

**CRIMINAL INJURIES COMPENSATION BOARD  
JERSEY**

**VICTIMS  
OF CRIMES  
OF VIOLENCE**

**A guide to Jersey's Criminal Injuries  
Compensation Scheme**

**June 2007**

## A GUIDE TO JERSEY'S CRIMINAL INJURIES COMPENSATION SCHEME

### INTRODUCTION

The aim of this guide is to summarise some of the more important aspects and conditions of the Criminal Injuries Compensation Scheme, and to provide applicants with enough information about its interpretation by the Board to help them apply with the minimum of trouble and research. It must be emphasized, however, that the guide is an aid and not a substitute for the Scheme itself and cannot cover every situation, each case is determined by the Board on its own merits and solely in accordance with the relevant provisions of the Scheme. Some applications are, of course, less straightforward than others. Thus, while the guide should enable most applications to be made without assistance, there will be some cases in which applicants may have to think carefully whether to seek advice first. The Board does not, however, pay for the cost of legal advice or representation.

Throughout the guide references are made to *Articles* of the Scheme. If you do not receive a copy of the Scheme with this guide you can send for one, and any further forms or information you may require, to -

Criminal Injuries Compensation Board,  
c/o States Greffe,  
Morier House,  
Halkett Place,  
St. Helier.  
JERSEY.  
JE1 1DD

Telephone No. (01534) 441028  
E-mail: [statesgreffe@gov.je](mailto:statesgreffe@gov.je)

This guide is issued on the authority of the Board.

### WHO CAN APPLY

1. Under *Article 10* of the Scheme you can apply for compensation if you sustained personal injury directly attributable -

- (a) to a crime of violence (including arson or poisoning);
- (b) to an incident when you were trying to stop someone from committing a crime or when you were trying to apprehend a suspect after a crime or when you were trying to help the police apprehend someone.

#### **“Crimes of violence”**

2. There is no legal definition of the term “crime of violence”. Most crimes of violence of course involve force to the person, e.g. assaults and woundings. Where it is not obvious the Board will look to the nature of the crime rather than its consequences.

#### **“Personal injury”**

3. This can include mental injury directly attributable to a crime of violence or threat of violence. Shock directly attributable to the loss of possessions is not within the Scheme.

### **“Directly attributable”**

4. Personal injury is “directly attributable” if the incident from which the injury arose would be considered by a reasonable person who knew all the facts to be a substantial cause of the injury, but not necessarily the only cause.

### **Fatalities**

5. You can also apply for compensation if you are a dependant or relative of someone who died from criminal injuries (*Article 25*) or who was injured but died from some other cause (*Article 26*). If you are not a relative or dependant but you paid for or towards the funeral of someone who died from criminal injuries, you can claim reasonable funeral expenses.

## **WHAT INJURIES QUALIFY**

### **Scope of the Scheme**

6. The injury must have been sustained, in Jersey or on a Jersey ship (*Article 10*) on or after 1st May 1991. Injuries sustained elsewhere, say on holiday abroad, are not covered. In this case there could be a remedy under a similar scheme in force in the country concerned.

### **Immunity of offender**

7. You can apply for compensation even if the injuries were caused by someone who could not be held responsible under the criminal law, because they were too young, or insane (*Article 13*). For example, a child below the age of 10 years is considered legally incapable of committing a crime. If, as a matter of fact, the child’s conduct would have amounted to a crime of violence if committed by an adult, the victim is entitled to apply for compensation from the Board.

### **The lower limit for compensation**

8. Under *Article 14* of the Scheme no compensation can be paid unless the Board is satisfied that the amount payable after deduction of social security benefits (but before any other deductions under the Scheme) would not be less than the statutory minimum.

9. Compensation is assessed on the basis of “common law” damages (*Article 20*). This means that, subject to the other provisions of the Scheme, the Board will award what a civil court would award in “damages” for the same injury. However, the effect of the lower limit in the Scheme prevents the Board from making an award if the damages a court could award would be less than the statutory minimum. Moreover, even if the total sum payable is equal to or more than the statutory minimum, an application might still have to be disallowed on account of the victim’s entitlement to social security benefits. Under *Article 28* of the Scheme all such benefits received as a result of the injury have to be deducted in full. So if the balance of compensation payable after deduction of such benefits is less than the statutory minimum then no compensation can be paid at all.

