

Le régime d'indemnisation des victimes d'infraction au Royaume-Uni

Textes de référence :

- ✓ Criminal Injuries Compensation Scheme 1964.
- ✓ Criminal Justice Act 1988.
- ✓ The Motor Insurers' Agreement 21 décembre 1998 (Extrait).

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Introduction

La procédure pénale ne permet pas à la victime d'une infraction pénale de se constituer partie civile à l'occasion de l'enquête ou du jugement des faits délictueux ou criminels. Lorsque l'infraction a entraîné un préjudice, la personne qui l'a éprouvé ne peut demander réparation à l'encontre du responsable qu'en exerçant une action en dommages intérêts devant le juge civil. La partie lésée ne détient aucun droit d'option entre la saisine du juge répressif et le juge civil pour la réparation du dommage comme en droit pénal français. Dans le système juridique Common Law, le juge pénal n'est pas compétent pour statuer, à l'occasion du procès répressif, sur l'action civile.

Il s'en suit qu'en droit anglais, la réparation d'un préjudice consécutif à une infraction pénale obéit à la procédure civile de droit commun. Le demandeur a alors la charge de la preuve de la faute du défendeur et il doit identifier le quasi-délit (*tort*) dont le défendeur serait coupable, par exemple la négligence, la nuisance, la violation de la propriété privée (*tresspass*), la diffamation etc. Le juge statue sur la balance des

probabilités (*balance of probabilities*). Cette solution n'est pas très avantageuse d'un point de vue pratique. Elle est peu rapide et est surtout très coûteuse pour la victime.

En droit anglais, deux régimes spécifiques de réparation se sont développés assez tôt du fait notamment de l'impossibilité de se constituer partie civile : l'indemnisation en matière des infractions pénales par les fonds publics (Première Partie) et l'indemnisation en matière des accidents de la circulation (ou des infractions au code de la route) (Deuxième Partie).

A. L'indemnisation en matière des infractions pénales

Le gouvernement a mis en place dès 1964 un dispositif d'indemnisation des victimes d'infractions pénales en créant le " Plan d'Indemnisation des Dommages résultant d'une Infraction ", (*Criminal Injuries Compensation Scheme*). Le Plan n'avait à l'époque aucune base légale (*statutory basis*)¹ mais était entré en vigueur en vertu de l'exercice des prérogatives par la Couronne britannique. Le Parlement votait toutefois annuellement les lignes budgétaires le concernant.

Sous ce régime, l'indemnisation des infractions pénales s'opérait conformément au droit de la responsabilité issu de la Common Law jurisprudentiel, c'est-à-dire la responsabilité délictuelle (*tort*). Tous les postes de préjudice, au cas par cas, étaient pris en compte pour l'indemnisation. Étaient par exemple retenus les dommages corporels, moraux et même matériels, telle que la perte de revenus (*loss of earnings*). La Commission d'indemnisation des infractions pénales (*Criminal Injuries Compensation Board*), qui gérait le Plan, allouait une somme globale (*lump sum*) à la victime.

En 1988, à la suite du rapport de la Commission Royale sur la responsabilité civile et l'indemnisation des dommages corporels (*Royal Commission on Civil Liability and Compensation for Personal Injury*), le législateur avait légalisé le Plan d'indemnisation en votant la Loi de 1988 sur la Justice Pénale (*Criminal Justice Act 1988*).

Avec l'augmentation du nombre d'indemnisations et des dommages invoqués, le gouvernement britannique a remplacé le mode de réparation des dommages sur la base du droit de la responsabilité délictuelle par un mode forfaitaire (*tariff-based scheme*).

Le mode forfaitaire a été sanctionné par la Chambre des Lords² dans un arrêt de 1995³ du fait qu'il manquait de base légale au regard de la Loi de 1988 sur la Justice pénale.

¹ En droit britannique, le gouvernement ne détient aucun pouvoir normatif autonome. En vertu du principe de la légalité (*rule of law*), tout acte réglementaire doit d'abord être autorisé par le Parlement. Seul le Souverain détient des prérogatives et peut les exercer à titre gracieux uniquement.

