Commissioner of Victims Rights may make an order for recovery against the convicted offender.<sup>161</sup> The maximum amount that must be paid under the order is the amount paid to the victim as financial support or a recognition payment.<sup>162</sup> A person against whom an order was made may object to the order within 28 days.<sup>163</sup>

[15.154] Once the order has been confirmed, the Commissioner of Victims Rights may serve a debt notice on the person.<sup>164</sup> If the amount to be paid is not paid by the due date, the matter may be referred to the Fines Commissioner and enforcement action may be taken.<sup>165</sup>

#### **(d) Proposal for reform**

[15.155] The Commission recommends that the State should be in a position to pursue a payment from an offender directly, where the statutory body has made a payment to a victim. The State should be able to take on the right of the victim to make a legal claim against the offender. This might be appropriate, for example, where the State is aware that the offender has significant means but the victim has decided not to pursue the offender for compensation.

[15.156] The Commission recognises that there are a number of practical issues regarding the transfer of an applicant's right to pursue a legal claim against an offender to the State. First, many offenders will have little or nothing in assets, meaning that pursuing a civil claim would be potentially futile. Second, in civil proceedings, it is the claimant who must establish the relevant wrongdoing on the balance of probabilities. This may be difficult where the State would have to establish this, particularly if the victim is not fully co-operative.

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<sup>158</sup> Section 55(2) of the Victims Rights and Support Act 2013 (New South Wales).

<sup>159</sup> Section 74(3) of the Victims Rights and Support Act 2013 (New South Wales).

<sup>160</sup> Section 59 of the Victims Rights and Support Act 2013 (New South Wales).

<sup>161</sup> Section 61 of the Victims Rights and Support Act 2013 (New South Wales).

<sup>162</sup> Section 70 of the Victims Rights and Support Act 2013 (New South Wales).

<sup>163</sup> Section 62 of the Victims Rights and Support Act 2013 (New South Wales).

<sup>164</sup> Section 70B of the Victims Rights and Support Act 2013 (New South Wales).

<sup>165</sup> Section 72 of the Victims Rights and Support Act 2013 (New South Wales).

[15.157] As discussed in detail in the Chapter on Determining Fair and Appropriate Compensation, the Commission emphasises that the proposed statutory scheme will not provide for full compensation and is simply providing a contribution to the losses suffered by the applicant.<sup>166</sup> In some cases, the applicant may still wish to pursue the offender for the difference between this contribution and the full value of a claim in civil proceedings. Therefore, the State should only consider pursuing an offender for repayment where an applicant clearly indicates that they are not pursuing, and do not intend to pursue, a civil claim. The Commission recommends that, where an applicant indicates that they will not pursue civil proceedings, the right of the applicant to pursue a civil claim may be transferred to the State but only to the extent of any payment already made by the statutory body. However, the applicant must explicitly confirm in writing that they do not intend to pursue civil proceedings, and they must agree to provide reasonable assistance to the State where it decides to pursue civil proceedings.

**R. 15.24 The Commission recommends** that where an applicant indicates that they will not pursue civil proceedings, the right of the applicant to pursue a civil claim may be transferred to the State, but only to the extent of any payment already made by the statutory body. In such a case the applicant must explicitly confirm in writing that they do not intend to pursue civil proceedings, and they must agree to provide reasonable assistance to the State where it decides to pursue civil proceedings.

<sup>166</sup> See also Case C-129/19 *Presidenza del Consiglio dei Ministri v BV, joined parties; Procura della Repubblica di Torino* ECLI:EU:C:2020:566 where the Court of Justice of the European Union stated at para 64 that compensation to victims of crime should represent a "contribution to the reparation of material and non-material losses suffered by them". This case is discussed in further detail in the Chapter on Determining Fair and Appropriate Compensation.

# APPENDIX A

## SUMMARY OF RECOMMENDATIONS

### TABLE OF CONTENTS

|                                                                                   |            |
|-----------------------------------------------------------------------------------|------------|
| <i>Chapter 2 Establishing a Statutory Scheme.....</i>                             | <i>587</i> |
| (a) A statutory basis for a victim compensation scheme.....                       | 587        |
| (b) Objectives.....                                                               | 587        |
| (c) Guiding Principles.....                                                       | 587        |
| <i>Chapter 3 Funding the Statutory Scheme.....</i>                                | <i>588</i> |
| <i>Chapter 4 Structure of the Statutory Body and the Application Process.....</i> | <i>588</i> |
| (a) The form of the proposed new body.....                                        | 588        |
| (b) The information and assistive tier.....                                       | 589        |
| (c) The assessment and adjudicative tier.....                                     | 590        |
| (d) The appeals tier.....                                                         | 591        |
| (e) The application process.....                                                  | 592        |
| <i>Chapter 5 Administration of the Statutory Body and Statutory Scheme.....</i>   | <i>595</i> |
| (a) Composition of the statutory body.....                                        | 595        |
| (b) Appointment, tenure and removal.....                                          | 597        |
| (c) Qualifications.....                                                           | 597        |
| (d) Specialist training.....                                                      | 598        |
| (e) Powers of the statutory body.....                                             | 599        |
| (f) Referring a question of law to the High Court.....                            | 601        |
| <i>Chapter 6 Defining Eligible Applicants and Crimes of Violence.....</i>         | <i>601</i> |
| (a) Defining a victim.....                                                        | 601        |
| (b) Other eligible applicants.....                                                | 602        |
| (c) Defining a crime of violence.....                                             | 605        |
| <i>Chapter 7 Other Eligibility Requirements.....</i>                              | <i>608</i> |
| (a) Jurisdiction.....                                                             | 608        |
| (b) Time limits.....                                                              | 608        |
| (c) Reporting obligations.....                                                    | 610        |
| (d) Obligation to give reasonable assistance.....                                 | 611        |
| <i>Chapter 8 Well-meaning intervenors.....</i>                                    | <i>612</i> |
| <i>Chapter 9 Exclusionary Criteria.....</i>                                       | <i>614</i> |
| (a) Current scheme: Conduct, character, or "way of life".....                     | 614        |
| (b) Contributory misconduct.....                                                  | 614        |

|                                                                                                                  |            |
|------------------------------------------------------------------------------------------------------------------|------------|
| (c) Exceptional public interest discretion to reduce or refuse compensation.....                                 | 616        |
| (d) Fraud, collusion and perpetrator benefit .....                                                               | 616        |
| <i>Chapter 10 Types of Compensation .....</i>                                                                    | <i>618</i> |
| (a) Terminology and types of compensation .....                                                                  | 618        |
| (b) Fair and appropriate compensation .....                                                                      | 619        |
| (c) Compensating property loss.....                                                                              | 619        |
| (d) Interim payments .....                                                                                       | 620        |
| (e) Periodic payments.....                                                                                       | 621        |
| (f) Types of compensation payments not included.....                                                             | 621        |
| <i>Chapter 11 Determining Fair and Appropriate Compensation .....</i>                                            | <i>621</i> |
| (a) Verifiable expenses and loss of earnings .....                                                               | 621        |
| (b) A framework for general compensation payments.....                                                           | 622        |
| (c) Bereavement payment for family members .....                                                                 | 624        |
| <i>Chapter 12 Legal Assistance .....</i>                                                                         | <i>624</i> |
| (a) Could legal assistance or other support be necessary for applicants .....                                    | 624        |
| (b) Funding necessary legal assistance.....                                                                      | 624        |
| (c) Reimbursement of other costs .....                                                                           | 627        |
| <i>Chapter 13 Interaction with Court Proceedings.....</i>                                                        | <i>627</i> |
| (a) Sequencing of proceedings .....                                                                              | 627        |
| (b) Sharing of information with courts .....                                                                     | 629        |
| (c) Testing evidence of an application for compensation in court proceedings .....                               | 630        |
| <i>Chapter 14 Offender Compensation .....</i>                                                                    | <i>631</i> |
| (a) Challenges with section 6 compensation orders and proposals for reform.....                                  | 631        |
| (b) Hybrid nature of section 6 compensation orders: the role of offender compensation orders in sentencing ..... | 631        |
| (c) A duty on the courts to consider a section 6 compensation order.....                                         | 632        |
| (d) Appropriate amount of compensation .....                                                                     | 633        |
| (e) Enforcement.....                                                                                             | 633        |
| <i>Chapter 15 Preventing Double compensation .....</i>                                                           | <i>633</i> |
| (a) Other sources of compensation.....                                                                           | 633        |
| (b) Duty to inform the statutory body of other payments .....                                                    | 635        |
| (c) Information regarding double payments.....                                                                   | 636        |
| (d) Reductions of compensation payments.....                                                                     | 637        |
| (e) Repayment of compensation by the victim.....                                                                 | 637        |
| (f) Direct recovery by the State.....                                                                            | 638        |

## Chapter 2: Establishing a Statutory Scheme

### (a) A statutory basis for a victim compensation scheme

- R. 2.1 **The Commission recommends** that a rights-based, victim-centred, state-funded scheme for compensating victims of crimes of violence be put on a statutory basis.
- R. 2.2 **The Commission recommends** that the independence and impartiality of the statutory body be enshrined in statute.

### (b) Objectives

- R. 2.3 **The Commission recommends** that the objectives for the statutory scheme should be to:
- (1) acknowledge, on behalf of the State, the impact of the crime of violence on the victim;
  - (2) provide a respectful forum for victims to be heard, as appropriate to each individual;
  - (3) assist in the victim's recovery from the crime of violence by providing fair, appropriate, and timely compensation as determined in accordance with the compensation scheme;
  - (4) enable the victim of a crime of violence to apply for compensation in an easily accessible process;
  - (5) complement other victims' services; and,
  - (6) where appropriate, compensate well-meaning intervenors.

### (c) Guiding principles

- R. 2.4 **The Commission recommends** that when exercising any function or making a decision under the proposed statute, the statutory body should have regard to the following principles:
- (1) This scheme should vindicate the right of victims of crimes of violence to fair and appropriate compensation and in so doing:
    - (a) provide an appropriate contribution towards compensating victims for the harm they have suffered, as determined in accordance with the compensation scheme;
    - (b) ensure that all victims are treated with dignity and respect;
    - (c) aim to prevent secondary victimisation by providing appropriate and trauma-informed support for victims throughout the compensation process;

- (d) ensure the compensation scheme is accessible to victims of crimes of violence without discrimination;
  - (e) compensate victims without undue delay.
- (2) This scheme should ensure fair, consistent and transparent decision-making.

### Chapter 3: Funding the Statutory Scheme

- R. 3.1 The Commission recommends** that the statutory body be adequately funded from central Government funds.
- R. 3.2 The Commission recommends** that the statutory body be funded on a multi-annual basis.
- R. 3.3 The Commission recommends** that the statutory scheme should provide that the expenses incurred by the Minister for Justice in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

### Chapter 4: Structure of the Statutory Body and the Application Process

#### (a) The form of the proposed new body

- R. 4.1 The Commission recommends** that a specialist independent body be established on a statutory basis to administer the statutory victim compensation scheme.
- R. 4.2 The Commission recommends** that the statutory body should be:
- (1) adequately and consistently funded;
  - (2) adequately staffed by a permanent core team who are appropriately skilled and regularly trained;
  - (3) operated with administrative efficiency;
  - (4) trauma informed; and
  - (5) victim-centred.
- R. 4.3 The Commission recommends** that the statutory body should have three tiers:
- (1) an information and assistive tier;
  - (2) an assessment and adjudicative tier and
  - (3) an appeals tier.



**R. 4.4 The Commission recommends** that the statutory body should have a function to cooperate with any person or body that it considers appropriate in relation to any matter connected to its functions, including other bodies that provide victim support services.

**(b) The information and assistive tier**

**R. 4.5 The Commission recommends** that the functions of the information and assistive tier would include:

- (1) Providing information and assistance, but not legal advice, to victims in their application for compensation;
- (2) Forwarding all applications and other requests, such as for interim payments or an advance decision on a contribution to costs, to the assessment and adjudicative tier;
- (3) Cooperating with any person or body that it considers appropriate in relation to any matter connected to its functions, including by seeking documentation to assist an applicant to complete their application in the following circumstances:
  - (a) where requested by the applicant,
  - (b) where otherwise necessary to complete an application, or
  - (c) where necessary for a fair determination of the application.
- (4) Proposing operational protocols or memoranda of understanding with other state bodies that it considers relevant to its work;
- (5) Providing information and assistance to victims in accessing victim support services; and
- (6) Providing assistance with cross-border applications when a resident of Ireland wishes to apply for compensation in another EU Member State where they were harmed as a result of a crime of violence. This should include:
  - (a) access to information,
  - (b) translation of relevant documents,
  - (c) cooperating with equivalent authorities in other EU Member States.

**R. 4.6 The Commission recommends** that it should be explicitly stated on the statutory body's website and public-facing documentation that staff members and decision-makers at the statutory body have a duty to maintain confidentiality in relation to applicants' personal information. This duty would not apply where the sharing of information is necessary for the processing of an application, for example for repayment where there has been a duplication of payment, or for another lawful purpose.

### (c) The assessment and adjudicative tier

**R. 4.7 The Commission recommends** that the functions of the assessment and adjudicative tier would include:

- (1) Deciding whether an applicant is eligible for the scheme;
- (2) Deciding whether an interim payment should be made, where requested by an applicant (in line with the criteria outlined in the Chapter on Types of Compensation);
- (3) Deciding whether to make provision for an advanced decision on a contribution towards the cost of the applicant's legal assistance or advice, where requested by an applicant (in line with the criteria outlined in the Chapter on Legal Assistance);
- (4) Deciding whether an oral hearing is appropriate;
- (5) Deciding whether an applicant is eligible for a payment under the scheme and, if so, determining the appropriate amount of payment;
- (6) Deciding whether to make a contribution towards the cost of an applicant's legal assistance following an application, if requested by an applicant;
- (7) Deciding how and when to publish the decisions of the statutory body;
- (8) Considering whether the public interest exclusion may apply, as outlined in the Chapter on Exclusionary Criteria, and, if so, forwarding the application to a three-member panel of the statutory body for approval of the decision on eligibility and amount of payment.

**(d) The appeals tier***(i) Internal appeals*

- R. 4.8 **The Commission recommends** that the statutory body should have an internal appeals tier.
- R. 4.9 **The Commission recommends** that appeals from a single decision-maker at the assessment and adjudicative tier should be heard by a panel of three decision-makers at the appeals tier.
- R. 4.10 **The Commission recommends** that the panel hearing an appeal should not include the original decision-maker.
- R. 4.11 **The Commission recommends** that decisions on appeal are the final decision of the statutory body.
- R. 4.12 **The Commission recommends that** the appeals tier should have the power to determine the application at an entirely new hearing or the hearing can be restricted where not all aspects of the decision are appealed by the applicant.
- R. 4.13 **The Commission recommends** that appeals on contributions to costs, as outlined in the Chapter on Legal Assistance, should only be 'on the record' meaning there will not be a new oral hearing for such appeals.

*(ii) External appeals*

- R. 4.14 **The Commission recommends** that a right of appeal to the High Court should exist from final determinations of the statutory body, but only on a point of law.
- R. 4.15 **The Commission recommends** that an external appeal to the High Court can incorporate points of law and grounds traditionally reserved for judicial review proceedings.
- R. 4.16 **The Commission recommends** that the High Court should be able to:
- (a) confirm the decision, or
  - (b) overturn that decision and replace it with a decision that the High Court considers appropriate or, where it is not possible for the High Court to make a new decision,
  - (c) remit the decision back to the statutory body.

*(iii) Onward appeals*

**R. 4.17 The Commission recommends** that no appeal should be permitted to the Court of Appeal unless the High Court certifies that there is a point of law of exceptional public importance and that an appeal is desirable in the public interest.

**(e) The application process***(i) Applications*

**R. 4.18 The Commission recommends** that a bespoke website be created for the statutory body that contains an online application procedure where applicants can make and track their application.

**R. 4.19 The Commission recommends** that application forms may be made:

- online,
- by post, or
- in-person.

**R. 4.20 The Commission recommends** that application forms should be:

- as accessible as possible;
- worded in plain language;
- available in multiple languages; and
- accompanied by a guidance note.

*(ii) Requests from the applicant*

**R. 4.21 The Commission recommends** that an applicant can indicate that they wish to request an interim payment on their application form, and provide detailed reasons for making this request. (This recommendation is also in the Chapter on Types of Compensation.)

**R. 4.22 The Commission recommends** that an applicant can indicate that they wish to request an advance payment on a contribution to costs on their application form, and provide detailed reasons for making this request. (This recommendation is also in the Chapter on Legal Assistance.)

**R. 4.23 The Commission recommends** that where an applicant has indicated that they wish to make a request as outlined above, the information and assistive tier should then explain the criteria for such payments to applicants, and take the following steps:

- (1) furnish the applicant with a separate application form to make such requests,

- (2) support applicants to understand whether they are likely to meet these criteria,
- (3) indicate on the relevant form that they consider the applicant is likely to meet the criteria, and
- (4) forward to the assessment and adjudicative tier for a decision on these requests.