10. The lower limit will usually apply when the injuries sustained are of a minor nature, e.g. cuts, bruises or sprains where there has been no more than minor medical treatment and where there is no remaining visible scarring, or which have not necessitated more than three to four weeks’ absence from work. Whilst the Board takes into account shock and emotional disturbance, and will give more weight to this if the victim is elderly, compensation would not normally be awarded for temporary shock, distress or emotional upset alone if no more than the inevitable reaction to an unpleasant experience.

### **Accidental injury**

**11.** As a general rule accidental injury is not covered by the Scheme. The Board can only compensate for accidental injury if you were engaged in one of the law enforcement activities set out in *Article 10* of the Scheme, and the injury was sustained in circumstances in which you could be said to have been taking an “exceptional risk which was justified in all the circumstances” (see *Article 15(d)*).

**12.** Whether the Board can accept you were taking an exceptional risk will depend on the facts. People who fall over when running towards an incident or going to apprehend an offender are unlikely to satisfy the test. Likewise a person injured climbing or jumping over such things as walls or fences will not usually be taking an exceptional risk, unless the action is essential and the person does not know or cannot see what is on the other side. But an act which would not be regarded as constituting an exceptional risk in daylight, may well be so at night.

### **Road traffic offences**

**13.** The general rule is that compensation is not payable under the Scheme for injuries caused as the result of traffic offences on the public highway (*Article 19*). In such cases the victim’s remedy is through the driver’s insurance company or, if the driver was uninsured or unidentified, through the Motor Insurer’s Bureau (MIB). The address of the Motor Insurer’s Bureau is -

Linford Wood House,  
6-12 Capital Drive, Linford Wood,  
MILTON KEYNES,  
MK14 6XT

**14.** There is one situation in which the MIB cannot help. That is where the victim was deliberately run down by a driver who cannot be traced or whose identity is unknown. In this case the victim should apply to the Board for compensation under *Article 19* of this Scheme.

### **Injury caused by animals**

**15.** Injuries suffered in an attack by an animal are not covered by the Scheme unless what has happened amounts to an assault as, for example, where a dog’s owner deliberately sets the dog upon some person.

### **Violence within the family**

**16.** Under *Article 10(b)* of the Scheme, if you and the person who injured you were living together in the same household as members of the same family at the time of the incident compensation will be paid only where -

- (i) the person responsible has been presented to the Court (unless the Board agrees that there are good reasons why a prosecution has not been brought);
- (ii) in the case of adults, the Board is satisfied that the person responsible and the applicant stopped living together before the application was made; and
- (iii) in the case of an application for compensation by or on behalf of a minor, the Board is satisfied that it would not be against the minor’s interest to make a full or reduced award.

## CONDITIONS WHICH APPLY IN ALL CASES

17. Even if there is no doubt that you have sustained “personal injury directly attributable to a crime of violence” for which compensation could be awarded under the Scheme you will also have to show the Board that an award should not be refused or reduced for one of the reasons set out in *Article 15* of the Scheme. You should read this Article with particular care. The following notes are to help you anticipate the Board’s likely approach.

### Informing the police (Article 15(a))

18. It is not necessary that the offender should have been convicted before an award can be made. Some offenders are never found. However, the Board attaches great importance to the duty of every victim of a crime of violence to inform the police of all the circumstances without delay, and to co-operate with their enquiries and any subsequent prosecution.

19. The condition that the incident should have been reported is particularly important since it is the Board’s main safeguard against fraud. A victim who has not reported the circumstances of the injury to the police and can offer no reasonable explanation for not doing so should assume that any application for compensation would be rejected by the Board altogether. Failure to inform the police is unlikely to be excused on the grounds that the victim feared reprisals or did not recognise his assailant or saw no point in reporting it. Reporting such incidents may help the police to prevent further offences against other people.

20. It is for the **victim** to report the incident personally unless he was prevented from doing so because of the nature of his injuries. In this case it is then his duty to contact the police and co-operate with their enquiries as soon as he is able to do so. It is not sufficient to assume that the incident will have been reported by someone else because, even if it has, that person may not have known the full circumstances. Reports by, or the evidence of friends, relatives or workmates will not be sufficient if there was no good reason for the victim not informing the police as well.