² La Chambre des Lords (*House of Lords*) est la deuxième chambre du Parlement et comprend à la fois une formation politique et une formation juridictionnelle. Celle-ci est la juridiction suprême au Royaume-Uni.

³ Chambre des Lords, *Regina c/ Secretary of State for the Home Department, ex parte Fire Brigades Union and others*, [1995] 2 All England Reports 244.

C'est à la suite de cet arrêt que le ministre de l'intérieur (*Secretary of State for the Home Affairs*) a fait adopter par le Parlement de Westminster une Loi rétablissant le système forfaitaire et le Plan d'indemnisation des infractions pénales⁴. La Loi s'intitule "Indemnisation des dommages résultant d'une Infraction Pénale" (*Criminal Injuries Compensation Act 1995*). Le Plan d'indemnisation est géré par l'Autorité d'Indemnisation des Infractions Pénales (*Criminal Injuries Compensation Authority*)⁵. La Loi de 1995 investit le ministre de l'intérieur du pouvoir d'établir un Plan d'indemnisation (Compensation Scheme), qui en fait n'est qu'une sorte d'arrêté ministériel d'application et de précision de la Loi.

Le Plan d'indemnisation a été établi en 1995 et a reçu l'approbation des deux chambres parlementaires en décembre de la même année. Voici les conditions de l'indemnisation (1), les caractères de l'indemnisation (2) et la procédure (3).

1. Les conditions de l'indemnisation

Le Plan d'indemnisation pose une série de conditions techniques pour avoir droit à une indemnisation et contiennent plusieurs dispositions transitoires qui ne nous intéressent pas dans le cadre de cette étude. Dans l'ensemble, les conditions de l'indemnisation ont été assouplies et sont très larges.

Selon le Plan, est éligible à une indemnisation toute personne qui est victime d'un dommage résultant d'une infraction (*sustained a criminal injury*) et, le cas échéant, ses héritiers. Le droit britannique ne prévoit pas de régime spécial d'indemnisation des victimes d'actes de terrorisme. Le dommage résultant d'une infraction pénale prévue par le Plan se définit comme tout dommage subi en Grande-Bretagne et qui est directement la cause de (a) l'infraction pénale commise avec violence (*crime of violence*) incluant l'incendie volontaire (*arson*) et l'empoisonnement (*act of poisoning*) ou (b) d'un franchissement illicite de la voie ferroviaire ou encore (c) de l'arrestation ou tentative d'arrestation de l'auteur d'une infraction ou du suspect ou la tentative de prévention ou la prévention de la commission d'une infraction ou à l'occasion de toute aide accordée à un agent de police lors de ses activités de police judiciaire⁶. La loi exclut les dommages causés par l'utilisation d'un véhicule, autrement dit, les accidents de la circulation, sauf dans le cas où le véhicule aurait délibérément été utilisé pour causer l'infraction et le dommage. Le caractère volontaire fait perdre alors à l'accident de la circulation sa qualification. La loi exclut également les agents de police qui sont victimes lors de l'exercice de leurs fonctions de police judiciaire (*law enforcement activities*) à l'exception des dommages résultant d'un risque exceptionnel pris dans l'accomplissement de leur mission⁷.

Par ailleurs, la victime peut valablement saisir l'Autorité indépendamment de la suite réservée à l'action publique. La saisine de l'Autorité s'analyse comme un recours en indemnité et non en réparation. Il se peut, dit le Plan, que l'auteur de l'infraction ne soit

⁴ Selon le ministre de l'intérieur, le système forfaitaire permet de mieux gérer l'allocation des indemnités.

⁵ L'Autorité est située au Tay House, 300 Bath Street, Glasgow G2 4JR UK.

⁶ Article 8 du Plan.

⁷ Article 12 du Plan.

pas condamné (*assailant cannot be convicted*) en raison de son âge, sa déficience mentale ou encore de l'immunité diplomatique dont il peut jouir.