*(iii) Certificate of authority and data protection*

**R. 4.24 The Commission recommends** that application forms should contain a certificate of authority, which provides for the applicant to:

- (1) acknowledge that they understand the eligibility criteria and the exclusions outlined in the scheme, and that the presence of any exclusionary criteria may lead to a reduction or refusal of compensation;
- (2) inform the proposed statutory body in the certificate of authority of:
  - (a) past payments, including damages, settlements or other compensation covering any costs or losses associated with their injury;
  - (b) any alternative avenues they are considering for compensation, and
- (3) authorise the statutory body to seek documents on the applicant's behalf where:
  - (a) requested by the applicant, or
  - (b) where necessary to complete an application, or
  - (c) where necessary for a fair determination;
- (4) give consent for the sharing of their personal information by the statutory body, where necessary for the processing of their application, or other lawful purpose, including for identifying potential double payments;
- (5) inform the statutory body of the details of their legal representatives, should an applicant have taken or intend to take civil proceedings against the offender for the same crime of violence;
- (6) give consent to contact from the statutory body to their legal representatives seeking any information on separate compensation payments intended to cover the same losses as applied for under the statutory scheme and, potentially, seeking an appropriate undertaking regarding repayment (this issue is discussed in the Chapter on Preventing Double Compensation);
- (7) authorise external bodies to share information with the statutory body at its request where necessary for the processing of their application;

- (8) certify that they understand that their personal data will be retained and will be subject to the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (as amended);
- (9) acknowledge that they are aware that their application form and any other information or document related to their application may be subject to requests for discovery in civil proceedings or disclosure in criminal trials;
- (10) acknowledge that a decision not to consent to requests for disclosure or discovery will have no adverse consequences for their application for compensation;
- (11) acknowledge that they are aware that they may be subject to examination or cross-examination on this material relating to their application when they are giving evidence in subsequent court proceedings;
- (12) undertake to notify the statutory body of any change to their circumstances, including any payment they receive in the future covering the same losses they have been compensated for under the statutory scheme;
- (13) certify that they understand that decisions of the statutory body will be made publicly available, once appropriately redacted, or may be delayed if the interests of justice so require.

- R. 4.25 The Commission recommends** that application forms should be accompanied by a guidance note in plain language which explains the entire application process, all documents required and who should or can obtain them, and in what circumstances, as well as all of the applicant's rights throughout the process. Staff at the assistive tier should confirm with an applicant that they understand everything in the application form and certificate of authority.
- R. 4.26 The Commission recommends** that the statutory body should publish its own data protection policy, disclosing when and how an applicant's data will be shared, in compliance with relevant data protection rules.

## Chapter 5: Administration of the Statutory Body and Statutory Scheme

### (a) Composition of the statutory body

#### *(i) Staff members and assessment and adjudication officers*

- R. 5.1 The Commission recommends** that the statutory body should be adequately staffed at the information and assistive tier to ensure sufficient support is available for all applicants.
- R. 5.2 The Commission recommends** that staff of the information and assistive tier be appointed by the statutory body itself.
- R. 5.3 The Commission recommends that** the statutory body should have a sufficient number of assessment and adjudication officers at the assessment and adjudicative tier and for the appeal tier to meet the demands of its case load.

#### *(ii) Chairperson*

- R. 5.4 The Commission recommends** that the statutory body should have a chairperson who is appointed by the Minister for Justice and who would oversee the management of the caseload of the statutory body and other functions as may be required. These functions may include the following:
- (1) ensuring the efficient functioning of the statutory body;
  - (2) ensuring that the role assigned to each assessment and adjudication officer is carried out as expeditiously as may be consistent with fairness and justice;
  - (3) developing procedures for the statutory body;
  - (4) publishing guidance material and other resources for victims, victim support service providers, and legal practitioners;

- (5) conducting education and training, public awareness activities and research in relation to the statutory scheme, including data collection on the operation of the scheme;
- (6) establishing a complaints process in relation to the administration of the statutory scheme, including in relation to the conduct of the scheme decision-makers and members of staff.

*(iii) Chief Executive Officer*

**R. 5.5    The Commission recommends** that the statutory body should have a Chief Executive Officer, appointed by the Minister for Justice, following a recommendation by the Public Appointments Service, who would oversee the administration and business of the body.



**(b) Appointment, tenure and removal**

- R. 5.6 **The Commission recommends** that the assessment and adjudication officers for the assessment and adjudication tier and the appeal tier of the statutory body, be appointed by the Minister for Justice, on the recommendation of the chairperson.
- R. 5.7 **The Commission recommends** that the Minister should not appoint an assessment and adjudication officer unless they have been selected by the Public Appointments Service after a public competition.
- R. 5.8 **The Commission recommends** that the term of office of assessment and adjudication officers of the statutory body shall be five years, renewable once.
- R. 5.9 **The Commission recommends** that temporary assessment and adjudication officers may be appointed by the Minister where the chairperson so requests to meet business needs.
- R. 5.10 **The Commission recommends** that the Minister may revoke an assessment and adjudication officer's appointment to the statutory body on the recommendation of the chairperson in specified circumstances, for cause, and only after appropriate and fair procedures have been followed.
- R. 5.11 **The Commission recommends** that the Minister may revoke a chairperson or CEO's appointment to the statutory body in specified circumstances, for cause, and only after appropriate and fair procedures have been followed. These specified circumstances would be set out by the statutory body.
- R. 5.12 **The Commission recommends** that a chairperson or a CEO may resign from office by giving notice to the Minister for Justice.

**(c) Qualifications***(i) Ordinary decision makers*

- R. 5.13 **The Commission recommends** that assessment and adjudication officers who decide cases should be either:
- (1) a barrister or solicitor with at least five years' post-qualification experience, or
  - (2) a person with other relevant experience and qualifications, as determined from time to time by the chairperson of the statutory body.

*(ii) Chairperson*

- R. 5.14 **The Commission recommends** that the chairperson of the statutory body should be a qualified solicitor or barrister.
- R. 5.15 **The Commission recommends** that the chairperson should have a minimum of seven years' post-qualification experience.

*(iii) Appeal panels*

- R. 5.16 **The Commission recommends** that appeal panels should consist of three assessment and adjudication officers of the statutory body, with a minimum of one legally qualified panel member.

**(d) Specialist training**

- R. 5.17 **The Commission recommends** that all staff of the statutory body and all assessment and adjudication officers be provided with the training necessary to enable them to work with and respond to the needs of victims of crimes of violence.

**(e) Powers of the statutory body***(i) Power to determine procedural rules*

- R. 5.18 **The Commission recommends** that the statutory body should have the power to draft its own procedures for the processing and determination of applications and appeals, including for the conduct of oral hearings. This should include the power to draft rules of procedure and practice directions.
- R. 5.19 **The Commission recommends** that the procedures, rules of procedure and practice directions of the statutory body should be published.

*(ii) Power to hold a hearing*

- R. 5.20 **The Commission recommends** that the statutory body may hold an oral hearing on any case before it, where appropriate. In making that assessment, the statutory body should be required to have regard to any request made by the applicant for an oral hearing.
- R. 5.21 **The Commission recommends** that the proposed statutory body should conduct oral hearings in a manner that ensures fairness and procedural justice.

*(iii) Power to join applications*

- R. 5.22 **The Commission recommends** that the statutory body should have the power to join applications arising from the same factual background, which may include the same crime of violence.

*(iv) Evidence*

- R. 5.23 **The Commission recommends** that the statutory body should have the power to conclude operational protocols or memoranda of understanding with other state and non-state bodies that it considers relevant to its work, including An Garda Síochána. (This recommendation is also in the Chapter on the Structure of the Statutory Body and the Application Process).
- R. 5.24 **The Commission recommends** that for the purposes of an oral hearing, the chairperson of the statutory body may:
- (1) direct in writing any person whose evidence is required by the statutory body to attend before the statutory body on a date and at a time and place specified in the direction to give evidence and to produce any document or thing in his or her possession or control specified in the direction;
  - (2) direct any such person to produce any specified document or thing in his or her possession or control.

**R. 5.25 The Commission recommends** that the statutory body be able to accept evidence even where such evidence would not satisfy the formal rules required for admissibility of evidence in court proceedings, provided that the process complies with the requirements of fair procedures.

**R. 5.26 The Commission recommends** that the statutory body should have the power to administer oaths or affirmations of truth.

*(v) Publication and redaction of decisions*

**R. 5.27 The Commission recommends** that the statutory body should, as a general rule, publish its decisions, appropriately redacted to remove personal data.

**R. 5.28 The Commission recommends** that where the statutory body has concerns regarding the interests of justice, including where it considers there may be a risk to the right to a fair trial or the right to privacy:

- (1) a decision on compensation could be made and published and, in addition to the usual redactions to remove personal data, the decision could be further redacted to protect the anonymity of both the defendant and the victim, such as by redacting any unique set of facts or circumstances that could identify the defendant or the victim, and the statutory body could prohibit the publication or broadcast of the redacted part of the decision which would, or would be likely to, identify the victim or defendant, or
- (2) a decision on compensation could be made but the publication of the decision could be delayed until after the conclusion of court proceedings, and the statutory body could prohibit the publication or broadcast of the decision which would, or would be likely to, identify the victim or defendant, or
- (3) where it would not be in the interests of justice to make a decision regarding compensation before the conclusion of court proceedings, and neither anonymising nor delaying the publication of a decision would mitigate these concerns, the statutory body should postpone consideration of an application. (This recommendation is also in the Chapter on Interaction with Court Proceedings).

**R. 5.29 The Commission recommends** that where the statutory body believes a person may be about to breach or has breached a non-publication order made by the statutory body, the statutory body may apply to a court for such order as may be prescribed for the purposes of enforcing the non-publication order or determining the consequences of its breach. (This recommendation is also in the Chapter on Interaction with Court Proceedings).

**R. 5.30 The Commission recommends** that the certificate of authority contains an acknowledgment by the applicant that decisions of the statutory body will generally be published, with appropriate redactions. (This recommendation is also in the Chapter on the Structure of the Statutory Body and the Application Process).

*(vi) Power to make a direct payment*

**R. 5.31 The Commission recommends** that where the statutory body has reasonable concerns that the victim of crime will not receive the benefit of the compensation payment, the statutory body may direct that a payment of compensation be made directly to the person or body charging for the relevant verifiable expenses, arising from the crime of violence, in order to ensure the victim receives the medical or other support they reasonably require. (This recommendation is also in the Chapter on Exclusionary Criteria).

**(f) Referring a question of law to the High Court**

**R. 5.32 The Commission recommends** that the statutory body should have the power to initiate a consultative case stated to the High Court.

**R. 5.33 The Commission recommends** that applicants for compensation should be permitted to request that the statutory body initiate a consultative case stated.

**R. 5.34 The Commission recommends** that the decision to initiate a consultative case stated should be made by the relevant assessment and adjudication officer.

## Chapter 6: Defining Eligible Applicants and Crimes of Violence

### (a) Defining a victim

#### *(i) Victims of a crime of violence*

**R. 6.1 The Commission recommends:**

- (1) A person is eligible for compensation if the person is a victim of a crime of violence;
- (2) A person is a victim of a crime of violence if they have suffered harm as a result of that crime;

- (3) Harm includes physical, mental or emotional harm or distress which was directly caused by a criminal offence.
- (4) Compensation for a victim of a crime of violence may include general compensation payments, reasonable and verifiable expenses and loss of earnings. (These categories of payments are defined in the Chapter on Types of Compensation).

## (b) Other eligible applicants

### (i) *Persons responsible for the maintenance of the victim*

**R. 6.2 The Commission recommends** that a person should be eligible for compensation for reasonable, verifiable expenses if the person is responsible for the maintenance of a victim of a crime of violence and has incurred reasonable, verifiable expenses as a result of the harm to the victim caused by the crime of violence.

### (ii) *Family members: Bereavement payments*

**R. 6.3 The Commission recommends** that a person should be eligible for a bereavement payment if:

- (1) the person is a family member of the victim of a crime of violence, and
- (2) the victim has died as a result of the crime of violence, and
- (3) the person has suffered harm as a result of the death.

Harm includes physical, mental or emotional harm or distress.

**R. 6.4 The Commission recommends** that a person is a family member of the victim if the person:

- (1) is a spouse, civil partner or cohabitant of the victim,
- (2) is a child or step-child of the victim,
- (3) is a parent or grandparent of the victim,
- (4) is a brother, sister, half brother or half sister, step-brother or step-sister, of the victim,
- (5) is a grandchild of the victim,
- (6) is an aunt, uncle, nephew or niece of the victim, and
- (7) is any other person—
  - (a) who was dependent on the victim, or
  - (b) who the statutory body considers had a sufficiently close connection with the victim as to warrant his or her being treated as a family member.

**R. 6.5 The Commission recommends** that the statutory body may request that the family nominate a representative to make an application on behalf of all eligible family members, where more than one family member wishes to apply for a bereavement payment. Where no agreement is reached, the statutory body may nominate a representative of the family to make an application on behalf of all eligible family members, on the basis of the degree of relationship between the family members and the victim.

*(iii) Family members: Bystanders to a crime of violence*

**R. 6.6 The Commission recommends** that a person is eligible for a general compensation payment if the person:

- (1) is a family member of the victim of the crime of violence, as defined by the scheme,
- (2) witnessed the crime of violence, and
- (3) suffered harm as a result.

Harm includes physical, mental or emotional harm or distress.

*(iv) Persons dependent on the victim*

**R. 6.7 The Commission recommends** that a person should be eligible for compensation for 'loss of dependency' if:

- (1) the person is a dependant of a victim of a crime of violence,
- (2) the victim has died as a result of the crime of violence,
- (3) the person has suffered a loss of a financial benefit or loss of service which could have reasonably been expected but for the crime of violence, and
- (4) the statutory body considers it is fair and appropriate, having regard to all the circumstances.

**R. 6.8 The Commission recommends** that all dependants may make an application for a portion of the bereavement payment in addition to a payment for loss of dependency.

**R. 6.9 The Commission recommends** that where a victim has died otherwise than as a result of the crime of violence, the statutory body may pay compensation to a dependant in respect of:

- (1) loss of earnings, and
- (2) reasonable, verifiable expenses.

**R. 6.10 The Commission recommends** that where a victim has died otherwise than as a result of the crime of violence, no compensation may be paid to a dependant unless the losses or expenses have:

- (1) arisen directly from the harm caused by the crime of violence, and
- (2) been incurred before the death of the victim, and
- (3) the dependant would, in the opinion of the statutory body, otherwise suffer hardship and
- (4) the statutory body considers this payment to be appropriate.



- R. 6.11 **The Commission recommends** that 'dependant' for the purposes of these payments only should be defined in the statutory scheme in accordance with section 47 of the Civil Liability Act 1961.
- R. 6.12 **The Commission recommends** that, where possible, there should be one application to the statutory scheme for the benefit of all dependants, with each dependant named in the application.
- R. 6.13 **The Commission recommends** that in the event that the victim has made an application to the statutory body before their death, and an application is subsequently made by one or more dependants, the statutory body can have regard to any amount of compensation the statutory body had decided upon for the victim before they died in determining a fair and appropriate payment for a dependant.
- R. 6.14 **The Commission recommends** that where a victim has made an application to the statutory body and the statutory body decides to award a payment, but the victim dies before the payment has been made, this payment can be made to a victim's estate.
- R. 6.15 **The Commission recommends** that where the compensation payment is made to a victim's estate and a dependant, who is not part of the victim's estate, makes an application to the statutory body, the statutory body can have regard to the payment already made to the estate in determining a fair and appropriate payment to the dependant.

*(v) Other persons who have incurred expenses in fatal cases*

- R. 6.16 **The Commission recommends** that where the victim has died as a result of the crime of violence, any person who incurred reasonable, verifiable expenses as a result of the death, such as funeral expenses, should be eligible for compensation for those expenses.

**(c) Defining a crime of violence**

- R. 6.17 **The Commission recommends** that a person is eligible for compensation if the person is a victim of a crime of violence.
- (1) A crime of violence is an offence, or series of offences, involving violence or the threat of violence against a person.
  - (2) The offences listed in Schedule 1 are to be regarded as crimes of violence.
- R. 6.18 **The Commission recommends** that in deciding whether an act is capable of constituting a criminal offence, it is irrelevant whether or not a person responsible for the crime:
- (1) has been identified or located,

- (2) has a legal defence to the crime,
- (3) lacks the capacity to be convicted of the crime, or
- (4) has been charged with or convicted of the crime.

**R. 6.19 The Commission recommends** that the standard of proof for determining whether an individual is a victim of a crime of violence for the purposes of being eligible for a compensation payment by the statutory body should be 'the balance of probabilities'.