21. The victim must report all the relevant circumstances. If he deliberately leaves out any important information or otherwise misleads the police, an application for compensation would usually be rejected.

22. The incident should have been reported to the police by the victim at the **earliest opportunity**. Failure to inform the police promptly can prejudice further enquiries. Thus, a victim who fails to report initially and only does so later for the purposes of claiming compensation from the Board is likely to find his application rejected. In general, the ignorance of rights, duties or the provisions of this Scheme are unlikely to be regarded by the Board as acceptable excuses, particularly in the case of the serious crimes which most citizens would recognize as matters which should have been reported to the police.

### Exceptional cases

23. Every case is treated on its merits and the Board will take a more sympathetic view where the delay or complete failure to report the incident to the police is clearly attributable to youth, old age, or some other physical or mental incapacity which rendered it difficult or impossible for the victim to appreciate what to do. The requirement might also be waived if the applicant was unaware that his injury was due to a crime of violence, or only discovered there was a connection long after the event by which time little or no purpose would have been served in reporting it to the police.

### Informing someone else

24. It is the **police** to whom crimes of violence must be reported, and reports made to employers, trade union officials, social workers or others will not generally be regarded by the Board as sufficient. Exceptions may be made, however, in the case of injuries sustained, for example, in mental hospitals and prisons where a prompt report to the appropriate person in authority may be sufficient because this will represent a willingness that the matter should be formally investigated. The “appropriate authority” in the

case of a child will often be the child's parents whose own failure to inform the police will not constitute a bar on the child's claim if it would have been unreasonable to expect the child to take the matter any further himself.

### **Helping the police to prosecute (Article 15(b))**

25. Even if the incident has been promptly reported to the police the Board has discretion to refuse or reduce compensation if the victim subsequently fails to co-operate with the police in bringing the offender to justice.

26. Essentially the Board makes a distinction between two situations -

- (a) an applicant refuses to co-operate with the police, for example, refuses to make a statement, attend an identification parade, name the assailant, attend court or such like conduct. The Board makes no award;
- (b) the applicant was willing to co-operate but in the particular circumstances it was decided by the police or the prosecuting authority that no further action should be taken or prosecution brought. An award will usually be made.

27. As with non-reporting, fear of reprisals, etc., will usually be no excuse. If the victim having at first refused to co-operate with the police subsequently changes his mind and assists them in all respects then the Board may consider making a reduced award.

### **Conduct and character of the victim (Article 15(c))**

28. You must be able to convince the Board that you were not in any way responsible for the incident in which you were injured. Otherwise the Board may decide to make no award or a reduced award. The Board can also refuse compensation or reduce it on account of previous criminal convictions. In fatal cases the Board will take account of the conduct and any convictions of the deceased as well.

### **Conduct "before, during or after the event"**

29. "Conduct" means something which can fairly be described as bad conduct or misconduct. It includes provocative behaviour. There is no limit upon the sort of conduct that the Board can take into consideration, but no reduction will be made on account of "contributory negligence" unless it can be said to constitute misconduct.

### **Fighting**

30. Compensation will not usually be awarded in the following circumstances -

- (a) if the victim, without reasonable cause, struck the first blow, regardless of the degree of retaliation or the consequences;
- (b) where the conduct of the victim was calculated or intended to provoke violence;
- (c) if the injury or death occurred in a fight in which the victim had voluntarily agreed to take part. This is so even if the consequences of such an agreement go far beyond what the victim expects. A victim who invites someone "outside" for what he intends should be a fist fight will not usually be compensated even if he ends up with the most serious injury. The fact that the offender goes further and uses a weapon will only make a difference in exceptional circumstances;

- (d) if the crime of violence formed part of a pattern of violence in which the victim or the applicant had been a voluntary participant, e.g. if there was a history of assaults involving the victim and the assailant where the victim had previously taken the role of the assailant;
- (e) where the victim or the applicant had attempted to revenge himself against the assailant.