Le Plan indemnise le dommage personnel (*personal injury*), c'est-à-dire le dommage corporel (*physical injury*), le dommage moral (*mental injury*). Le dommage moral est, selon le Plan, une maladie psychiatrique ou psychologique reconnue par la médecine. Le Plan indemnise également toute maladie causée par l'infraction. Cependant, s'agissant du dommage moral et lorsqu'il constitue le seul dommage dont la réparation est demandée, la victime ne sera indemnisée que si au moment de l'infraction pénale elle avait une crainte raisonnable (*reasonable fear*) d'une agression ou elle a un lien d'affection très proche avec la victime principale.

2. Les caractères de l'indemnisation

Comme nous l'avons souligné, l'indemnisation n'est plus intégrale et n'obéit plus aux règles du droit de la responsabilité délictuelle. L'indemnité allouée aux victimes d'infraction est calculée sur la base des taux fixés par le ministre de l'intérieur pour chaque poste de préjudice (*each description of injury*). La Loi de 1995 a posé le principe d'une indemnisation standard (*standard amount of compensation*). Le recours en indemnisation devant l'Autorité est un mode de réparation autonome répondant à des règles propres. Il appartient au ministre de l'intérieur de fixer souverainement et au préalable l'indemnité qui peut être accordée à la victime.

Ainsi, dans le Plan, le ministre de l'intérieur a fixé les différents taux d'indemnisation, du niveau 1 à 25 (*level 1 to 25*). Le niveau 25 représente le montant maximal d'indemnisation pour un poste de préjudice. Dans la fixation des taux, le ministre de l'intérieur s'est, en principe, inspiré de la pratique de la commission d'indemnisation avant la réforme de 1995.

Seront toutefois déduites du montant forfaitaire toutes les prestations sociales (*social security benefits*) et autres indemnités versées soit par l'Etat soit par une assurance quelconque.

Le Plan prévoit plusieurs catégories et une longue liste de préjudices. Au cas où le préjudice subi ne serait pas prévu dans le Plan, l'Autorité saisira le ministre de l'intérieur d'une demande d'inclusion de ce préjudice dans la liste et proposera le montant de l'indemnité. Une indemnité partielle pourra alors être allouée pendant la procédure de modification de la liste.

Bien que la réparation soit autonome, le Plan prévoit des indemnités non forfaitaires pour certains types de préjudice, notamment pour la perte de revenus (*loss of earnings*) et des dépenses exceptionnelles (*special expenses*) et en cas de décès de la victime.

S'agissant de la perte des revenus, le Plan prévoit une indemnisation à partir de la vingt-huitième semaine d'incapacité de travail (*incapacity for work*). Il reviendra alors à l'Autorité d'apprécier le préjudice en fonction du salaire ou des revenus de la victime au

moment des faits délictueux moins les différentes indemnités qu'elle a droit de recevoir, par exemple, la pension, les paiements de son assurance ou des allocations etc.

Aussi, lorsque l'incapacité de travail est supérieure à vingt-huit semaines, l'Autorité peut allouer une indemnité relative à des dépenses exceptionnelles subies par la victime, tels les frais médicaux, la perte de tout bien qui a un lien avec l'infraction. Pour ce type de préjudice, le droit commun de la responsabilité délictuelle (*tort law*) s'applique mais le critère de la vingt-huitième semaine écarte l'application du Plan à bon nombre de victimes ayant une incapacité de travail. Seuls les plus gravement atteintes auront droit à une indemnité non forfaitaire.