**R. 6.20 The Commission recommends** that the statute should contain a schedule providing that a crime of violence should include, but not be limited to:

- Murder at common law;
- Capital murder (section 3 of the Criminal Justice Act 1990);
- Manslaughter at common law;
- Assault (section 2 of the Non-Fatal Offences against the Person Act 1997);
- Assault causing harm (section 3 of the Non-Fatal Offences against the Person Act 1997);
- Non-fatal strangulation or non-fatal suffocation (section 3A of the Non-fatal Offences against the Person Act 1997);
- Assault causing serious harm (section 4 of the Non-Fatal Offences against the Person Act 1997);
- Non-fatal strangulation or non-fatal suffocation causing serious harm (section 4A of the Non-Fatal Offences against the Person Act 1997);
- Threats to kill or cause serious harm (section 5 of the Non-Fatal Offences against the Person Act 1997);
- Syringe and similar attacks (sections 6 – 8 of the Non-Fatal Offences against the Person Act 1997);
- Coercion (section 9 of the Non-Fatal Offences against the Person Act 1997);
- Harassment (section 10 of the Non-Fatal Offences against the Person Act 1997);
- Stalking (section 10 of the Non-Fatal Offences against the Person Act 1997);
- Poisoning (section 12 of the Non-Fatal Offences against the Person Act 1997);
- Endangerment (section 13 of the Non-Fatal Offences against the Person Act 1997);

- False imprisonment (section 15 of the Non-Fatal Offences against the Person Act 1997);
- Violent offences aggravated by hatred (sections 2A, 3B, 4B, 5A, 9A, 10B and 13A of the Non-Fatal Offences against the Person Act 1997);
- Intimate image abuse (sections 2 – 4 of the Harassment, Harmful Communications and Related Offences Act 2020);
- Rape (section 2 of the Criminal Law (Rape) Act 1981);
- Sexual assault (section 2 of the Criminal Law (Rape) (Amendment) Act 1990);
- Aggravated sexual assault (section 3 of the Criminal Law (Rape) (Amendment) Act 1990);
- Rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990;
- Offences against children contained section 4 of the Child Trafficking and Pornography Act 1998 and Part 2 of the Criminal Law (Sexual Offences) Act 2017;
- Sexual acts with protected persons (Part 3 of the Criminal Law (Sexual Offences) Act 2017);
- Forced marriage (section 38 of the Domestic Violence Act 2018);
- Coercive control (section 29 of the Domestic Violence Act 2018);
- Female Genital Mutilation (sections 2 and 3 of the Criminal Justice (Female Genital Mutilation) Act 2012);
- Robbery (section 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001);
- Human trafficking (section 3 of the Child Trafficking and Pornography Act 1998 and sections 2 and 4 of the Criminal Law (Human Trafficking) Act 2008);
- Terrorism under section 6 of the Criminal Justice (Terrorist Offences) Act 2005, insofar as it relates to homicide, non-fatal offences against the person, torture and sexual offences;
- Hostage-taking (section 9 of the Criminal Justice (Terrorist Offences) Act 2005);
- Terrorist bombing (section 10 of the Criminal Justice (Terrorist Offences) Act 2005).

- R. 6.21 **The Commission recommends** that the Minister for Justice should have the power to amend Schedule 1, through regulation, by adding, removing or modifying an entry.
- R. 6.22 **The Commission recommends** that for the avoidance of doubt, road traffic offences are excluded from the statutory compensation scheme, with the exception of the deliberate use of a mechanically propelled vehicle with intent to cause injury or death.

## Chapter 7: Other Eligibility Requirements

### (a) Jurisdiction

- R. 7.1 **The Commission recommends** that the statutory scheme should require that the harm for which compensation is being sought was sustained within the State or aboard an Irish registered vessel or aircraft.

### (b) Time limits

- R. 7.2 **The Commission recommends** that the time limit to apply to the proposed statutory scheme should be up to two years after the date of the crime of violence.
- R. 7.3 **The Commission recommends** that the statutory body should have a discretion to accept out-of-time applications if:
- (1) there is a good reason justifying the delay, and
  - (2) the statutory body is satisfied that the application can be dealt with fairly.

- R. 7.4 **The Commission recommends** that there should be a statutory long-stop of 10 years from the date of the crime of violence for out-of-time applications.
- R. 7.5 **The Commission recommends** that for the purposes of the time limit, an act of violence that consists of a series of related criminal acts occurs on the last of those criminal acts.
- R. 7.6 **The Commission recommends** that a 'next friend', such as a child's parent or guardian, can apply to the statutory body on their behalf.
- R. 7.7 **The Commission recommends** that children who suffered harm as a result of a crime of violence when under the age of 18 may apply to the statutory body for compensation on reaching the age of 18, or at any time before then. The ordinary time limit will run from the date the person turns 18. In other words, they must apply within two years of the date they turn 18, unless there is good reason for further delay and the application can be dealt with fairly, in which case the long-stop of 10 years will apply from the date the person turns 18.
- R. 7.8 **The Commission recommends** that if a victim of a crime of violence is under a mental incapacity, the victim may apply to the statutory body for compensation when they cease to have a mental incapacity. The ordinary time limits will run from the date they cease to be under a mental incapacity.
- R. 7.9 **The Commission recommends** that, for the purposes of making an application for compensation, a victim shall be considered to have a mental incapacity while they are suffering from any psychological condition that is of such significance that the victim's will, or the victim's ability to make a reasoned decision, to make such an application is substantially impaired.
- R. 7.10 **The Commission recommends** that a 'next friend' can apply to the statutory body on behalf of a person with a mental incapacity.
- R. 7.11 **The Commission recommends** that where a person is making an application on behalf of a child or a person under a mental incapacity, the standard time limits for applicants should apply.
- R. 7.12 **The Commission recommends** that the time limit for an internal appeal from the assessment and adjudicative tier to the appeals tier of the statutory body should be three months.

**(c) Reporting obligations**

- R. 7.13 The Commission recommends** that applicants are required to make all reasonable efforts to report the alleged crime of violence giving rise to the harm to An Garda Síochána, or to Fiosrú, the Office of the Police Ombudsman.
- R. 7.14 The Commission recommends** that the statutory body may accept applications where the applicant has not made a report of the crime of violence to An Garda Síochána, or to Fiosrú in special circumstances such that it would not be in the interests of justice to deny or reduce a payment for this reason. The decision-maker must have sufficient evidence to determine an application, and the decision-maker must consider that the failure to report the crime of violence was reasonable in all the circumstances.
- R. 7.15 The Commission recommends** that in determining whether failure to report the offence was reasonable in all the circumstances, the decision-maker should have regard to:
- (1) the age and capacity of the applicant;
  - (2) the nature of the harm and its effect on the applicant;
  - (3) the nature of the offence giving rise to the harm and its effect on the applicant;
  - (4) whether the crime of violence occurred in the context of domestic abuse or sexual violence;
  - (5) the relationship between the applicant and the alleged offender, including any history of coercion, abuse, or threatening behaviour;
  - (6) any fear the applicant may have of retribution from the offender;
  - (7) whether the applicant is from a minority community and may fear discrimination from a state actor on reasonable grounds;
  - (8) whether the applicant is a victim of trafficking;
  - (9) whether the applicant reported the crime of violence to another body or organisation.

**(d) Obligation to give reasonable assistance***(i) Providing reasonable assistance to the statutory body*

- R. 7.16 The Commission recommends** that an application for a compensation payment may be refused or reduced if an applicant fails to provide reasonable assistance to the statutory body.
- R. 7.17 The Commission recommends** that the statutory body may waive this requirement in special circumstances such that it would not be in the interests of justice to deny or reduce a payment for this reason. The decision-maker must have sufficient evidence to determine an application, and the decision-maker must consider that the failure to provide reasonable assistance was reasonable in all the circumstances.
- R. 7.18 The Commission recommends** that in deciding whether to waive this obligation, the decision maker should have regard to:
- (1) the age and capacity of the applicant;
  - (2) the nature of the harm and its effect on the applicant;
  - (3) the nature of the crime of violence giving rise to the harm and its effect on the applicant;
  - (4) whether the crime of violence occurred in the context of domestic abuse or sexual violence;
  - (5) the relationship between the applicant and the alleged offender, including any history of coercion, abuse, or threatening behaviour;
  - (6) any fear the applicant may have of retribution from the offender;
  - (7) whether the applicant is from a minority community and may fear discrimination from a state actor on reasonable grounds;
  - (8) whether the applicant is a victim of trafficking.

*(ii) Providing reasonable assistance to An Garda Síochána, the Police Ombudsman, or to the DPP*

- R. 7.19 The Commission recommends** that applicants should in general be required to provide reasonable assistance to An Garda Síochána, or Fiosrú, the Office of the Police Ombudsman, with the investigation of the crime that gave rise to the harm for which the applicant is applying for compensation.
- R. 7.20 The Commission recommends** that applicants should in general be required to provide reasonable assistance to the Office of the Director of Public Prosecutions where a prosecution is planned or proceeding for the crime that gave rise to the harm for which the applicant is applying for compensation.
- R. 7.21 The Commission recommends** that the statutory body should have a discretion to waive the requirement to provide reasonable assistance to An Garda Síochána or Fiosrú, the Office of the Police Ombudsman, and to the Office of the Director of Public Prosecutions in special circumstances such that it would not be in the interests of justice to deny or reduce a payment for this reason.
- R. 7.22 The Commission recommends** that in deciding whether to waive this requirement, the decision maker should have regard to:
- (1) the age and capacity of the applicant;
  - (2) the nature of the harm and its effect on the applicant;
  - (3) the nature of the crime of violence giving rise to the harm and its effect on the applicant;
  - (4) whether the crime of violence occurred in the context of domestic abuse or sexual violence;
  - (5) the relationship between the applicant and the alleged offender, including any history of coercion, abuse, or threatening behaviour;
  - (6) any fear the applicant may have of retribution from the offender;
  - (7) whether the applicant is from a minority community and may fear discrimination from a state actor on reasonable grounds;
  - (8) whether the applicant is a victim of trafficking.

## Chapter 8: Well-meaning intervenors

- R. 8.1 The Commission recommends** that a person should be eligible for compensation if the person:
- (1) suffers harm,
  - (2) In the course of acting as a well-meaning intervenor, and



(3) has acted reasonably in the circumstances.

**R. 8.2 The Commission recommends** that for the purposes of the proposed statute, a “well-meaning intervenor” should mean a person who:

- (1) acts in the reasonable belief that they are coming to the assistance of a member of An Garda Síochána—
  - (a) because of an unlawful attack upon the member,
  - (b) because the member was attempting to prevent the commission of an offence or to take a person into lawful custody,
  - (c) in the course of a riot, or a disturbance or threatened disturbance of the peace,
  - (d) in the course of preventing the escape of a person in lawful custody, or
  - (e) because the member was saving, or attempting to save, an individual whose life was in danger;
- (2) acts in the reasonable belief that they are attempting to prevent an offence, which was, or which the person reasonably believed to be, in the course of being committed or about to be committed; or
- (3) acts in the reasonable belief that they are preventing the escape of a person who has committed a crime, or the escape of a person in lawful custody.

- R. 8.3 **The Commission recommends** that a person should be eligible for compensation as a well-meaning intervenor if the person suffers harm while acting in the reasonable belief that they are saving, or attempting to save, an individual whose life was in danger.
- R. 8.4 **The Commission recommends** that a well-meaning intervenor should be eligible for the same types of compensation payment as a victim of a crime of violence under the statutory scheme.
- R. 8.5 **The Commission recommends** that well-meaning intervenors should have to comply with all other relevant eligibility criteria for the statutory scheme, including reporting the incident to An Garda Síochána.
- R. 8.6 **The Commission recommends** that where a person is eligible for compensation as a victim of crime, that person should not be eligible for compensation as a well-meaning intervenor for the same incident.
- R. 8.7 **The Commission recommends** that where a person is eligible for compensation as part of their employer insurance scheme, that person should not be eligible for compensation as a well-meaning intervenor for the same incident.

## Chapter 9: Exclusionary Criteria

### (a) Current scheme: Conduct, character, or “way of life”

#### (i) *No broad discretion*

- R. 9.1 **The Commission recommends** that the statutory scheme should not contain a broad exclusion based simply on an applicant’s conduct, character, or “way of life”.

#### (ii) *Unconnected criminal convictions*

- R. 9.2 **The Commission recommends** that any prior criminal record unconnected to the incident giving rise to the harm should not preclude an applicant from obtaining compensation under the proposed statutory scheme, if they are otherwise eligible and no other exclusions apply.

### (b) Contributory misconduct

- R. 9.3 **The Commission recommends** that the statute should provide for the following exclusions:
- (1) The statutory body may reduce a payment, or refuse to make a payment, if it is satisfied that:

- (a) the conduct of the victim directly or indirectly contributed to the harm they suffered, or consequences arising from the crime of violence, and
  - (b) that conduct makes it appropriate to reduce or refuse to make the payment.
- (2) For the purposes of subsection (1), conduct contributing to the harm suffered or to the consequences arising from the crime of violence includes but is not limited the following conduct by the victim:
  - (a) past conduct (including unspent criminal convictions) that contributed to the harm suffered by the victim,
  - (b) participating or assisting in the crime of violence that is the subject of the application,
  - (c) encouraging any person to participate in or assist in the crime of violence that is the subject of the application,
  - (d) failing to take reasonable steps to mitigate the consequences arising from the crime of violence,
  - (e) failing to take reasonable steps to avoid a violent situation.
- (3) The conduct described in subsections (2)(a), (2)(d) and (2)(e) should not be considered conduct that contributed to the harm under section 1(1)(a) where the crime of violence involves sexual violence or domestic violence. Save however in relation to subsection (2)(a), where a payment may be reduced or refused for a victim of domestic violence where the statutory body believes that past acts of domestic violence by the applicant contributed to the harm suffered by them.

**R. 9.4 The Commission recommends** that a payment should not be reduced or refused solely on the basis that the applicant was intoxicated through alcohol or drugs at the time of the circumstances giving rise to the harm.

**(c) Exceptional public interest discretion to reduce or refuse compensation**

**R. 9.5 The Commission recommends** that the statutory body may refuse a payment, or make a reduced payment, where it considers that the making of a payment, or of a full payment (as the case may) would be so contrary to the interests of justice that public confidence in the compensation scheme would be undermined.

**R. 9.6 The Commission recommends** that any use of the public interest discretion should be unanimously approved by a three-person panel of the statutory body, that contains the chairperson of the statutory body, or the next most senior decision-maker if the chairperson is unavailable. If unanimity is not possible, the majority should contain the chairperson of the statutory body or the next most senior decision-maker if the chairperson is unavailable.

**R. 9.7 The Commission recommends** that in all cases where this public interest discretion is used, the statutory body must publish reasons for exercising the discretion. The publication of these reasons should be subject to the statutory body's normal criteria for publishing decisions, including appropriate redactions to remove personal data, the power to delay publication, and the power not to publish a decision where the interests of justice so require.

**R. 9.8 The Commission recommends** that even when this exclusion is applied, some or all verifiable expenses arising from the crime of violence could still be paid to the applicant on a discretionary basis.

**(d) Fraud, collusion and perpetrator benefit**

*(i) Fraudulent applications*

**R. 9.9 The Commission recommends** that any person found to have provided information on an application form or otherwise to the statutory body, knowing it to be false or having no reasonable basis for believing it to be true, should be disentitled to a compensation payment by the statutory body.

**R. 9.10 The Commission recommends** that where staff at the assistive tier reasonably believe that any information provided in, or document accompanying, an application is fraudulent, they must report this to An Garda Síochána for investigation.

**R. 9.11 The Commission recommends** that any payment received on foot of an application which turns out to be fraudulent may be recovered by the State.

*(ii) Collusion*

**R. 9.12 The Commission recommends** that a payment will be refused where the decision-maker has reasonable grounds to believe that the applicant has:

- (1) colluded with the perpetrator for the purposes of receiving compensation,
- (2) the act of violence was planned, and
- (3) the applicant voluntarily consented to the act.

**R. 9.13 The Commission recommends** that any payment received on foot of a successful application where the applicant turns out to have colluded with the offender may be recovered by the State.

*(iii) Benefit to the perpetrator*

**R. 9.14 The Commission recommends** that where the statutory body has reasonable concerns that the victim of crime will not receive the benefit of the compensation payment, it may make a payment of compensation directly to the person or body charging for a verifiable expense, arising from the crime of violence, in order to ensure that the victim receives the medical or other support they require.

**R. 9.15 The Commission recommends** that the statutory body may make a reduced payment, or refuse to make a payment, if it is satisfied that the perpetrator will benefit from the compensation payment and it is not possible to divert such a payment directly to the person or body charging for a verifiable expense, arising from the crime of violence. However, the statutory body should not make a reduced payment or refuse a payment on the basis that the perpetrator lives in the same household as the victim.

## Chapter 10: Types of Compensation

### (a) Terminology and types of compensation

#### (i) *Financial loss*

- R. 10.1 **The Commission recommends** that the term 'verifiable expenses' should be used in the statutory scheme to refer to reasonable, financial losses that the applicant has incurred, or that will be incurred, as a result of the crime of violence, which are verified by receipts, invoices or other proof of an expense.
- R. 10.2 **The Commission recommends** that any potential payment of loss of earnings for the applicant should be referred to as a category of loss separate to 'verifiable expenses'.