#### **Provocative words or behaviour.**

31. Conduct of this kind may result either in a reduced award or in the rejection of the application altogether. In each case the Board will consider whether the violence done was in or out of proportion to the victim's provocation.

#### **Alcohol or drug related incidents**

32. Many of these incidents occur in places and situations which the victim might have avoided had he been sober or not willing to run some kind of risk. In such circumstances the Board may make an award but only after looking very carefully at the circumstances to ensure that the applicant's conduct "before, during or after the events giving rise to the claim" was not such that it would be inappropriate to make a payment from public funds.

#### **Gangs and terrorists**

33. A member of a violent gang will rarely be awarded compensation even if the circumstances in which he sustained his injury were unconnected with membership of the gang. Anyone convicted of terrorist activities would be refused compensation by the Board whatever the circumstances of the incident giving rise to the claim.

#### **Immoral conduct**

34. This is not in itself a reason for refusing or reducing an award but in some cases immoral conduct may amount to provocative conduct justifying refusal or reduction for other reasons.

#### **Unlawful conduct**

35. An applicant injured in the course of committing a serious crime will usually receive no award.

#### **Conduct of children playing dangerous games**

36. The applicant must show that a crime of violence was committed. The mere fact that a game was dangerous will not of itself be sufficient. Even if a crime of violence is established, the Board will not make an award where there is nothing to choose between the conduct of the child who inflicted the injury and the victim. To do so would merely be compensating the loser. For example, if 11 and 12 year old boys were firing stones from catapults at each other and one boy received a serious eye injury, that would be an assault, thus a crime of violence, but an application would be rejected. In cases where the children are of different ages or take unequal parts in the game, a full or reduced award may be made depending on the degree of their participation and their understanding of the risk involved.

#### **"Character" as shown by criminal convictions**

37. This part of *Article 15(c)* of the Scheme gives the Board discretion to refuse or reduce compensation because of the applicant's (or the deceased's) past record of criminal offences, whenever committed. The Board can take account of convictions which are entirely unconnected with the incident in which the applicant was injured. Any attempt the applicant has made to reform himself will also be taken into consideration.

38. The Board may completely reject an application if the applicant has -

- (a) one conviction for a serious crime of violence, e.g. murder, manslaughter, rape, wounding or inflicting grievous bodily harm;
- (b) one conviction for some other very serious crime of violence, e.g. drug smuggling in quantity;
- (c) more than one recent conviction for less serious crimes of violence, e.g. assault, burglary, theft or criminal damage; or
- (d) numerous convictions for dishonesty of a serious nature.

39. Each case is judged on its merits and in some circumstances even a conviction for a serious crime of violence will not be regarded as a complete bar. For example the Board would be likely to approach sympathetically an application from a person with a bad record of convictions who had been injured while assisting the police to uphold the law or genuinely giving help to someone who was under attack.

#### **Where offender may benefit**

40. Under *Article 16* of the Scheme no compensation can be paid in any case unless the Board is satisfied there is no possibility that any person responsible for causing the injury may benefit from an award as could happen if, for example, the victim and the offender were still living under the same roof.

#### **HOW AND WHEN TO APPLY**

41. If you have been injured as the direct result of a crime of violence and decide to apply for compensation you should complete an **Injury** application form and send it to the Board as soon as possible after the incident (*Article 33*). When submitting the application form you must also provide some proof of the applicant's identity (e.g. a photocopy of the current driving licence, passport or citizens card). Application forms can be obtained by contacting the Board's office at the address shown at the start of this guide. If the person who was injured has died, ask for a **fatal** application form. If death occurred otherwise than as a result of the injury ask for a **fatal** (*Article 26*) application form.

#### **Time limits**

42. Do not delay making your application. Applications must in any event be made within three years of the date of the incident giving rise to the injury. The Board cannot consider applications made outside this period unless the circumstances are exceptional (*Articles 11 and 12*).

43. The three year limitation period is the same as in the civil courts and exists because late claims can be difficult to investigate. The Scheme has received considerable publicity and the fact that an applicant was unaware of its existence or its provisions is unlikely to be regarded as an acceptable reason for not making an application within three years.