En cas de violence ayant entraîné la mort (*fatal injury*) de la victime principale, une indemnité sera allouée pour les frais des funérailles. Aucune autre indemnité ne lui sera accordée ou pour la gestion de ses biens. Par contre, les victimes par ricochet de son décès qui demandent une indemnité (*qualifying claimant*) auront droit à une indemnité forfaitaire. Ont droit à cette indemnité l'époux ou le compagnon survivant, les parents ou les enfants de la victime. Lorsqu'il y a un seul demandeur à l'indemnité, le Plan prévoit l'allocation d'une indemnité du niveau 13 et en cas de pluralité de demandeurs, il auront droit à une indemnité de niveau 10. Une compensation supplémentaire peut être accordée au demandeur dépendant financièrement de la victime principale et au mineur de moins de 18 ans. Dans tous les cas, l'indemnité totale allouée à la victime principale et aux victimes par ricochet ne pourra dépasser £ 500 000 (soit approximativement 5,000,000.00 francs français).

L'attitude de la victime pendant l'incident peut conduire l'Autorité à refuser ou à réduire le montant de l'indemnité. Une réduction peut également être appliquée lorsque la victime n'a pas coopéré avec les forces de police pour la recherche des éléments de preuve et l'arrestation de l'auteur ou n'a pas informé la police de l'infraction⁸.

3. La procédure

L'Autorité est un organe administratif et non juridictionnel. En ce sens, le ministère d'avoué (*solicitor*) n'est pas obligatoire. Le formalisme est exclu. La procédure est toutefois écrite. La preuve appartient au demandeur et le régime civil de la preuve s'applique. Le niveau de preuve exigée est celui de la balance des probabilités⁹ alors qu'en droit pénal anglais la preuve de la culpabilité doit être rapportée au-delà de tout doute raisonnable (*beyond all reasonable doubt*).

La demande en indemnité auprès de l'Autorité doit être faite dans un délai de deux ans à compter de la commission de l'infraction. L'Autorité peut toutefois ne pas appliquer cette règle lorsqu'elle considère qu'il est raisonnable et est dans l'intérêt de la justice ainsi. La forclusion n'est pas rigide.

L'Autorité peut faire procéder à tout examen médical de la victime. Elle prend en charge les frais y relatifs.

⁸ Article 13 du Plan.

⁹ Article 3-2 de la Loi de 1995.

La décision d'accorder ou non une indemnité peut être réformée si elle est acceptée ou non contestée par la victime. Elle est définitive, mais un nouvel examen (*re-opening of a case*) est possible en cas d'aggravation de l'état de santé de la victime après la décision finale.

Si la victime conteste la décision, elle peut relever appel de celle-ci devant un juge (*adjudicator*) de l'Autorité. Un appel supplémentaire est prévu devant une formation élargie (*panel*) de l'Autorité.

B. L'indemnisation des victimes d'accidents de la circulation (infraction au code de la route)

Les victimes des dommages résultant d'un accident de la circulation peuvent bénéficier d'un mécanisme mis en place par le gouvernement, en particulier le ministère des transports (*Department of Transport*), qui tend à améliorer leur situation de la victime.

Le gouvernement britannique a créé dès juillet 1946 un système de réparation des dommages de la circulation géré par le Bureau des Assureurs Automobiles¹⁰ (*Motor Insurers' Bureau (MIB)*)¹¹.

Le régime de l'obligation du Bureau est contenu dans des conventions (*agreements*) passées entre le Bureau, le ministre des transports et diverses compagnies d'assurances.

Le Bureau peut être amené à réparer le dommage issu d'un accident de la circulation dans deux cas : l'automobiliste défendeur n'est pas couvert par une police d'assurance (1) et l'identité de l'automobiliste responsable est inconnue (2).

1. L'absence d'une police d'assurance

Le Bureau des Assureurs Automobiles doit en principe substituer tout défendeur automobiliste responsable d'un accident en cas d'absence d'une police d'assurance lors de l'action en recouvrement des dommages. Le Bureau ne statue pas sur une demande de réparation qui lui serait adressée. Le système d'indemnisation prévue par la Convention du 21 décembre 1988 est celui-ci : la victime d'un accident de la circulation engage une action en responsabilité délictuelle contre le débiteur responsable devant la juridiction compétente. La victime, demandeuse à l'action (*claimant*) notifie dans un délai de sept jours le Bureau de l'assignation (*summons*) du débiteur en justice. La notification de l'assignation ou la saisine du tribunal est une condition primordiale et doit être faite de manière formelle. En absence de notification, le Bureau ne substitue pas le débiteur lors du

¹⁰ Le *Motor Insurers' Bureau* est situé au 152 Silbury Boulevard, Central Milton Keynes, MK 1NB UK.