#### (ii) *Non-financial loss*

- R. 10.3 **The Commission recommends** that the term 'general compensation payment' should be used in the statutory scheme when referring to what otherwise might be known as payments for general damages, pain and suffering, non-financial loss or non-material loss.
- R. 10.4 **The Commission recommends** that the term 'bereavement payment' should be used in the statutory scheme when referring to payments for family members in fatal cases, as might otherwise be known as the 'solatium'.

**(b) Fair and appropriate compensation**

- R. 10.5 The Commission recommends** that the statutory scheme should provide 'fair and appropriate' payments of compensation to victims of crimes of violence, and to family members of a victim of a crime of violence in fatal cases.
- R. 10.6 The Commission recommends** that the statutory scheme should include provision for general compensation payments to victims of crimes of violence. Proposed definitions for 'victim' and 'crime of violence' can be found in the Chapter on Defining Eligible Applicants and Crimes of Violence.
- R. 10.7 The Commission recommends** that the statutory scheme should include provision for bereavement payments to family members of a victim who dies as a result of a crime of violence. 'Family members' is defined in the Chapter on Defining Eligible Applicants and Crimes of Violence.
- R. 10.8 The Commission recommends** that the statutory scheme should include provision for payments of compensation of reasonable, verifiable expenses for all eligible applicants.
- R. 10.9 The Commission recommends** that the statutory scheme should include provision for compensation payments for loss of earnings for victims of crimes of violence. Loss of earnings should be on the basis of any actual loss of net income sustained, or, in the case of long term harm, likely to be sustained by the victim, taking into account likely career progression.
- R. 10.10 The Commission recommends** that the statutory scheme should include provision for compensation for 'loss of dependency', to include loss of financial benefit and loss of service. This issue is explored in more detail in the Chapter on Defining Eligible Applicants and Crimes of Violence.

**(c) Compensating property loss**

- R. 10.11 The Commission recommends** that the statutory body should not compensate a victim for property or equipment lost or damaged as a result of the crime of violence unless:
- (1) the property is relied on by the victim as a physical aid such as a wheelchair, spectacles or a hearing aid, or
  - (2) where it considers appropriate, the statutory body may compensate a victim for their clothing which was damaged in the course of the crime of violence.

**(d) Interim payments**

- R. 10.12 **The Commission recommends** that the statutory body may grant interim payments of compensation in exceptional cases where particular criteria are met.
- R. 10.13 **The Commission recommends** that the statutory body may grant interim payments of compensation to applicants for reasonable and verifiable expenses.
- R. 10.14 **The Commission recommends** that the statutory body may also grant interim payments for verifiable loss of earnings to the date of the decision of the interim payment but only where not to make such a payment would cause hardship for the applicant.
- R. 10.15 **The Commission recommends** an interim payment may be made when each of the following criteria is satisfied:
- (1) the decision-maker is satisfied that the applicant is highly likely to be granted compensation under the scheme;
  - (2) it is not practicable to make a final determination of the compensation payable at that stage;
  - (3) an interim payment is necessary to meet urgent or immediate established need arising from the harm suffered by the applicant as a result of the crime of violence.



- R. 10.16 **The Commission recommends** that an applicant can indicate that they wish to request an interim payment on their application form, and provide detailed reasons for making this request. (This recommendation is also in the Chapter on the Structure of the Statutory Body and the Application Process).
- R. 10.17 **The Commission recommends** that an applicant may apply for more than one interim payment where necessary to cover further urgent or immediate needs arising from the harm suffered by the applicant as a result of the crime of violence.
- R. 10.18 **The Commission recommends** that clear guidelines should be drafted by the statutory body about the making of interim payments.
- R. 10.19 **The Commission recommends** that a decision not to grant an interim payment can be appealed to the appeals tier of the statutory body on the record. The decision of the internal appeals tier will be final.
- R. 10.20 **The Commission recommends** that an interim payment must be deducted from the amount of the final compensation payment made by the statutory body.
- R. 10.21 **The Commission recommends** that if the value of the final payment is lower than the total value of any interim payments made, the applicant must repay to the State the difference between the final payment and the total of the interim payments.
- R. 10.22 **The Commission recommends** that the Government consider creating a recovery mechanism, adequately resourced, to pursue the recovery of double compensation from other sources, as recommended in the Chapter on Preventing Double Compensation. This body could also pursue the recovery of interim payments, if they are not repaid voluntarily.

#### (e) Periodic payments

- R. 10.23 **The Commission recommends** that the Government should consider extending to the statutory body the power to make periodic payments when the system of periodic payments for court payments is established.

#### (f) Types of compensation payments not included

- R. 10.24 **The Commission recommends** that the statutory body will not provide compensation in respect of the maintenance of any child born to a victim of sexual violence as a result of that sexual violence.

## Chapter 11: Determining Fair and Appropriate Compensation

### (a) Verifiable expenses and loss of earnings

*(i) Maximum amount of compensation*

- R. 11.1 The Commission recommends** that the statutory scheme should provide compensation for reasonable, verifiable expenses, and loss of earnings, not covered by any other source, incurred as a result of the crime of violence, without a maximum threshold.

*(ii) Minimum amount of compensation*

- R. 11.2 The Commission recommends** that there should be no minimum payment threshold for eligible applicants for compensation to the statutory scheme for reasonable, verifiable expenses, and loss of earnings, incurred as a result of the crime of violence.

**(b) A framework for general compensation payments**

- R. 11.3 The Commission recommends** that the statutory body should use a band scheme as a framework to assist in determining payments of general compensation. The band scheme should have four categories as follow:

**Categories of Payments**

- (1) *Category A general compensation payment* is a payment made where a crime of violence has had a severe impact on the applicant;
- (2) *Category B general compensation payment* is a payment made where a crime of violence has had a serious impact on the applicant;
- (3) *Category C general compensation payment* is a payment made where a crime of violence has had a moderate impact on the applicant;
- (4) *Category D general compensation payment* is a payment made where a crime of violence has had a minor impact on the applicant.

- R. 11.4 The Commission recommends** that each band category should provide a minimum and maximum amount of compensation. The top band, Category A, will represent a maximum threshold, or a cap, for general compensation payments. The bottom band for non-fatal cases, Category D, will contain a minimum threshold.

- R. 11.5 The Commission recommends** that the statutory body should consider the following when determining both the category of, and the amount of, general compensation to be paid:

**Considerations for category and amount of payment**

- (1) In determining what category that the general compensation payment should fall under, as well as what specific general compensation payment should be paid, the statutory body shall have regard to all of

the consequences for the applicant, and in particular, shall have regard to the following matters:

- (a) the nature of the crime(s) of violence or attempt or threat of crime of violence and the circumstances in which it occurred;
  - (b) the age and capacity of the victim at the time of the crime;
  - (c) any relationship between the victim and the offender;
  - (d) the severity and duration of any physical or psychiatric injury or injuries suffered by the victim, including the:
    - (i) nature, extent and duration of treatment undertaken and/or medication prescribed;
    - (ii) likely success of treatment;
    - (iii) prognosis, to include any likely lasting impact, future risks or vulnerability.
  - (e) the overall impact of the crime on the victim, taking into account the individual circumstances of the victim at the time of the crime including any impact on:
    - (i) quality of life, leisure activities, work and education;
    - (ii) personal relationships.
- (2) In determining whether the harm was minor, moderate, serious or severe, the statutory body may have regard to the category that the harm would fall under in the Personal Injuries Guidelines.

**(c) Bereavement payment for family members**

- R. 11.6 **The Commission recommends** that there should be one lump sum bereavement payment to family members who have suffered harm in fatal cases which shall be divided between them.
- R. 11.7 **The Commission recommends** that the statutory body should decide on the division of the bereavement payment between family members based on the closeness of their relationship with the victim and the level of harm they have suffered as a result of the death.
- R. 11.8 **The Commission recommends** that the statutory body may request that the family nominate a representative to make an application on behalf of all eligible family members, where more than one family member wishes to apply for a bereavement payment. Where no agreement is reached by the family, the statutory body may nominate a representative of the family to make an application on behalf of all eligible family members, on the basis of the degree of relationship between the family members and the victim. (This recommendation is also in the Chapter on Defining Eligible Applicants and Crimes of Violence.)

**Chapter 12: Legal Assistance****(a) Could legal assistance or other support be necessary for applicants***(i) Legal assistance*

- R. 12.1 **The Commission recommends** that applicants may access legal assistance to assist with the preparation and presentation of their application where legal assistance is necessary either because their case is complex or because of their personal circumstances.

*(ii) Accompaniment at hearings*

- R. 12.2 **The Commission recommends** that applicants may be accompanied at oral hearings by their legal adviser or another person of their choosing.

**(b) Funding necessary legal assistance***(i) Circumstances for contributing to legal costs*

- R. 12.3 **The Commission recommends** that the statutory body may make a contribution towards the costs of legal assistance where a legal practitioner is necessary because of:
- (1) the complexity of the case
  - or

- (2) the circumstances of the applicant.

With the exception of cases where an advanced decision has been made, an applicant will only receive a contribution to legal costs if they are successful in their application for compensation.

*(ii) Scale of fees*

**R. 12.4 The Commission recommends** that a contribution towards the costs to be paid to an applicant for necessary legal assistance should be based on a scale of fees. The statutory body should recommend a schedule of fees, to be approved by the Minister for Justice, for:

- (1) An amount for legal assistance at application stage,
- (2) An amount for legal representation at an oral hearing at first instance,
- (3) An amount for legal representation at an oral hearing on appeal.

*(iii) Advance decision on legal costs*

**R. 12.5 The Commission recommends** that the statutory body may make an advance decision on costs where a legal adviser is necessary because of:

- (1) the complexity of the case,
- (2) the circumstances of the applicant, and where
- (3) an applicant cannot access a legal adviser without advance approval that the statutory body will make a contribution to their costs, and
- (4) an applicant cannot vindicate their right of access to justice and right to an effective remedy without advance approval that the statutory body will make a contribution to their costs.

The applicant should receive this contribution regardless of the success of their application.

**R. 12.6 The Commission recommends** that an applicant can indicate that they wish to request an advance decision on a contribution to costs on their application form, and provide detailed reasons for making this request. (This recommendation is also in the Chapter on the Structure of the Statutory Body and the Application Process.)

**R. 12.7 The Commission recommends** that where an applicant has indicated that they wish to make such a request, the information and assistive tier should take the following steps:

- explain the criteria for such decisions to applicants,
- furnish the applicant with a separate application form to make such requests,

- support and inform applicants in regard to whether they meet these criteria,
- indicate on the relevant form that they consider the applicant meets the criteria, and
- forward to the assessment and adjudicative tier for a decision on these requests. (This recommendation is also in the Chapter on the Structure of the Statutory Body and the Application Process.)

*(iv) Appealing a decision on legal costs*

- R. 12.8 The Commission recommends** that an applicant may appeal the decision on a contribution to costs on the record to the internal appeals tier of the statutory body. The decision of the internal appeals tier will be final.

*(v) Application to courts*

- R. 12.9 The Commission recommends** that where the statutory body is stating a case to the High Court, and an applicant wants to be joined as a party, the statutory body may contribute to the applicant's costs.
- R. 12.10 The Commission recommends** that the statutory body should reimburse the costs of the applicant's ancillary applications to the courts that are necessary for the purposes of an application for compensation.

*(c) Reimbursement of other costs*

- R. 12.11 The Commission recommends** that the reasonable and verifiable costs of any reports or other evidence submitted by a successful applicant may be reimbursed.
- R. 12.12 The Commission recommends** that the statutory body may reimburse the reasonable, necessary and verifiable expenses of witnesses.
- R. 12.13 The Commission recommends** that the reasonable and verifiable costs of any reports or other evidence that the statutory body requests or directs to be produced may be reimbursed, including for an unsuccessful applicant.

**Chapter 13: Interaction with Court Proceedings***(a) Sequencing of proceedings*

- R. 13.1 The Commission recommends** that applications for compensation should be dealt with as expeditiously as possible and, as a general rule, the statutory body should not wait for the conclusion of a criminal investigation or the conclusion of criminal or civil court proceedings in respect of the same crime of violence giving rise to the harm before deciding on an application for compensation.
- R. 13.2 The Commission recommends** that where the statutory body has concerns regarding the interests of justice, including where it considers there may be a risk to the right to a fair trial, or the right to privacy:
- (1) a decision on compensation could be made and published, and, in addition to the usual redactions to remove personal data, it could be further redacted to protect the anonymity of both the defendant and the victim, such as by redacting any unique set of facts or circumstances that could identify the defendant or the victim, and the statutory body

could prohibit the publication or broadcast of the redacted part of the decision which would, or would be likely to, identify the victim or defendant, or

- (2) a decision on compensation could be made but the publication of the decision could be delayed until after the conclusion of court proceedings, and the statutory body could prohibit the publication or broadcast of the decision which would, or would be likely to, identify the victim or defendant, or
- (3) where it would not be in the interests of justice to make a decision regarding compensation before the conclusion of court proceedings, and neither anonymising nor delaying the publication of a decision would mitigate these concerns, the statutory body should postpone consideration of an application.



**R. 13.3 The Commission recommends** that where the statutory body believes a person may be about to breach or has breached a non-publication order made by the statutory body, the statutory body may apply to a court for such order as may be prescribed for the purposes of enforcing the non-publication order or determining the consequences of its breach.

**(b) Sharing of information with courts**

*(i) Obligation on the DPP to disclose the fact of a compensation application*

**R. 13.4 The Commission recommends** that the Director of Public Prosecutions should be under an obligation to disclose to the defence the fact that an application for compensation was made, unless there is a serious risk that the likelihood of disclosing, or requiring disclosure of, the fact of the application will cause harm to the victim. In making this decision, the nature and extent of the harm should be considered by the Director of Public Prosecutions.

*(ii) Voluntary, informed and written consent*

- R. 13.5 The Commission recommends** that victims must be fully informed of the possibility of requests for disclosure or discovery of documents relating to their compensation claim at the outset of their application, both in the application form and by staff of the information and assistive tier. (There is a related recommendation in the Chapter on the Structure of the Statutory Body and the Application Process).
- R. 13.6 The Commission recommends** that the information and assistive tier of the statutory body should provide appropriate assistance to victims regarding disclosure and discovery requests. (There is a related recommendation in the Chapter on the Structure of the Statutory Body and the Application Process).
- R. 13.7 The Commission recommends** that where there is a request for discovery or disclosure to the statutory body, the statutory body should only share documents for court proceedings where a victim has voluntarily consented in writing to the sharing of the documents.
- R. 13.8 The Commission recommends** that victims should be put on notice of the request for discovery or disclosure and should be shown the contents of the documents or information that are the subject of the request as soon as practicable.
- R. 13.9 The Commission recommends** that any consent given by the victim to the sharing of documents relevant to their application must be voluntary, informed and in writing before the statutory body can share such documents for court proceedings.

- R. 13.10 **The Commission recommends** that, in the absence of a victim's voluntary, informed and written consent, such disclosure or discovery should require a court order.
- R. 13.11 **The Commission recommends** that the statutory body should make clear to a victim that a decision not to consent to requests for disclosure or discovery will have no adverse consequences for their application for compensation. (There is a related recommendation in the Chapter on the Structure of the Statutory Body and the Application Process).

### (c) Testing evidence of an application for compensation in court proceedings

- R. 13.12 **The Commission recommends** that victims must be fully informed of the possibility that they may be subject to examination or cross-examination on their application for compensation in subsequent court proceedings, both in the application form and by staff of the information and assistive tier. (This recommendation is reflected in the Chapter on the Structure of the Statutory Body and the Application Process).
- R. 13.13 **The Commission recommends** that examination or cross-examination of victims in civil or criminal proceedings about their application for compensation to the statutory body should require leave of the court.
- R. 13.14 **The Commission recommends** that in considering whether to allow such examination or cross-examination, the court, in addition to the usual tests which include relevance and probative value, should have regard to:
- (1) the desirability of facilitating access to statutory schemes for compensation,
  - (2) the appropriate protection of the victim's rights, including the rights to dignity and privacy, and
  - (3) the need to minimise the risk of retraumatisation or secondary victimisation.
- R. 13.15 **The Commission recommends** that where a court permits examination or cross-examination of a victim on their application for state compensation, it must order that such examination be conducted in a manner which minimises the potential for retraumatisation or secondary victimisation.