44. The Board will, however, give sympathetic consideration to late applications from or on behalf of victims whose ability to help themselves is or was impaired, and to those who were under the age of 18 at the time of the incident. In addition, the Board will give careful consideration to late claims by persons whose injuries were not immediately attributable to the incident provided the application is made as soon as possible after discovering the cause.

#### **Applications on behalf of children**

45. An application on behalf of a person under the age of 18 must be made by an adult with parental rights over the child. The reason for this is that a child cannot legally decide for itself whether to accept the Board's determinations and if the application is not made and conducted by the right person on the child's behalf there may be unnecessary delay before compensation can be paid. A copy of the child's birth certificate must be enclosed with the application form.



46. Usually, the person to make the application will be one of the child's natural parents. If the child is in care the Board will expect the application to be made by the authority to whom care has been granted. In other cases the Board will expect the application to be made and signed by the person having parental rights over the child for the time being. Where there is no one legally entitled to act for the child, help should be sought from the Viscount's Department. The Board does not make these arrangements itself, wherever possible all the necessary formalities should be completed on the child's behalf before an application is made.

47. Persons subject to a "tutelle" must make application to the Board through their "tuteur".

#### **Mental incapacity**

48. Applications in respect of adults who are legally incapable of managing their own affairs, whether they have been rendered so as the result of a criminal injury or otherwise, must be made by a person properly authorised to act on the victim's behalf. In these cases the victim's family or friends should always consider the desirability of taking medical or legal advice before making an application for compensation.

### **HOW THE BOARD DEALS WITH APPLICATIONS**

49. Every application will be acknowledged by the Board as soon as practicable after receipt. The applicant will be given a **personal reference** number which must always be quoted in subsequent communications with the Board.

50. The Board has a duty to check the information you give. You will have to sign a section of the application form giving the Board permission to write to the police, hospital, doctor, employers or anyone else to confirm what you have said about your injuries and loss of earnings. You may be asked by the Board to provide details of any financial loss yourself and you have a general duty to give all reasonable assistance to the Board in connection with your application (*Article 10(b)*). All enquiries made by the Board are dealt with in confidence.

51. The necessary enquiries always involve a delay of some kind in every case and you should not look for an early decision on your application. Once you have received an acknowledgement you can be sure that the enquiries on your case have been started and you will be contacted as soon as possible.

52. Generally the Board concentrate first on an applicant's eligibility under the Scheme because there is no point in calling for detailed medical evidence if compensation is likely to be refused, e.g. because the incident was not reported to the police. Sometimes it may be necessary to defer any decision until the outcome of any criminal proceedings against the offender is known, but the Board will only do this if it considers that the proceedings are likely to have a bearing on the victim's application for compensation.

#### **Interim awards**

53. Wherever possible the Board will try to resolve an application by a once only lump sum payment of compensation (**a final award**). But to do this the Board needs to have a clear medical prognosis, and in some cases this can take a long time to obtain. In such cases, providing the applicant is in all respects eligible for compensation, the Board may make one or more interim awards on account. But the Board will usually take this course if there is evidence of need or hardship or -

(a) when the final award is likely to be substantial, and

(b) there has already been - or it appears that there will inevitably be - a substantial delay before a final award can be made.

### Photographs and inspections

54. When the Board has completed its enquiries and is satisfied that you seem to be eligible for compensation you may be sent a form asking whether you have fully recovered from your injuries. If there is any serious scarring you may be asked at this stage to provide photographs of a specified type (for which a standard fee will be offered) to help the Board assess the proper amount of compensation. Please do not send photographs unless asked; any sent without request will of course be considered but the cost will not be reimbursed unless they enable the Board to assess the extent of the injury **once it has fully healed**. Photographs taken shortly after the incident which caused the injury will not usually help.

55. If it is impossible to assess the extent of your injuries on the basis of photographs you may be asked to attend one of the Board's hearings so that a member of the Board can inspect your injuries before assessing compensation. An applicant is not called for inspection unless the Board has already decided that he is entitled to an award, or a reduced award. However, before making a final determination, the Board can take account of any fresh information (e.g. about further criminal convictions) between the date of calling for the inspection and the date of the Board's determination which would affect the applicant's eligibility under the Scheme.