¹¹ John PRITCHARD et Nicolas SOLOMON, "*Personal injury litigation*", Londres, FT Law & Tax, 1997, v. p. 335 et s.

recouvrement¹². Une fois notifié, le Bureau mandatera une compagnie d'assurance pour agir en son nom et de suivre la procédure. Comme pour toute action en réparation devant un tribunal, une transaction peut intervenir entre la victime et la compagnie d'assurance avant le jugement de l'affaire et le Bureau paiera le montant transactionnel. Au cas où la victime obtient un titre exécutoire de la juridiction saisie, le Bureau paiera la condamnation à la place du débiteur.

Dans certaines circonstances, le Bureau peut considérer l'automobiliste non couvert par une police d'assurance. Il y a bien entendu le cas de l'automobiliste en infraction manifeste à la législation sur les assurances. Mais le défendeur peut aussi bien avoir souscrit un contrat d'assurance et la compagnie d'assurance invoque l'exclusion (*repudiate*) de la garantie (par exemple lors d'une utilisation non autorisée d'un véhicule appartenant à une société). Le défendeur n'est ainsi pas couvert par la garantie et est considéré comme ne bénéficiant pas d'une assurance.

La convention de 1988 ne couvre toutefois pas les accidents dans lesquels est impliqué un véhicule appartenant à la Couronne britannique¹³, dans les cas où le passager-victime avait connaissance que le conducteur n'avait pas eu d'autorisation du propriétaire d'utiliser le véhicule (en cas de vol) et enfin lorsque la victime était consciente que le véhicule ne bénéficiait d'aucune assurance.

S'agissant de l'étendue de la réparation, le Bureau est tenu de réparer l'intégralité du dommage corporel. Quant au dommage matériel, sa responsabilité est limitée à la hauteur maximale de £ 250,000 (soit approximativement 2,500,000.00 francs français).

2. Dans le cas d'un délit de fuite (*hit and run case*)

Le Bureau indemniser la victime au cas où l'automobiliste responsable serait inconnu ou a pris la fuite après l'accident. Une Convention, intitulée Convention sur les automobilistes non retracés (*Untraced Motorists' Agreement*) s'applique.

Trois conditions sont posées. Il faut que (a) le demandeur (*applicant*) ne puisse identifier l'automobiliste responsable, (b) l'accident ait eu lieu dans des conditions où l'automobiliste serait responsable pour fait de négligence et (c) que ce type de responsabilité soit prévu par la Loi de 1988 sur la circulation routière (*Road Traffic Act 1988*) qui fait office de code de la route au Royaume-Uni. La troisième condition ne vise que le décès ou les dommages corporels (*death or bodily injuries*) de la victime. Le dommage matériel est ici exclu.

La demande d'indemnisation auprès du Bureau doit être faite dans un délai de trois ans à compter de l'accident. Aucune possibilité d'extension de la période de forclusion n'existe, comme en droit commun de la responsabilité.

¹² En cas de non-notification du Bureau dans un délai de sept jours, il est conseillé à la victime d'assigner à nouveau le débiteur et de notifier ensuite le Bureau dans le délai.

¹³ Dans ce cas, le département ministériel concerné traitera la demande d'indemnité.

Dans le cas d'un délit de fuite, la procédure est toute différente de celle examinée en matière d'absence d'une couverture d'assurance. La procédure est inquisitoriale. Une fois saisi d'une demande d'indemnisation, le Bureau instruit celle-ci et statue. Un appel peut avoir lieu contre la décision auprès d'un arbitre, qui est un avocat (*Barrister*) ayant le titre de conseiller de la reine (*Queen's Counsel*)¹⁴. Les frais de la sentence arbitrale (*award*) sont pris en charge par le Bureau. Aucun appel n'existe contre la sentence arbitrale.