## Chapter 14: Offender Compensation

### (a) Challenges with section 6 compensation orders and proposals for reform

#### (i) *Lack of awareness of section 6 compensation orders*

- R. 14.1 The Commission recommends** that the Criminal Justice Act 1993 be amended to place an explicit obligation on the DPP to ensure that victims are informed of the court's ability to make a section 6 compensation order, upon conviction and prior to sentencing of the offender, when they are invited to make their victim impact statement, in accordance with section 5 of the CJA 1993.
- R. 14.2 The Commission recommends** that the Criminal Justice Act 1993 be amended to place an explicit obligation on the DPP to ensure that victims are informed of their ability to outline their financial losses within their victim impact statements, before a sentencing hearing.
- R. 14.3 The Commission recommends** that the Criminal Justice Act 1993 be amended to place an explicit obligation on the DPP to certify to the sentencing court that the victim was informed at an appropriate stage of the court's ability to make a section 6 compensation order, upon conviction and prior to sentencing of the offender, as well as the victim's right to outline their losses in a victim impact statement, in accordance with section 5 of the CJA 1993.

### (b) Hybrid nature of section 6 compensation orders: the role of offender compensation orders in sentencing

- R. 14.4 The Commission recommends** that section 6(1) of the Criminal Justice Act 1993 should be amended to add the wording "a fine", after "instead of". Section 6(1) should therefore read as follows:
- (1) Subject to the provisions of this section, on conviction of any person of an offence, the court, instead of a fine or in addition to dealing with him in any other way, may, unless it sees reason to the contrary, make (on application or otherwise) an order (in this Act referred to as a "*compensation order*") requiring him to pay compensation in respect of any personal injury or loss resulting from that offence (or any other offence that is taken into consideration by the court in determining sentence) to any person (in this Act referred to as the "*injured party*") who has suffered such injury or loss.

**R. 14.5 The Commission recommends** that there should be no change to the practice that section 6 compensation orders should not ordinarily be considered by the court as a mitigating factor to reduce the sentence that would otherwise be imposed by the sentencing court.

**(c) A duty on the courts to consider a section 6 compensation order**

**R. 14.6 The Commission recommends** that the Criminal Justice Act 1993 should be amended to place a duty on the sentencing court to consider making a section 6 compensation order on conviction of any person of an offence, where the victim has suffered any personal injury or loss as a result of the offence.

**R. 14.7 The Commission recommends** that where a court declines to make a compensation order under section 6 of the Criminal Justice Act 1993, where the victim has suffered any personal injury or loss as a result of the offence, it should provide reasons for not making such an order.

**R. 14.8 The Commission recommends** that the following reasons can be considered examples of valid reasons for not making such an order, and should be inserted into section 6(5) of the Criminal Justice Act 1993 as a non-exhaustive list:

- The means of the offender are insufficient to pay a section 6 compensation order;
- A section 6 compensation order may result in undue hardship for the offender or the dependants of the offender, or any other special circumstances would make it inappropriate;
- Identifying the appropriate measure of compensation is complex or not capable of summary assessment;
- The offender has made a voluntary offer of compensation to the victim;
- The victim is of the view that an order should not be made (for instance where the victim has sued, or intends to sue, for damages in civil proceedings); or,
- Where the making of a section 6 compensation order appears to the court to not be in the interests of justice.

**(d) Appropriate amount of compensation**

**R. 14.9 The Commission recommends** that the Criminal Justice Act 1993 should be amended to provide that courts should be empowered to have regard to the Personal Injuries Guidelines when determining the appropriate amount of compensation under a section 6 compensation order.

**(e) Enforcement**

**R. 14.10 The Commission recommends** that if the recommendations contained in the Report by the Department of Justice's *Review of the Enforcement of Child Maintenance Orders* (2024) that are relevant to the enforcement of section 6 compensation orders have not been implemented in the Family Law (Maintenance of Spouses and Children) Act 1976 before the Criminal Justice Act 1993 is revised, in line with the recommendations on offender compensation in this Chapter, then the Government should consider amending section 7 of the Criminal Justice Act 1993 to directly reflect the recommendations in the *Review of the Enforcement of Child Maintenance Orders* (2024), in so far as they apply to section 6 compensation orders, to ensure effective enforcement of section 6 compensation orders.

**Chapter 15: Preventing Double Compensation****(a) Other sources of compensation***(i) Employment leave and social welfare payments*

**R. 15.1 The Commission recommends** that employment leave and social welfare payments for the same expenses, losses or harm should be considered double payments.

*(ii) Insurance payments*

**R. 15.2 The Commission recommends** that where a victim's verifiable expenses or any loss of earnings have been paid directly or refunded by their insurance provider, these expenses should be considered a double payment. This does not apply to a payment made under the victim's own insurance policy for the injury they sustained as a result of a crime of violence, which may be of the same nature as a general compensation payment.

*(iii) Charitable payments and donations*

**R. 15.3 The Commission recommends** that individual donations to a victim should not be considered a double payment.

*(iv) Voluntary payments by the offender following a criminal prosecution*

**R. 15.4 The Commission recommends** that a voluntary payment of compensation from an offender should be considered double payment, but only to the extent that the total amount of compensation received would be in excess of the likely amount of damages that a victim would have received in a successful civil claim. The statutory body may reference the Personal Injuries Guidelines when assessing this, as well as any relevant contributory factors likely to affect an award.

*(v) Court-order offender compensation*

**R. 15.5 The Commission recommends** that court-ordered compensation payments under section 6 of the Criminal Justice Act 1993 should be considered double payment, where they cover the same verifiable expenses or loss of earnings.

**R. 15.6 The Commission recommends** that court-ordered compensation payments under section 6 of the Criminal Justice Act 1993 should be considered double payment where they are intended as a general compensation payment, but only to the extent that the total amount of compensation received would be in excess of the likely amount of damages a victim would have received in a successful civil claim. The statutory body may reference the Personal Injuries Guidelines when assessing this, as well as any relevant contributory factors likely to affect an award.

*(vi) Civil proceedings*

**R. 15.7 The Commission recommends** that awards of compensation arising from civil proceedings for the same expenses, losses or harm should be considered double payments.

*(vii) Proposals for reform*

**R. 15.8 The Commission recommends** that the statutory scheme should provide as follows:

- (1) If the harm is inflicted in the circumstances set out in the scheme and any person would be entitled to claim compensation (whether statutory or non-statutory), damages or an insurance payment, otherwise than under the scheme for the expenses, losses or harm, they will not be prohibited from also claiming compensation under the scheme.
- (2) The statutory body will decide the claim on the basis that no payment under the scheme should result in compensation being paid twice. The statutory body is to be considered a payor of last resort, even where a payment to an applicant may be made by the statutory body before a payment to the applicant covering the same expenses, losses or harm from another payor.

- (3) As a general rule, all subsequent double payments to a victim for the same expenses, losses or harm covered by their compensation payment should, in principle, be recoverable to avoid a situation where a victim is compensated twice for the same expenses, losses or harm. Individual donations, and general compensation payments for injury from the victim's own insurers should be exceptions to this rule.

#### **(b) Duty to inform the statutory body of other payments**

**R. 15.9 The Commission recommends** that applicants should be required to inform the proposed statutory body of:

- (1) past payments, including damages, settlement or other compensation covering any expenses, losses or harm suffered as a result of the crime of violence,
- (2) any alternative avenues they are considering for compensation, and
- (3) and make an undertaking to inform the statutory body of any payment they receive in the future covering the same expenses, losses or harm they have already been compensated for by the statutory body.

This declaration and undertaking should be made as part of the application form to the statutory body. (This recommendation is also in the Chapter on the Structure of the Statutory Body and the Application Process).

- R. 15.10 The Commission recommends** that the application form should include provision for the applicant to give consent to the statutory body contacting their legal representatives for any information on separate compensation payments intended to cover the same expenses, losses or harm as applied for under the statutory scheme and potentially for an appropriate undertaking regarding repayment. (This recommendation is also in the Chapter on the Structure of the Statutory Body and the Application Process).
- R. 15.11 The Commission recommends** that a duty to inform the statutory body should be placed upon a victim's legal representative, if the victim has legal representation for their application to the statutory scheme or for any other related claim for compensation in civil proceedings. The victim's legal representative must inform the statutory body by way of writing of any additional claims for compensation by the victim for the same expenses, losses or harm or any other payments to the victim covering the same expenses, losses or harm as an application to the statutory body once the legal representative becomes aware to the best of their knowledge that the victim has applied to the statutory body, following reasonable enquiry.
- R. 15.12 The Commission recommends** that should a victim's legal representative fail to give this information to the statutory body, they may be referred to the appropriate regulatory body by the State body (or recovery mechanism) charged with recovering double payments.
- R. 15.13 The Commission recommends** that legal representatives should be required to issue an undertaking to the statutory body that, where possible, they will retain any subsequent double payments resulting from court proceedings made to them, and repay the State once monies are received by them.

### (c) Information regarding double payments

- R. 15.14 The Commission recommends** that the statutory body should have the power to request information from any person or body that it considers appropriate in relation to payments made for the same expenses, losses or harm, before making a payment of compensation. This power should only be used where the applicant has consented to such a request in the Certificate of Authority in the application form. (A related recommendation can be found in the Chapter on the Structure of the Statutory Body and the Application Process).
- R. 15.15 The Commission recommends** that the statutory body should have a statutory basis for sharing information with a court, such that the court can then order an offender to pay the State directly where appropriate. This would include the fact that a payment of compensation was made, the amount of the payment, and detail regarding what verifiable expenses and loss of earnings were paid by the statutory body.



**(d) Reductions of compensation payments**

**R. 15.16 The Commission recommends** that any payments to the applicant received in advance of a payment of compensation by the statutory body that are intended to cover the same expenses, losses or harm should be deducted from the applicant's payment, if the statutory body considers that the payment would otherwise constitute a double payment. If the amount previously received by the applicant exceeds the amount of the payment that the statutory body intended to make to cover the same expenses, losses or harm, no payment should be made by the statutory body.

**(e) Repayment of compensation by the victim**

- R. 15.17 The Commission recommends** that the statutory body should have the power to impose a condition on any payment of compensation requiring the applicant to repay any part of the payment that is the subject of a future double payment. This power should extend to specifying the possible source of such payment.
- R. 15.18 The Commission recommends** that the statutory body should not be charged with the function of seeking the recovery of double payments.
- R. 15.19 The Commission recommends** that the Government consider creating a recovery mechanism, adequately resourced, to pursue the recovery of double payments from other sources. This could consist of an agency or body that could operate under the Minister for Justice with responsibility for recouping double payment, once it becomes aware that a person has received a double payment.
- R. 15.20 The Commission recommends** that the State should have the power to bring proceedings to recover any double payment, where the victim has failed to fulfil a request to repay the State.
- R. 15.21 The Commission recommends** that civil courts should be explicitly empowered to order that civil damages should be repaid directly to the State to the extent that they are intended to cover the same expenses, losses or harm as a payment of compensation that has already been made by the statutory body.
- R. 15.22 The Commission recommends** that the sentencing judge should be empowered to order that section 6 compensation orders should be repaid directly to the State to the extent that they are intended to cover the same expenses, losses or harm as a payment of compensation that has already been made by the statutory body.
- R. 15.23 The Commission recommends** that the Government should consider adopting the following factors to be considered before pursuing repayment by victims:
- (1) the victim's circumstances and the impact that repayment will have on the victim from a trauma-informed perspective;
  - (2) the amount of compensation that may need to be repaid;

- (3) the circumstances leading to the potential repayment, including whether there was any dishonesty involved; and
- (4) any other relevant circumstances.

**(f) Direct recovery by the State**

**R. 15.24 The Commission recommends** that where an applicant indicates that they will not pursue civil proceedings, the right of the applicant to pursue a civil claim may be transferred to the State, but only to the extent of any payment already made by the statutory body. In such a case the applicant must explicitly confirm in writing that they do not intend to pursue civil proceedings, and they must agree to provide reasonable assistance to the State where it decides to pursue civil proceedings.

# **APPENDIX B**

## **COMPENSATION FOR VICTIMS OF CRIMES OF VIOLENCE BILL**

An Act to provide for compensation for harm suffered by victims of crimes of violence, those affected by crimes of violence, and well-meaning intervenors; to establish the Statutory Body, to amend the law relating to compensation orders, and for connected purposes.

Be it enacted by the Oireachtas, as follows:—

### **CONTENTS**

#### **PART 1**

##### **PRELIMINARY**

1. Short title and commencement
2. Definitions and interpretation
3. Objectives

#### **PART 2**

##### **COMPENSATION**

###### *Chapter 1*

###### *Eligibility for compensation*

4. Victim of crime of violence
5. Meaning of crime of violence
6. Persons responsible for the maintenance of victim
7. Family member who witnesses crime of violence
8. Family members of victim who has died
9. Dependants of victim who has died

10. Other persons who have incurred expenses when a victim has died
11. Well-meaning intervenors

## *Chapter 2*

### *Payment of compensation*

12. Payment of compensation
13. Bereavement payment
14. General compensation: banding
15. General compensation: determining the category and amount of compensation
16. Verifiable expenses
17. Loss of earnings
18. Loss of dependency
19. Specific exception

## *Chapter 3*

### *Reductions in and refusals of the payment of compensation*

20. Assistance and reporting obligations of applicants
21. Consequences of failure to comply with assistance and reporting obligations
22. Contributory misconduct by victim
23. Ensuring that applicant benefits from compensation
24. Collusion with perpetrator
25. False information
26. Irrelevant considerations
27. Public interest

## *Chapter 4*

### *Application process*

28. Application for compensation
29. Certificate of authority
30. Application by family members of victim who has died

31. Time limit
32. Interim payments
33. Oral hearings
34. Death of applicant before payment is made
35. Death of victim of unrelated causes before application made
36. Information to be given to applicants during the application process
37. Publication of decisions
38. Procedural rules and practice statements
39. Decisions to be made by Assessment and Adjudication Officer
40. Delay pending linked proceedings or investigations

### *Chapter 5*

#### *Costs*

41. Legal costs
42. Costs of reports or other evidence
43. Witness costs
44. Costs of ancillary court proceedings

### *Chapter 6*

#### *Appeals*

45. Internal appeals
46. Consultative case stated
47. Appeal to the High Court from a decision of the Statutory Body

### *Chapter 7*

#### *Double compensation*

48. Prohibition of double compensation
49. Meaning of double compensation
50. Duty on applicant regarding double compensation
51. Duty on legal representatives regarding double compensation
52. Power of courts regarding double compensation
53. Assignment and subrogation of claims to the State

*Chapter 8*  
*Recovery of awards*

54. Recovery of awards: collusion or false information

**PART 3**  
**THE STATUTORY BODY**

*Chapter 1*  
*Establishment and functions*

55. Establishment  
56. Independence and impartiality  
57. Guiding principles  
58. Internal arrangements for exercise of functions

*Chapter 2*  
*Membership of the Statutory Body*

59. Chairperson  
60. Appointment and removal of Chairperson  
61. Chief Executive Officer  
62. Appointment and removal of Chief Executive Officer  
63. Assessment and Adjudication Officers  
64. Appointment and removal of Assessment and Adjudication Officers

*Chapter 3*  
*Miscellaneous*

65. Training for staff and decision-makers of the Statutory Body  
66. Information, guidance and assistance  
67. Education, public awareness and research  
68. Complaints procedure  
69. Cooperation with other persons by the Statutory Body

- 70. Duty of confidentiality
- 71. Sharing of detail of application / payment
- 72. Recovery of awards in cases of false information

#### **PART 4**

#### **COURT PROCEEDINGS**

- 73. Discovery and disclosure
- 74. Disclosure of fact of application: criminal proceedings
- 75. Cross-examination of victim
- 76. Compensation orders in criminal proceedings

#### **PART 5**

#### **FINAL**

- 77. Recovery of money
- 78. Expenses
- 79. Regulations
- 80. Transitional provision

- 
- SCHEDULE 1 — CRIMES OF VIOLENCE
  - SCHEDULE 2 — GENERAL COMPENSATION: BANDING
  - SCHEDULE 3 — CONTRIBUTION TOWARDS LEGAL COSTS
  - SCHEDULE 4 — THE STATUTORY BODY

#### **PART 1**

#### **PRELIMINARY**

##### **Short title and commencement**

##### **1.**

(1) This Act may be cited as the Compensation for Victims of Crimes of Violence Act 2026.

(2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

##### **Definitions and interpretation**

**2. In this Act—**

“Applicant” means the person applying for compensation under this Act;

“Crime of violence” has the meaning given to it in *section 5*. “Harm” includes physical, mental or emotional harm or distress which was directly caused by a crime of violence.

“Minister” means the Minister for Justice;

“Office of the Police Ombudsman” means the body established under section 64 of the Garda Síochána Act 2005 and continued in being by section 170(1) of the Policing, Security and Community Safety Act 2024;

“Perpetrator” means the person who committed the crime of violence giving rise to the application for compensation;

“Personal Injuries Guidelines” means the personal injuries guidelines adopted by the Judicial Council in accordance with the Judicial Council Act 2019;

“Statutory Body” has the meaning given to it in *Part 3*.

“Victim” has the meaning given to it in *section 4*.

“Well-meaning intervenor” has the meaning given to it in *section 11*.