### HOW COMPENSATION IS ASSESSED

56. Compensation is assessed on the same basis as "common law damages", subject to statutory limits (*Article 20*). This means that if the incident which caused the injury occurred in Jersey or on a Jersey ship, compensation will be assessed in accordance with the rules of law in Jersey. But there are some respects in which the Scheme differs from the law as applied in the Courts. For example under *Article 28* the Board is required to deduct the **full** value of any benefits received by the victim as a result of the injuries sustained and under *Article 24* there is a limit on the amount of lost earnings or earnings capacity the Board can take into account. The following notes give an outline of the way the Board calculates the final sum payable.

#### Injury cases

57. Damages are assessed under two broad headings -

- **General Damages.** This is compensation for the injury itself, for the pain and suffering, and for any loss of facility. If the Board is satisfied that there will be a continuing financial loss or reduction in future earning capacity, compensation will be included for this as well.
- **Special Damages.** This is compensation for financial loss already sustained as a result of the injury calculated to the date of the award. Depending on the circumstances it could include -
  - earnings lost through time off work, calculated usually from figures supplied by the applicant's employers, or from accounts;
  - out-of-pocket expenses such as dental costs, fares to hospital for treatment and repair to or replacement of certain personal items. Normally the Board will only refund such expenses if receipts are provided.

**NOTE:** The Scheme allows the Board to compensate for the loss or damage to **clothing** and personal adjuncts but for watches and jewellery, etc. there is a statutory limit (*Article 27*).

#### Private medical treatment

58. The Board will not compensate for the cost of private treatment unless satisfied that it was reasonable to obtain treatment privately. Where the Board is so satisfied compensation will not exceed a reasonable amount.

### Additional payment in rape cases

59. A woman who has been raped, and who gives birth to a child as a result, which she intends to keep, may be eligible for an additional payment as provided for in *Article 18*.

### Fatal cases

60. Where the victim dies as a result of a criminal injury the Board will assess compensation for the dependants or relatives of the victim in accordance with the Fatal Accidents (Jersey) Law 1962 and for a person alleged to have been married to the deceased by habit or repute (*Article 25*).

61. Compensation in either case is based primarily on the **financial dependency** of the dependant or relative of the victim. The Board can make no award unless satisfied by evidence in support of the application that the applicant depended upon the victim financially. A financial dependency cannot be founded on social security benefits.

62. In addition, the Board may award compensation in respect of **funeral expenses**. The person who paid for the funeral expenses will be awarded a reasonable sum in compensation, even if that person is otherwise ineligible to claim under the Scheme (*Article 25*). The cost of a tombstone may be met if it is reasonable but no award can be made for a memorial, for newspaper intimations, wreaths, flowers or other expenditure.

- In fatal cases the conduct and previous convictions of both the victim and the applicant must be taken into account (*Article 15(c)*).
- No compensation other than funeral expenses is payable for the benefit of the victim's **estate**.
- The lower limit for compensation (*Article 25*) does not affect the payment of funeral expenses or claims under *Article 26* which can be met by the statutory minimum.

### PROCEDURE FOR CONSIDERING APPLICATIONS AND NOTIFICATION OF BOARD'S DECISIONS

63. Your application, and any supporting documents, will be considered by two members of the Board. If they decide to make an award you will be notified and given a breakdown of how the award was assessed, including any deductions made for compensation received from other sources (e.g. from a compensation order by a criminal court). If no award is made or the amount of the award is reduced you will be given reasons for the decision.

### ACCEPTANCE OF DECISIONS AND HEARINGS

64. If they cannot reach a decision on your application or for any other reason, the two members of the Board may, instead of making a decision, refer it to a hearing before three different members of the Board. You will be informed as soon as possible if your application has been referred and you will also be sent a note about procedure and attendance at hearings (*Article 34 and 35A*).

65. If an initial decision has been taken on your application and you decide to accept the decision, you must return a signed notice of acceptance before the Board will make any payment which may have been awarded.

66. However, if you are not satisfied with the initial decision you may, within three months of the date when the decision was notified to you, apply for a hearing before three members of the Board, excluding those who made the original decision. A note explaining about procedure and attendance at hearings will be sent to you with the Board's decision. (*Articles 34B and 35*).