C. Annexes

1. The Criminal Injuries Compensation Scheme

1. This Scheme is made by the Secretary of State under the Criminal Injuries Compensation Act 1995. Applications received on or after 1 April 1996 for the payment of compensation to, or in respect of, persons who have sustained criminal injury will be considered under this Scheme.

Administration of the Scheme

2 Claims officers in the Criminal Injuries Compensation Authority ("the Authority") will determine claims for compensation in accordance with this Scheme. Appeals against decisions taken on reviews under this Scheme will be determined by adjudicators. Persons appointed as adjudicators are appointed as members of the Criminal Injuries Compensation Appeals Panel ("the Panel "). The Secretary of State will appoint one of the adjudicators as Chairman of the Panel. The Secretary of State will also appoint persons as staff of the Panel to administer the provisions of this Scheme relating to the appeal system.

3. Claims officers will be responsible for deciding, in accordance with this Scheme, what awards (if any) should be made in individual cases, and how they should be paid. Their decisions will be open to review and thereafter to appeal to the Panel, in accordance with this Scheme. No decision, whether by a claims officer or the Panel, will be open to appeal to the Secretary of State.

4. The general working of this Scheme will be kept under review by the Secretary of State. The Accounting Officer(s) for the Authority and the Panel must each submit reports to the Secretary of State as soon as possible after the end of each financial year, dealing with the operation of this Scheme and the discharge of functions under it. The Accounting Officer(s) must each keep proper accounts and proper records in relation to those accounts, and must each prepare a statement of accounts in each financial year in a

¹⁴ Les avocats les plus brillants obtiennent le titre honorifique de conseiller de la reine après un minimum de dix années d'expérience professionnelle. En général, l'avocat est promu à ce titre à l'âge de cinquante ans ou plus. Très peu d'avocats obtiennent ce titre.

form directed by the Secretary of State. These statements of accounts must be submitted to the Secretary of State as soon as possible after the end of each financial year.

5. The Panel will advise the Secretary of State on matters on which he seeks its advice, as well as on such other matters and at such times as it considers appropriate. Any advice given by the Panel will be referred to by the Accounting Officer for the Panel in his annual report made under the preceding paragraph.

Eligibility to apply for compensation

6. Compensation may be paid in accordance with this Scheme:

- (a) to an applicant who has sustained a criminal injury on or after 1 August 1964;
- (b) where the victim of a criminal injury sustained on or after 1 August 1964 has since died, to an applicant who is a qualifying claimant for the purposes of paragraph 38 (compensation in fatal cases).

For the purposes of this Scheme, "applicant" means any person for whose benefit an application for compensation is made, even where it is made on his behalf by another person.

7. No compensation will be paid under this Scheme in the following circumstances:

- (a) where the applicant lodged a claim before 1 April 1996 for compensation in respect of the same criminal injury under any scheme for the compensation of the victims of violent crime in operation in Great Britain before that date; or
- (b) where the criminal injury was sustained before 1 October 1979 and the victim and the assailant were living together at the time as members of the same family.

8. For the purposes of this Scheme, "criminal injury" means one or more personal injuries as described in the following paragraph, being an injury sustained in Great Britain (see Note 1) and directly attributable to:

- (a) a crime of violence (including arson, fire-raising or an act of poisoning); or
- (b) an offence of trespass on a railway; or
- (c) 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.