**Objectives**

**3. The objectives of this Act are to—**

- (a) acknowledge, on behalf of the State, the impact of crimes of violence on victims,
- (b) provide a respectful forum for victims to be heard, as appropriate for each individual,
- (c) assist in victims’ recovery from crimes of violence by providing fair, appropriate and timely compensation, as determined in accordance with this Act,
- (d) enable victims to apply for compensation in an easily accessible process,
- (e) complement other victims’ services,
- (f) where appropriate, compensate well-meaning intervenors.

**PART 2**

**COMPENSATION**

*Chapter 1*

*Eligibility for compensation*

**Victim of crime of violence**

**4.**

- (1) A person is eligible for compensation if the person is a victim of a crime of violence.
- (2) A person is a victim of a crime of violence if they have suffered harm as a result of that crime.

**Meaning of crime of violence**

**5.**

- (1) A crime of violence is an offence, or series of offences, involving violence or the threat of violence against a person.
- (2) For the purposes of this Act, the offences listed in Schedule 1 are crimes of violence



(3) The crime must have occurred—

- (a) within the State,
- (b) on board a vessel registered in the State within the meaning of the Merchant Shipping Act 1992, or
- (c) on board an Irish aircraft within the meaning of the Air Navigation and Transport Act 1946.

(4) In considering whether an act is capable of constituting an offence, it is irrelevant whether or not a person responsible for the harm to the victim—

- (a) has been identified or located,
- (b) has a legal defence,
- (c) lacks the capacity to be convicted, or
- (d) has been convicted of the crime of violence.

(5) For the purposes of this Act, the standard of proof which the Statutory Body will apply to a decision on any application will be the balance of probabilities.

(6) For the avoidance of doubt, road traffic offences, other than the deliberate use of a mechanically propelled vehicle with intent to cause injury or death, are not crimes of violence for the purposes of this Act.

(7) The Minister may by order amend *Schedule 1* by adding or modifying an entry, in order to facilitate the objectives set out in *section 3* of this Act.

### **Persons responsible for the maintenance of victim**

6. A person is eligible for compensation if the person—

- (a) is responsible for the maintenance of a victim of a crime of violence, and
- (b) has suffered financial loss or incurred reasonable expense as a result of the harm to the victim.

### **Family member who witnesses crime of violence**

7. A person is eligible for compensation if—

- (a) the person is a family member of the victim at the time of the crime of violence, as defined in *section 8(3)*, and
- (b) the person—
  - (i) witnessed the crime of violence, and
  - (ii) suffered harm as a result.

### **Family members of victim who has died**

8.

(1) A person is eligible for a bereavement payment if—

- (a) the person is a family member of the victim of a crime of violence,
- (b) the victim has died as a result of the crime of violence, and
- (c) the person has suffered harm as a result of the death.

(2) That application is to be for the benefit of all the family members who have suffered harm as a result of the death.

(3) A person is a family member of the victim if the person—

- (a) is a spouse, civil partner or cohabitant of the victim,
- (b) is a child, step-child or grandchild of the victim,
- (c) is a parent, step-parent or grandparent or of the victim,

- (d) is a sibling, half-sibling or step-sibling of the victim,
- (e) is an aunt, uncle, niece or nephew or of the victim,
- (f) has such a close connection with the victim that the Statutory Body considers it justified to treat them as a family member

(4) In this section, “civil partner” and “cohabitant” have the meanings given to them by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

(5) For the purposes of determining whether a person is a relative in a direct line with the victim, relationships via adoption are to be treated as relationships via birth.

#### **Dependants of victim who has died**

##### **9.**

(1) A person is eligible for compensation if—

- (a) the person is a dependant of the victim of the crime of violence,
- (b) the victim has died as a result of the crime of violence,
- (c) the person has suffered a loss of a financial benefit which could have reasonably been expected but for the crime of violence, and
- (d) the Statutory Body considers it fair and appropriate to do so.

(2) In this section “dependant” has the same meaning as it has in section 47 of the Civil Liability Act 1961.

#### **Other persons who have incurred expenses when a victim has died**

**10.** A person is eligible for compensation if—

- (a) the victim has died as a result of the crime of violence,
- (b) the person has incurred reasonable, verifiable expenses as a result of the death, such as funeral expenses.

#### **Well-meaning intervenors**

##### **11.**

(1) Subject to *subsections (3) and (4)*, a person is eligible for compensation if the person—

- (a) suffers harm,
- (b) in the course of acting as a well-meaning intervenor, and
- (c) has acted reasonably in the circumstances.

(2) For the purposes of this Act “well-meaning intervenor” means a person who acts in the reasonable belief that they are—

- (a) coming to the assistance of a member of An Garda Síochána —
  - (i) because of an unlawful attack upon the member,
  - (ii) because the member was attempting to prevent the commission of an offence, or to take a person into lawful custody,
  - (iii) in the course of a riot, or a disturbance or threatened disturbance of the peace,
  - (iv) because the member was saving, or attempting to save, a person whose life was in danger, or
  - (v) in the course of preventing the escape of a person in lawful custody,
- (b) attempting to prevent an offence, which was in the course of being committed or about to be committed,

- (c) preventing the escape of a person who had committed a crime, or the escape of a person in lawful custody,
- (d) saving, or attempting to save, a person whose life was in danger.

(3) A person is not eligible for compensation under this section if the person is eligible for compensation arising out of the incident as part of their applicable insurance scheme or employment cover.

(4) A person is not eligible for compensation under this section if the person is eligible for compensation as a victim of a crime of violence for the same incident under *section 4*.

(5) All relevant provisions of this Act related to eligibility and to payments shall apply when considering an application from a well-meaning intervenor. References to a ‘crime of violence’ in relevant provisions should be taken to apply to an ‘incident’ occurring in the circumstances outlined in *subsection (2)*.

## *Chapter 2*

### *Payment of compensation*

#### **Payment of compensation**

#### **12.**

(1) Where the Statutory Body is satisfied that the applicant is eligible, it may pay compensation.

(2) Where the applicant is eligible for compensation under *section 4*, as a victim of a crime of violence, compensation may include—

- (a) general compensation,
- (b) verifiable expenses, and
- (c) loss of earnings.

(3) Where the applicant is eligible for compensation under *section 6*, as a person responsible for the maintenance of a victim, compensation may include—

- (a) verifiable expenses, and
- (b) loss of earnings.

(4) Where the applicant is eligible for compensation under *section 7*, as a family member who witnesses the crime of violence, compensation may include—

- (a) general compensation,
- (b) verifiable expenses.

(5) Where the applicant is eligible for compensation under *section 8*, as a family member of a victim who has died as a result of the crime of violence, compensation may include—

- (a) a portion of the bereavement payment, and
- (b) verifiable expenses.

(6) Where the applicant is eligible for compensation under *section 9*, as a dependant of the victim who has died, compensation may include—

- (a) Payments for “loss of dependency” in accordance with *section 17*, and
- (b) verifiable expenses.

(7) Where the applicant is eligible for compensation under *section 10*, compensation may include verifiable expenses.

(8) Where the applicant is eligible for compensation under *section 11*, compensation may include—

- (a) general compensation,

- (b) verifiable expenses, and
- (c) loss of earnings.

(9) If an applicant is eligible for compensation under more than one section, the applicant may be paid compensation under each of those sections, but a person shall not be paid compensation both under *section 11* and under another section.

### **Bereavement payment**

**13.** A bereavement payment payable under *section 8* refers to one payment to be divided between those family members who have suffered harm as a result of the death of the victim, as the Statutory Body thinks appropriate, having regard to the degree of relationship between the family members and the victim.

### **General compensation: banding**

#### **14.**

(1) General compensation is payable in respect of the pain and suffering arising out of the crime of violence.

(2) The amount of general compensation payable depends upon the impact of the crime of violence upon the applicant as per the following categories—

- (a) Category A where the crime of violence had a severe impact,
- (b) Category B where the crime of violence had a serious impact,
- (c) Category C where the crime of violence had a moderate impact,
- (d) Category D where the crime of violence had a minor impact

(3) *Schedule 2* sets out the band of general compensation payable within each of these categories.

(4) The Minister may by order vary the amounts in *Schedule 2*.

### **General compensation: determining the category and amount of compensation**

#### **15.**

(1) In determining—

- (a) which category the impact falls within, and
- (b) the amount of general compensation within that category that is payable to the applicant,

the Statutory Body shall have regard to all the circumstances and all the consequences of the crime of violence for the applicant, and in particular, where relevant—

- (a) the age and capacity of the applicant,
- (b) the nature of the harm and its effect upon the applicant,
- (c) the circumstances in which the crime of violence occurred,
- (d) the nature of the crime of violence and its effect on the applicant,
- (e) the nature of the relationship between the applicant and the perpetrator, including any history of coercion, abuse or threatening behaviour,
- (f) the severity and duration of the harm suffered by the applicant, including—
  - (i) the nature, extent and duration of treatment undertaken, including any medication prescribed,
  - (ii) the likely success of the treatment,

- (iii) the prognosis for the applicant, to include any likely lasting impact, future risks or vulnerability,
  - (g) the overall impact of the crime of violence on the applicant, taking into account the individual circumstances of the applicant at the time of the crime of violence including any impact on—
    - (i) quality of life, leisure activities, work and education, and
    - (ii) personal relationships.
- (2) In determining which category the impact arising from the crime of violence falls within, the Statutory Body may also have regard to the category that such impact would likely fall under in the Personal Injury Guidelines.

### **Verifiable expenses**

#### **16.**

- (1) Verifiable expenses are payable in respect of specific and direct expenses or costs arising out of the crime of violence, including—
- (a) medical expenses,
  - (b) care needs,
  - (c) transport costs,
  - (d) in a case where the victim dies, funeral expenses,
  - (e) other specific and direct costs or expenses.
- (2) The Statutory Body may only pay verifiable expenses if satisfied that they—
- (a) are reasonable, and
  - (b) have been, or will be incurred, for example upon production of invoices, receipts or other proof.
- (3) No verifiable expenses are payable in respect of loss or damage to property unless—
- (a) the property is relied upon by the applicant as a physical aid, for example a wheelchair, or
  - (b) the property is the applicant's clothing which was damaged in the crime of violence, and the Statutory Body considers it appropriate to make a payment.

### **Loss of earnings**

#### **17.**

- (1) Loss of earnings may be payable in respect of any actual loss of net income—
- (a) sustained, or,
  - (b) in the case of long-term injury, likely to be sustained
- by the victim as a result of the crime of violence.
- (2) In calculating loss of earnings, the Statutory Body shall take into account—
- (a) net earnings at the time of the crime of violence,
  - (b) likely career progression.

### **Loss of dependency**

**18.** Loss of dependency is payable in respect of loss of financial benefit and loss of services that are capable of being calculated financially, and that arise as a result of the death of the victim.

**Specific exception**

**19.** No payment of compensation is to be made in respect of the maintenance of a child born to a victim of sexual violence as a result of that sexual violence, as part of a compensation payment to the victim of sexual violence.

*Chapter 3**Reductions in and refusals of the payment of compensation***Assistance and reporting obligations of applicants****20.** Applicants shall—

- (a) provide reasonable assistance to the Statutory Body in its consideration of the application,
- (b) make reasonable efforts to report the crime giving rise to the harm to—
  - (i) An Garda Síochána, or
  - (ii) Fiosrú, the Office of the Police Ombudsman, and
- (c) provide reasonable assistance with the investigation and prosecution of the crime to—
  - (i) An Garda Síochána,
  - (ii) Fiosrú, the Office of the Police Ombudsman,
  - (iii) the Office of the Director of Public Prosecutions.

**Consequences of failure to comply with assistance and reporting obligations****21.**

(1) Where an applicant has failed to comply with the obligations set out in *section 18*, the Statutory Body may refuse to make a compensation payment in respect of that application.

(2) If the applicant has failed to comply with the obligations set out in *section 18*, but the Statutory Body considers that there are special circumstances, it may—

- (a) make the compensation payment, or
- (b) make a reduced compensation payment.

(3) There are special circumstances if, in the opinion of the Statutory Body—

- (a) it would be in the interests of justice to make a payment, or a reduced payment,
- (b) the Statutory Body has sufficient evidence to make a decision on the application, and
- (c) the failure to comply with the obligation was reasonable.

(4) In considering whether there are special circumstances, the Statutory Body may take into account—

- (a) the age and capacity of applicant,
- (b) the nature of the harm and its effect upon the applicant,
- (c) the nature of the crime and its effect on the applicant,
- (d) the nature of the relationship between the applicant and the perpetrator, including any history of coercion, abuse or threatening behaviour,
- (e) whether the crime occurred in the context of domestic abuse or sexual violence,
- (f) any fear the person may have of retribution from the perpetrator,
- (g) whether the applicant reported the crime to another body,

- (h) whether the person is from a minority community and may fear discrimination from a State actor on reasonable grounds,
- (i) whether the person is a victim of trafficking.

### **Contributory misconduct by victim**

#### **22.**

(1) Subject to *section 24*, the Statutory Body may make a reduced payment, or refuse to make a payment, if it is satisfied that—

- (a) the conduct of the victim directly or indirectly contributed to the harm suffered or consequences of the crime of violence, and
- (b) that conduct makes it appropriate to reduce or refuse to make the payment.

(2) For the purposes of *subsection (1)*, conduct contributing to the harm includes, but is not limited to, the following conduct by the victim—

- (a) conduct (including unspent convictions) that caused or contributed to the harm,
- (b) participating in or assisting in the crime of violence,
- (c) encouraging any person to participate in or assist in the crime of violence,
- (d) failing to take reasonable steps to mitigate the consequences arising from the crime of violence,
- (e) failing to take reasonable steps to avoid a violent situation.

(3) Subject to *subsection (4)*, the conduct set out in *paragraphs (a), (d) and (e) of subsection (2)* is not to be taken into consideration if the crime of violence that caused the harm involved sexual violence or domestic violence.

(4) The Statutory Body may take into consideration the conduct set out in *subsection (2)(a)* if—

- (a) that conduct itself is domestic violence perpetrated by the applicant, and
- (b) that conduct contributed to the harm suffered by the applicant.

### **Ensuring that applicant benefits from compensation**

#### **23.**

(1) Where the Statutory Body has a reasonable concern that the applicant will not receive the benefit of a compensation payment, it may make the payment directly to the person charging for a verifiable expense, in order to ensure the applicant receives the medical or other support they require.

(2) The Statutory Body may make a reduced payment, or refuse to make a payment if satisfied that—

- (a) the perpetrator will benefit from the compensation payment, and
- (b) it is not possible to make the payment directly in accordance with subsection (1).

(3) *Subsection (2)* does not apply if the basis for concern is that the perpetrator and the victim reside in the same household.

### **Collusion with perpetrator**

**24.** The Statutory Body shall refuse to make a payment if it has reasonable grounds to believe that the applicant has—

- (a) colluded with the perpetrator for the purposes of receiving compensation,
- (b) the act of violence was planned, and
- (c) the applicant voluntarily consented to the act.

### **False information**

#### **25.**

(1) The Statutory Body shall refuse to make a payment if satisfied that the applicant has provided information to the Statutory Body knowing it to be false, or having no reasonable basis for believing it to be true.

(2) Where staff or decision-makers of the Statutory Body reasonably believe that information provided is fraudulent, they must report this to An Garda Síochána.

### **Irrelevant considerations**

#### **26.**

(1) The Statutory Body shall not make a reduced payment, or refuse to make a payment, solely on the ground that—

- (a) the applicant was intoxicated at the time of the crime of violence, or
- (b) the applicant has a conviction for a criminal offence unconnected to the crime of violence.

(2) In this section “intoxicated” means under the intoxicating influence of any alcoholic drink, drug, solvent or other substance or a combination of substances.

### **Public interest**

#### **27.**

(1) The Statutory Body may refuse payment, or make a reduced payment, where it considers that the making of a payment, or of a full payment (as the case may be) would be so contrary to the interests of justice that public confidence in compensation payments under this Act would be undermined.

(2) A decision to make a reduced payment or refuse to make a payment under this section shall be made by a three-person panel of the Statutory Body that contains—

- (a) the chairperson of the statutory body, or
- (b) the next most senior decision-maker, if the chairperson is unavailable.

(3) That decision must be approved—

- (a) unanimously by that panel, or
- (b) if unanimity is not possible, by a majority that contains—
  - (i) the chairperson of the statutory body, or
  - (ii) the next most senior decision-maker, if the chairperson is unavailable.

(4) Subject to *section 32(2)* [publication of decisions] the Statutory Body shall publish its reasons for refusing to make a payment, or making a reduced payment.

## *Chapter 4*

### *Application process*

### **Application for compensation**

#### **28.**

(1) An application for compensation may be made—

- (a) electronically,
- (b) by post, or
- (c) in person.

(2) Application forms shall be—

- (a) as accessible as possible,



- (b) worded in plain language,
- (c) available in multiple languages,
- (d) accompanied by a guidance note.

(3) The Statutory Body may require the applicant to supply any information, documents or evidence in connection with the application, that the Statutory Body considers appropriate.

(4) Where applications arise out of the same crime of violence—

- (a) they may be made together,
- (b) the Statutory Body may consider them together.

### **Certificate of authority**

29. An application shall include a certificate of authority from the applicant—

- (a) stating that the information contained within it, and all other information, documents or evidence supplied by the applicant are true,
- (b) certifying that they understand the eligibility criteria and the exclusions outlined in the scheme, and that the presence of any exclusionary criteria may lead to a reduction or refusal of compensation,
- (c) authorising the Statutory Body to obtain information on behalf of the applicant—
  - (i) where requested by the applicant,
  - (ii) where necessary in order to complete the application, or
  - (iii) where necessary in order to reach a fair decision.
- (d) consenting to the Statutory Body sharing information, including personal information, for the purposes of processing the application, or where necessary for other lawful purposes, including recovering double compensation,
- (e) authorising external bodies to share information with the statutory body at its request where necessary for the processing of the application,
- (f) informing the statutory body of the details of their legal representatives, should an applicant have taken or be intending to take civil proceedings against the offender for the same crime of violence,
- (g) giving consent to contact from the statutory body to their legal representatives seeking any information on separate compensation payments intended to cover the same losses as applied for under the statutory scheme and, potentially, seeking an appropriate undertaking regarding repayment,
- (h) stating whether or not the applicant—
  - (i) has received compensation for the crime of violence, otherwise than under this Act,
  - (ii) is considering applying for compensation for the crime of violence, otherwise than under this Act,
- (i) undertaking to inform the Statutory Body if, subsequent to making the application, the applicant applies for or receives compensation for the crime of violence intended to cover the same losses, expenses or harm covered by a payment made by the Statutory Body, otherwise than under this Act,
- (j) certifying that they understand the rules of the statutory body in relation to publication of decisions,
- (k) certifying that they understand that their personal data will be retained and will be subject to the General Data Protection Regulation (GDPR) and Data Protection Act 2018.

- (l) including any other matter which the statutory body has specified that they consider is appropriate or necessary to carry out its functions.

### **Application by family members of victim who has died**

#### **30.**

(1) This section applies in respect of applications by family members of a victim who has died, in accordance with *section 8*.

(2) The Statutory Body may—

- (a) request that the family members concerned nominate a family member to represent them, or
- (b) where the family members are unable to reach agreement in respect of a nomination, nominate one or more family members for the purposes of representing them, on the basis of the degree of relationship between the family members and the victim.

### **Time limit**

#### **31.**

(1) A person shall apply for compensation—

- (a) within two years of the crime of violence,
- (b) in the case of a person who was a child when they first suffered the harm, within two years of reaching the age of 18,
- (c) in the case of a person who had a mental incapacity when they first suffered the harm, within two years of them ceasing to have that mental incapacity.

(2) Where the harm arises from a series of linked crimes of violence, the two year time period starts to run from the date of the last of those crimes.

(3) Subsection (1)(b) and (1)(c) do not apply where a person is making an application on behalf of the child or person with a mental incapacity.

(4) For the purposes of this section, a person has a mental incapacity if they have a psychological condition that is of such significance that their will, or ability to make a reasoned decision, to make the application, is substantially impaired.

(5) The Statutory Body may accept an application up to eight years beyond the time limits set out in subsection (1) if satisfied that—

- (a) there is good reason for justifying the delay, and
- (b) the application can be dealt with fairly.

### **Interim payments**

#### **32.**

(1) The Statutory Body may make an interim payment of compensation following a request by the applicant.

(2) An interim payment may be for—

- (a) Reasonable and verifiable expenses, and
- (b) loss of earnings to the date of the interim payment, but only where not to make such a payment would cause hardship to the applicant.

(3) The Statutory Body may only make the interim payment if satisfied that—

- (a) the applicant is highly likely to be paid compensation following full consideration of the application (“the final payment”),
- (b) it is not practicable for the Statutory Body to make a decision on the final payment at the time it is considering making the interim payment, and

- (c) the interim payment is necessary to cover urgent or immediate established need arising from the harm suffered by the applicant.
- (4) An applicant may request more than one interim payment where necessary to cover further urgent or immediate expenses.
- (5) The value of any interim payment made shall be deducted from the value of the final payment.
- (6) If the application for the final payment is rejected, the applicant must repay to the State the total value of any interim payments made.
- (7) If the value of the final payment is lower than the total value of any interim payments made, the applicant must repay to the State the difference between the final payment and the total of the interim payments.

### **Oral hearings**

#### **33.**

- (1) The Statutory Body may hold an oral hearing on an application where it considers it appropriate to do so, taking into account any views expressed by the applicant, including whether the applicant has requested a hearing.
- (2) The Statutory Body shall conduct hearings in a manner that ensures fairness and procedural justice.
- (3) Where the Statutory Body holds a hearing, it has the same powers as the High Court to—
  - (a) direct a person to attend for the purposes of giving evidence, and produce any document or thing in their possession or control,
  - (b) direct a person to produce any specified document or thing in their possession or control,
  - (c) administer oaths or affirmations of truth.
- (4) At a hearing the Statutory Body may accept evidence even where this evidence would not satisfy the formal rules required for admissibility of evidence in court proceedings.
- (5) An applicant may be accompanied at a hearing by their legal adviser or another person of their choosing.

### **Death of applicant before payment is made**

#### **34.**

- (1) This section applies where an applicant dies after the application has been made and the Statutory Body has made a decision to make a payment, and the payment has not been made.
- (2) The Statutory Body may make the payment to the applicant's estate if it considers it is fair to do so.
- (3) A dependant who is not part of the applicant's estate may make a separate application for compensation to the Statutory Body for 'loss of dependency' on the victim's death but the Statutory Body shall take into account any payment previously made in respect of the victim.

### **Death of victim of unrelated causes before application made**

#### **35.**

- (1) This section applies where—
  - (a) a person is eligible for compensation as a victim of a crime of violence by virtue of *section 4*,
  - (b) that person has not made an application, and

(c) that person dies from causes unrelated to the crime.

(2) The Statutory Body may allow one or more dependants of that person to make an application if they would otherwise suffer hardship and the Statutory Body considers such a payment to be appropriate.

(3) Where an application is made by virtue of this section, compensation is limited to—

- (a) verifiable expenses, and
- (b) loss of earnings,

arising from the crime of violence and incurred before the death of the victim.

### **Information to be given to applicants during the application process**

#### **36.**

(1) During the application process, the Statutory Body shall explain to applicants—

- (a) the application process,
- (b) the information, documents or evidence required to be submitted, and who should obtain them, and
- (c) the rights of applicants.

(2) During the application process, the Statutory Body shall inform applicants that the application form, any other document in possession or control of the Statutory Body, and any narrative account of the crime of violence giving rise to the harm may be subject to—

- (a) discovery in civil proceedings, and
- (b) disclosure in criminal proceedings

(3) During the application process, the Statutory Body shall inform applicants of the possibility that they may be subject to examination or cross-examination on their application in subsequent court proceedings,

(4) During the application process, the Statutory Body shall inform applicants that a decision by them not to consent to any potential request for disclosure or discovery will have no adverse consequences for their application for compensation,

(5) During the application process, the Statutory Body shall inform applicants that if the information, documents or evidence supplied by the applicant is false in any material respect, and the applicant knows that it is false, the applicant may be prosecuted under section 6 of the Criminal Justice (Perjury and Related Offences) Act 2021.

### **Publication of decisions**

#### **37.**

(1) The Statutory Body shall publish decisions made in respect of applications, appropriately redacted to remove personal data.

(2) The Statutory Body may decide where the interests of justice so require to—

- (a) publish an additionally redacted decision or
- (b) defer publication of the decision, or,
- (c) where publishing an appropriately redacted decision or deferring publication will not satisfy the interests of justice, the Statutory Body may decide not to publish a decision.

### **Procedural rules and practice statements**

#### **38.**

(1) The Statutory Body may determine its own rules of procedure and issue its own practice directions for the processing of, and decisions on, applications and appeals, including for the conduct of oral hearings.

- (2) The Statutory Body shall publish these rules of procedure and practice directions.

### **Decisions to be made by Assessment and Adjudication Officer**

**39.** A decision in respect of an application, including costs and interim payments, may only be made by—

- (a) an Assessment and Adjudication Officer, or
- (b) a three-person panel of the Statutory Body, where the interests of justice exception at *section 25* is considered.

### **Delay pending linked proceedings or investigations**

**40.**

(1) The processing of an application or the making of a payment should not be delayed pending the outcome of related court proceedings or criminal investigations.

(2) The Statutory Body may delay processing or payment where necessary in the interests of justice.

(3) Court proceedings and criminal investigations are related if they are in respect of the same crime of violence.

## *Chapter 5*

### *Costs*

### **Legal costs**

**41.**

(1) The Statutory Body may make a contribution towards the applicant's costs of legal assistance, following the application, where—

- (a) the Statutory Body considers that legal assistance is necessary, and
- (b) the application is successful.

(2) The Statutory Body may guarantee in advance that it will make a contribution towards the applicant's costs of legal assistance, where—

- (a) the Statutory Body considers that legal assistance is necessary,
- (b) the applicant cannot access legal assistance without that guarantee, and
- (c) the applicant cannot vindicate their right of access to justice and right to an effective remedy without that guarantee.

(3) Where the Statutory Body has made this guarantee and the application is not successful, the Statutory Body shall make the contribution it has guaranteed.

(4) Where the Statutory Body has a case stated to the High Court and the applicant wishes to join as a party to it, the Statutory Body may make a contribution towards the applicant's costs of legal assistance, where the Statutory Body considers that legal assistance is necessary.

(5) For the purposes of this section, legal assistance is necessary due to—

- (a) the complexity of the application, or
- (b) the circumstances of the applicant.

(6) *Schedule 3* sets out a scale of fees, which is the contribution towards the applicant's costs of legal assistance that the Statutory Body may make in respect of—

- (a) legal assistance at the application stage,
- (b) legal representation at an oral hearing,
- (c) legal representation at an oral hearing on an internal appeal.

- (7) The Minister may by order amend *Schedule 3* to vary the amounts.

#### **Costs of reports or other evidence**

##### **42.**

- (1) The Statutory Body shall reimburse the reasonable costs of any reports or other evidence —
- (a) submitted by a successful applicant, whether or not it requested it, or
  - (b) that it requested be submitted by an applicant who was unsuccessful.
- (2) The Statutory Body may only pay costs under this section if satisfied, for example by the production of receipts or invoices, that these costs have been properly incurred in connection with the application.

#### **Witness costs**

- 43.** The Statutory Body may reimburse the reasonable, verified and necessary costs of witnesses who attend to give evidence at a hearing.

#### **Costs of ancillary court proceedings**

##### **44.**

- (1) The Statutory Body shall reimburse the costs of ancillary applications to the courts that are necessary for the purposes of an application for compensation.
- (2) In this section “costs” includes legal costs as well as court fees.

### *Chapter 6*

### *Appeals*

#### **Internal appeals**

##### **45.**

- (1) The Statutory Body shall establish procedures for an internal appeal of its decision.
- (2) Internal appeals shall be heard by a panel of three Assessment and Adjudication Officers, none of whom was involved in making the decision being appealed, at least one of whom is to be legally qualified.
- (3) The internal appeal may be—
- (a) an entirely new hearing on all issues, or
  - (b) a hearing only on particular issues.
- (4) An application for the internal appeal must be made within three months of the decision.
- (5) Where an appeal is only in respect of the contribution to legal costs, there is no entitlement to an oral hearing.
- (6) The decision of the Statutory Body on an internal appeal is the final decision of the Statutory Body.

#### **Consultative case stated**

- 46.** The Statutory Body may initiate a consultative case stated to the High Court—
- (a) on its own initiative, or
  - (b) on request by an applicant.

**Appeal to the High Court from a decision of the Statutory Body****47.**

- (1) An applicant may appeal a final decision of the Statutory Body to the High Court.
- (2) An application for the appeal must be made within 21 days of the final decision.
- (3) The High Court may, on the hearing of an appeal, consider any evidence adduced or argument made, whether or not adduced or made to the Statutory Body.
- (4) The appeal may be on a point of law only (including points of law that would ordinarily be the subject matter of judicial review proceedings).
- (5) The High Court may, on the hearing of an appeal—
  - (a) confirm the decision, or
  - (b) overturn that decision and replace it with a decision that the High Court considers appropriate or
  - (c) where not possible, remit the decision back to the Statutory Body.
- (6) No appeal lies from a decision of the High Court to the Court of Appeal unless the High Court certifies that there is a point of law of exceptional public importance and that an appeal is desirable in the public interest.

*Chapter 7**Double compensation***Prohibition of double compensation****48.**

- (1) A person is not prohibited from applying for compensation under this Act because they are entitled to apply for, or have received, compensation otherwise than under this Act.
- (2) The Statutory Body shall ensure that an applicant does not receive double compensation in respect of a crime of violence, and the following provisions of this section apply accordingly.
- (3) Where an applicant has received compensation otherwise than under this Act, the Statutory Body shall not make any payment under this Act to the extent that it would be double compensation.
- (4) The Statutory Body may impose a condition on any payment of compensation requiring the applicant to repay any part of the payment that is the subject of a future double payment.
- (5) Where an applicant has received compensation under this Act—
  - (a) the applicant must undertake to repay to the State any subsequent payment received by the applicant, otherwise than under this Act, to the extent that it would be double compensation,
  - (b) any subsequent payment received by the applicant, otherwise than under this Act, is recoverable to the extent that it would be double compensation.
- (6) The Statutory Body may—
  - (a) request information from any person, or
  - (b) share information with any person,

where the Statutory Body considers this appropriate for the purposes of exercising its functions under this section.

- (7) Where a payment is recoverable under this section, it is recoverable by the State.

**Meaning of double compensation****49.**

(1) The following provisions apply for the purposes of determining whether there is double compensation when payment is made or sought, otherwise than under this Act, in respect of the harm for which compensation is made or sought, under this Act.

(2) An employment leave payment or social welfare payment is double compensation.

(3) Payment, or reimbursement, of the applicant's verifiable expenses, or loss of earnings, by an insurance provider is double compensation,

(4) A general compensatory payment by an insurance provider is not double compensation.

(5) Individual donations to an applicant are not double compensation.

(6) Voluntary compensation payments made by an offender to the applicant are double compensation.

(7) Payments under subsection (6) are only double compensation to the extent that those voluntary payments, plus compensation paid under this Act, exceeds what the applicant would be entitled to in a successful civil claim for damages in respect of that crime of violence.

(8) Court ordered compensation payments under section 6 of the Criminal Justice Act 1993 are double compensation, where the payment is in respect of the applicant's verifiable expenses or loss of earnings.

(9) Court-ordered compensation payments under section 6 of the Criminal Justice Act 1993 are double compensation, where the payment is in respect of pain and suffering,

(10) But payments under subsection (9) are only double compensation to the extent that those court-ordered payments, plus compensation paid under this Act, exceeds what the applicant would be entitled to in a successful civil claim for damages in respect of that crime of violence.

(11) Awards of damages in civil cases are double compensation.

(12) For the purposes of deciding what an applicant would be entitled to in a successful civil claim, the Statutory Body may have regard to the Personal Injury Guidelines.

(13) In sections 46 to 50 payments otherwise than under this Act include payments, damages, settlements, compensation, costs, expenses and any other sum, howsoever described, paid to, or for the benefit of the applicant, arising out of the crime of violence.

**Duty on applicant regarding double compensation****50.**

(1) An applicant must disclose to the Statutory Body if the applicant—

- (a) has already received payment, otherwise than under this Act, in respect of the crime of violence,
- (b) is considering applying for payment, otherwise than under this Act, in respect of the crime of violence.

(2) If, after the applicant has received compensation under this Act, the applicant subsequently becomes aware of the matters referred to in *subsection (1)*, the applicant must disclose those matters to the Statutory Body.

**Duty on legal representatives regarding double compensation****51.**

(1) This section applies where an applicant has a legal representative in respect of—

- (a) the application for compensation under this Act,



- (b) any other application for payment, otherwise than under this Act, in respect of the crime of violence.

(2) The representative must disclose to the Statutory Body whether the applicant, to the best knowledge of the representative following reasonable enquiry—

- (a) has already been paid compensation, or
- (b) has applied, or intends to apply, for compensation,

otherwise than under this Act, in respect of the crime of violence.

(3) Where the representative subsequently becomes aware of the matters referred to in *subsection (2)*, the representative must disclose those matters to the Statutory Body.

(4) A representative in respect of the application for compensation under this Act must give an undertaking to the Statutory Body that the representative will retain any payment which would breach the prohibition on double compensation in their possession or control and remit it to the State following a lawful request from the State.

(5) Where the representative fails to comply with the obligations under this section, the State may refer the representative to the appropriate regulatory body for that representative.

### **Power of courts regarding double compensation**

**52.** A court—

- (a) in a civil claim for damages, or
- (b) in exercising its powers under section 6 of the Criminal Justice Act 1993,

may direct that compensation payable in that claim, where it would be double compensation, is payable directly to the State.

### **Assignment and subrogation of claims to the State**

**53.**

(1) Where an applicant receives compensation under this Act, all rights of action which the applicant has against any other person, or the estate of any other person, in respect of the crime of violence, to the amount of the compensation payment and from the date of the making of the payment, is assigned to and vests in the State.

(2) Without prejudice to subsection (1), the State, to the amount of the payment referred to in subsection (1), is subrogated to all rights or remedies to which the applicant is entitled in respect of the crime of violence.

(3) Every right of action vested in the State may, on and from the date on which it is vested, be sued on, recovered or enforced by the State, and it is not necessary for the State, to give notice to any person bound by the right of action of the vesting effected by that subsection.

(4) The State may request the applicant to provide the State with such information or documents as the State considers necessary for the purposes of exercising any right of action which vests in the State, or protecting any right or remedy subrogated to the State.

(5) The State may, for the purpose of exercising any right of action vested in the State, or protecting any right or remedy subrogated to the State, require the applicant to execute all documents (including the verification by the applicant of any document by affidavit) or take any other step as may, in the opinion of the State, be necessary for that purpose.

*Chapter 8*  
*Recovery of awards*

**Recovery of awards: collusion or false information**

**54.** The State may recover a payment from an applicant if the Statutory Body is satisfied that the applicant has—

- (a) colluded with the perpetrator as set out in *section 22*, or
- (b) provided false information to the Statutory Body as set out in *section 23*.

**PART 3**  
**THE STATUTORY BODY**

*Chapter 1*  
*Establishment and functions*

**Establishment**

**55.**

- (1) There is established the Statutory Body.
- (2) *Schedule 4* makes further provision in respect of the Statutory Body.

**Independence and impartiality**

**56.** The Statutory Body is, subject to the provisions of this Act, to be independent and impartial in the exercise of its functions.

**Guiding principles**

**57.** The Statutory Body shall vindicate the right of victims of crimes of violence to fair and appropriate compensation, and in exercising its functions under this Act, the Statutory Body shall comply with the following guiding principles—

- (a) provide an appropriate contribution towards compensating victims for the harm they have suffered as determined in accordance with this Act,
- (b) ensure that all victims are treated with dignity and respect,
- (c) aim to prevent secondary victimisation by providing appropriate and trauma-informed support for victims throughout the compensation process,
- (d) compensate victims without undue delay,
- (e) ensure that compensation is accessible to victims of crimes of violence without discrimination,
- (f) ensure fair, consistent and transparent decision-making.

**Internal arrangements for exercise of functions**

**58.**

- (1) The Statutory Body shall make administrative arrangements for its functions to be exercised by—
  - (a) an information and assistive tier,
  - (b) an assessment and adjudicative tier, and

- (c) an appeals tier,

within the Statutory Body.

(2) The information and assistive tier is to assist victims in making applications, including navigating the application and appeal process.

(3) The assessment and adjudicative tier is to assess applications and requests and make decisions regarding eligibility.

(4) The appeals tier is to hear appeals from the assessment and adjudicative tier.

(5) But this section does not limit the exercise of functions by the Statutory Body.

## *Chapter 2*

### *Membership of the Statutory Body*

#### **Chairperson**

##### **59.**

(1) The Statutory Body is to have a Chairperson.

(2) The Chairperson is responsible for—

- (a) overseeing the management of the caseload of the Statutory Body,
- (b) ensuring its efficient functioning,
- (c) monitoring Assessment and Adjudication Officers in the disposal of their cases in a timely and just manner.

(3) The Chairperson is to be treated as also being an Assessment and Adjudicative Officer.

#### **Appointment and removal of Chairperson**

##### **60.**

(1) The Chairperson is to be appointed by the Minister.

(2) A person is not eligible to be appointed unless the person has practiced as a solicitor or barrister for at least seven years.

(3) A person shall not be appointed unless the person has been recommended by the Public Appointments Service consequent upon the holding of a competition in accordance with the Public Service Management (Recruitment and Appointments) Act 2004.

(4) The Public Appointments Service shall not make a recommendation in respect of more than three persons.

(5) The Chairperson is to be appointed for a fixed term of no more than 5 years.

(6) A person may be re-appointed as Chairperson once.

(7) The chairperson—

- (a) may resign from office by giving notice to the Minister,
- (b) may be removed from office by notice given by the Minister on the grounds that the Chairperson—
  - (i) has without reasonable excuse failed to discharge their functions, or
  - (ii) is, in the opinion of the Minister, unable or unfit to carry out their functions.

#### **Chief Executive Officer**

##### **61.**

(1) The Statutory Body is to have a Chief Executive Officer.

(2) The Chief Executive Officer, in consultation with the Chairperson, is responsible for the administration and business of the Statutory Body.

## **Appointment and removal of Chief Executive Officer**

### **62.**

(1) The Chief Executive Officer is to be appointed by the Minister from among persons in respect of whom a recommendation for the purposes of this section has been made by the Public Appointments Service consequent upon the holding of a competition in accordance with the Public Service Management (Recruitment and Appointments) Act 2004.

(2) The Public Appointments Service shall not make a recommendation in respect of more than three persons.

(3) The Chief Executive Officer is to be appointed for a fixed term of no more than five years.

(4) A person may be re-appointed as Chief Executive Officer once.

(5) The Chief Executive Officer—

- (a) may resign from office by giving notice to the Minister,
- (b) may be removed from office by notice given by the Minister on the grounds that the Chief Executive Officer—
  - (i) has without reasonable excuse failed to discharge their functions, or
  - (ii) is, in the opinion of the Minister, unable or unfit to carry out their functions.

## **Assessment and Adjudication Officers**

### **63.**

(1) The Statutory Body is to have Assessment and Adjudication Officers.

(2) The Assessment and Adjudication Officers are responsible for making decisions, on behalf of the Statutory Body, in respect of applications.

## **Appointment and removal of Assessment and Adjudication Officers**

### **64.**

(1) Assessment and Adjudication Officers are to be appointed by the Minister, on the recommendation of the Chairperson.

(2) A person is not eligible to be appointed as an Assessment and Adjudication Officer unless the person—

- (a) has been qualified as a solicitor or barrister for at least five years, or
- (b) has other experience and qualifications which the Chairperson considers makes them suitable for appointment.

(3) A person shall not be appointed unless the person has been recommended by the Public Appointments Service consequent upon the holding of a competition in accordance with the Public Service Management (Recruitment and Appointments) Act 2004.

(4) An Assessment and Adjudication Officer is to be appointed for a fixed term of no more than five years.

(5) A person may be re-appointed as Assessment and Adjudication Officer once.

(6) An Assessment and Adjudication Officer —

- (a) may resign from office by giving notice to the Minister,
- (b) may be removed from office by notice given by the Minister, on the recommendation of the Chairperson in—
  - (i) circumstances to be specified by the Statutory Body,
  - (ii) for cause, and
  - (iii) only after appropriate and fair procedures have been followed.

### *Chapter 3*

#### *Miscellaneous*

#### **Training for staff and decision-makers of the Statutory Body**

**65.** All staff and decision-makers of the Statutory Body are to receive training to enable them to work with victims, and respond to the needs of victims.

#### **Information, guidance and assistance**

**66.**

(1) The Statutory Body shall provide information, guidance and assistance to victims in respect of applications to the Statutory Body.

(2) Where a person is ordinarily resident in the State, the Statutory Body shall provide information, guidance and assistance, including the translation of relevant documents, where the person wishes to apply for compensation as a result of being a victim of a crime of violence in another Member State.

(3) The Statutory Body shall provide information to victims in respect of accessing victim support services.

#### **Education, public awareness and research**

**67.** The Statutory Body may conduct education, training, public awareness activities and research, including data collection, into the operation of this Act.

#### **Complaints procedure**

**68.** The Statutory Body shall establish a process by which a person may make a complaint about the Statutory Body, or a member of the Statutory Body.

#### **Cooperation with other persons by the Statutory Body**

**69.**

(1) The Statutory Body may cooperate with any person it considers appropriate in relation to any matter connected to its functions, including in particular, victim support services.

(2) In particular, the Statutory Body may cooperate for the purpose of seeking information in respect of an application for compensation.

(3) The Statutory Body may make protocols or memoranda of understanding with any person, including An Garda Síochána, for the purpose of facilitating the exercise of the Statutory Body's functions.

#### **Duty of confidentiality**

**70.** The Statutory Body shall treat an applicant's personal information as confidential, and may only disclose it with the consent of the applicant, or where necessary for—

- (a) processing an application,
- (b) considering whether there has been double compensation,
- (c) for the purposes of complying with a court order,
- (d) for the purposes of section 58 or 59, or
- (e) any other lawful purpose.

#### **Sharing of detail of application / payment**

**71.**

- (1) This section applies in respect of the following information—
  - (a) whether a payment of compensation has been made,
  - (b) the reason for making, or not making, the payment,
  - (c) the amount paid, including how much for general compensation, verifiable expenses and loss of earnings.
- (2) The Statutory Body may only share this information—
  - (a) with the free and informed written consent of the applicant, or where
  - (b) it is required by another body for the purposes of the performance by it of any of its functions including in the context of court proceedings.

#### **Recovery of awards in cases of false information**

**72.** The State may recover a payment from an applicant if the Statutory Body is satisfied that the applicant has provided information to the Statutory Body knowing it to be false, or having no reasonable basis for believing it to be true.

## **PART 4**

### **COURT PROCEEDINGS**

#### **Discovery and disclosure**

**73.**

- (1) The Statutory Body may only comply with a request for discovery in civil proceedings, or disclosure in criminal proceedings if—
  - (a) the applicant to whom the request relates consents to the request, or
  - (b) a court orders it.
- (2) Consent to a request for discovery or disclosure is only valid if it is voluntary, informed, and in writing.
- (3) The Statutory Body shall, as soon as is practicable—
  - (a) inform the applicant about the request,
  - (b) show the applicant the content of the documents or other information that are the subject of the request.
- (4) The Statutory Body shall provide advice and assistance to the applicant in relation to the request.
- (5) A decision of the applicant to refuse consent to the request is not to have any adverse effect upon their application for compensation.

#### **Disclosure of fact of application: criminal proceedings**

**74.**

- (1) The Director of Public Prosecutions shall disclose to the defence the fact that an application for compensation was made, unless there is a serious risk that the likelihood of disclosing, or requiring disclosure of, the fact of the application will cause harm to the victim.
- (2) In making this decision, the nature and extent of the harm shall be considered by the Director of Public Prosecution.

#### **Cross-examination of victim**

**75.**

- (1) A person may only be cross-examined on information contained in an application for compensation with the leave of the court.
- (2) In making a determination on whether to grant leave, the court shall, in addition to any criteria that it would normally consider, have regard to—
  - (a) the desirability of facilitating access to compensation under this Act,
  - (b) the appropriate protection of the victim’s rights, including the rights to dignity and privacy, and
  - (c) the need to minimise the risk of retraumatisation or secondary victimisation.
- (3) Where a court permits examination or cross-examination, it shall order that the examination be conducted in a manner which minimises the potential for retraumatisation or secondary victimisation.

### **Compensation orders in criminal proceedings**

**76.** Section 6 of the Criminal Justice Act 1993 (compensation orders) is amended as follows—

- (a) in subsection (1) after “instead of” insert “a fine”,
- (b) after subsection (1) insert—
 

“(1A) The court shall consider making a compensation order where the injured party suffered a personal injury or loss.

(1B) The Director of Public Prosecutions shall, before sentencing, inform the injured party—

  - (a) that the court has the power to make a compensation order,
  - (b) that the injured party’s right to give evidence or make submissions under section 5, includes the right to give information on their financial losses arising from the crime.”
- (c) after subsection (5)(a) insert—
 

“(aa) to whether a compensation order would cause undue hardship for the convicted person, or the dependants of the convicted person, or any in other special circumstances that would make it inappropriate,

(ab) to whether the appropriate measure of compensation is complex, or not capable of summary assessment,

(ac) to whether the injured party’s loss was not clearly caused by the offence,

(ad) to whether the convicted person has made a voluntary offer of compensation to the injured party,

(ae) to whether the injured party is of the view that a compensation order ought not be made,

(af) to whether it would be in the interests of justice to make a compensation order,”
- (d) after subsection (7) insert—
 

“(7B) Where the court has the power to make a compensation order but declines to do so, it shall give its reasons for declining to do so.”
- (e) after subsection (11) insert—
 

“(11A) In making a compensation order, the court may have regard to the personal injuries guidelines adopted by the Judicial Council in accordance with the Judicial Council Act 2019.”

## PART 5

### FINAL

#### Recovery of money

77. The Minister may by regulations establish procedures by which the State may recover money that is to be repaid under this Act.

#### Expenses

78. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, be paid out of moneys provided by the Oireachtas.

#### Regulations

79. Regulations or orders under this Act shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling them is passed by either such House within the next 21 days on which that House has sat after the regulations or orders are laid before it, the regulations are annulled accordingly, but without prejudice to the validity of anything previously done under them.

#### Transitional provision

80.

## SCHEDULE 1

### CRIMES OF VIOLENCE

#### Section 5

1. Murder at common law.
2. Manslaughter at common law.
3. An offence under section 3 of the Criminal Justice Act 1990 (capital murder).
4. An offence under the following provisions of the Non-Fatal Offences Against the Person Act 1997—
  - (a) section 2 (assault),
  - (b) section 2A (assault aggravated by hatred),
  - (c) section 3 (assault causing harm),
  - (d) section 3A (non-fatal strangulation or non-fatal suffocation),
  - (e) section 3B (assault causing harm aggravated by hatred),
  - (f) section 4 (causing serious harm),
  - (g) section 4B (causing serious harm aggravated by hatred),
  - (h) section 5 (threats to kill or cause serious harm),
  - (i) section 5A (threats to kill or cause serious harm aggravated by hatred),
  - (j) sections 6 to 8 (syringe offences),
  - (k) section 9 (coercion),
  - (l) section 9A (coercion aggravated by hatred),
  - (m) section 10 (harassment or stalking),
  - (n) section 10B (harassment aggravated by hatred),



- (o) section 12 (poisoning),
- (p) section 13 (endangerment),
- (q) section 13A (endangerment aggravated by hatred),
- (r) section 15 (false imprisonment).

5. An offence under the following provisions of the Harassment, Harmful Communications and Related Offences Act 2020—

- (a) sections 2 or 3 (intimate image abuse),
- (b) section 4 (threatening or grossly offensive communication).

6. An offence under the following provisions of the Criminal Law (Rape) Amendment Act 1990—

- (a) section 2 (sexual assault),
- (b) section 3 (aggravated sexual assault),
- (c) section 4 (rape).

7. An offence under section 2 of the Criminal Law (Rape) Act 1981.

8. An offence under the following provisions of the Criminal Law (Sexual Offences) Act 2017—

- (a) sections 3 to 8 (sexual offences involving children),
- (b) sections 21 or 22 (sexual offences involving protected persons).

9. An offence under sections 3 to 6 of the Child Trafficking and Pornography Act 1998 (child trafficking and pornography).

10. An offence under sections 2, 3 or 3A of the Criminal Law (Sexual Offences) Act 2006 (child sex offences).

11. An offence under the following provisions of the Domestic Violence Act 2018—

- (a) section 38 (forced marriage),
- (b) section 39 (coercive control).

12. An offence under section 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001 (robbery).

13. An offence under sections 2 to 4 of the Criminal Law (Human Trafficking) Act 2008 (human trafficking).

14. An offence under section 6 of the Criminal Justice (Terrorist Offences) Act 2005 (terrorism).

15. An offence under sections 2 or 3 of the Criminal Justice (Female Genital Mutilation) Act 2012.

## SCHEDULE 2

### GENERAL COMPENSATION: BANDING

Section 12

| Category   | Band for general compensation |
|------------|-------------------------------|
| Category A | € X to € Y                    |
| Category B | € X to € Y                    |
| Category C | € X to € Y                    |

|            |            |
|------------|------------|
| Category D | € X to € Y |
|------------|------------|

### SCHEDULE 3

#### CONTRIBUTION TOWARDS LEGAL COSTS

Section 39

| Nature of legal advice and assistance | Contribution |
|---------------------------------------|--------------|
| Assistance with application           | € X          |
| Oral hearing at first instance        | € X          |
| Oral hearing on appeal                | € X          |

### SCHEDULE 4

#### THE STATUTORY BODY

Section 53

#### Payment of remuneration and allowances etc

1.

#### Status

2. The Statutory Body is a body corporate.

#### Powers

3. Investigatory powers

4. The Statutory Body has the power to—

- (a) make inquiries,
- (b) carry out investigations,
- (c) request documents or other evidence, and
- (d) do any other thing that is conducive to the effective exercise of its functions under Part 2.

#### Committees

5.

#### Procedure and proceedings

6.

#### Staff

7. The Statutory Body may employ staff.

**Pensions**

8.

**Delegation**

9.

**Financial provisions**

10.

**Accounts**

11.

**Annual report**

12.

**Interim Chairperson**

13.

**Interim Chief Executive Officer**

14.

**Temporary Assessment and Adjudication Officer**

15.