9. For the purposes of this Scheme, personal injury includes physical injury (including fatal injury), mental injury (that is, a medically recognised psychiatric or psychological illness) and disease (that is, a medically recognised illness or condition). Mental injury or disease may either result directly from the physical injury or occur without any physical injury, but compensation will not be payable for mental injury alone unless the applicant:

- (a) was put in reasonable fear of immediate physical harm to his own person; or

(b) had a close relationship of love and affection with another person at the time when that person sustained physical (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; or

(c) was the non-consenting victim of a sexual offence (which does not include a victim who consented in fact but was deemed in law not to have consented); or

(d) being a person employed in the business of a railway, either witnessed and was present on the occasion when another person sustained physical (including fatal) injury directly attributable to an offence of trespass on a railway, or was closely involved in its immediate aftermath. Paragraph 12 below does not apply where mental injury is sustained as described in this sub-paragraph.

10. It is not necessary for the assailant to have been convicted of a criminal offence in connection with the injury. Moreover, even where the injury is attributable to conduct within paragraph 8(a) in respect of which the assailant cannot be convicted of an offence by reason of age, insanity or diplomatic immunity, the conduct may nevertheless be treated as constituting a criminal act.

11. A personal injury is not a criminal injury for the purposes of this Scheme where the injury is attributable to the use of a vehicle, except where the vehicle was used so as deliberately to inflict, or attempt to inflict, injury on any person.

12. Where an injury is sustained accidentally by a person who is engaged in: (a) any of the law-enforcement activities described in paragraph 8(c), or

(b) any other activity directed to containing, limiting or remedying the consequences of a crime, compensation will not be payable unless the person injured was, at the time he sustained the injury, taking an exceptional risk which was justified in all the circumstances

Eligibility to receive compensation

13. A claims officer may withhold or reduce an award where he considers that:

(a) the applicant failed to take, without delay, all reasonable steps to inform the police, or other body or person considered by the Authority to be appropriate for the purpose, of the circumstances giving rise to the injury; or

(b) the applicant failed to co-operate with the police or other authority in attempting to bring the assailant to justice; or

(c) the applicant has failed to give all reasonable assistance to the Authority or other body or person in connection with the application; or

(d) 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; or

(e) the applicant's character as shown by his criminal convictions (excluding convictions spent under the Rehabilitation of Offenders Act 1974) or by evidence available to the claims officer makes it inappropriate that a full award or any award at all be made.

14. Where the victim has died since sustaining the injury (whether or not in consequence of it), the preceding paragraph will apply in relation both to the deceased and to any applicant.

15. A claims officer will make an award only where he is satisfied:

(a) that there is no likelihood that an assailant would benefit if an award were made; or (b) where the applicant is under 18 years of age when the application is determined, that it would not be against his interest for an award to be made.

16. Where a case is not ruled out under paragraph 7(b) (injury sustained before 1 October 1979) but at the time when the injury was sustained, the victim and any assailant (whether or not that assailant actually inflicted the injury) were living in the same household as members of the same family, an award will be withheld unless:

(a) the assailant has been prosecuted in connection with the offence, except where a claims officer considers that there are practical, technical or other good reasons why a prosecution has not been brought; and

(b) in the case of violence between adults in the family, a claims officer is satisfied that the applicant and the assailant stopped living in the same household before the application was made and are unlikely to share the same household again.

For the purposes of this paragraph, a man and woman living together as husband and wife will be treated as members of the same family.

Consideration of applications

17. An application for compensation under this Scheme in respect of a criminal injury ("injury" hereafter in this Scheme) must be made in writing on a form obtainable from the Authority. It should be made as soon as possible after the incident giving rise to the injury and must be received by the Authority within two years of the date of the incident. A claims officer may waive this time limit where he considers that, by reason of the particular circumstances of the case, it is reasonable and in the interests of justice to do so.

18. It will be for the applicant to make out his case including, where appropriate:

(a) making out his case for a waiver of the time limit in the preceding paragraph; and

(b) satisfying the claims officer dealing with his application (including an officer reviewing a decision under paragraph 60) that an award should not be reconsidered, withheld or reduced under any provision of this Scheme.

Where an applicant is represented, the costs of representation will not be met by the Authority.

19. A claims officer may make such directions and arrangements for the conduct of an application, including the imposition of conditions, as he considers appropriate in all the circumstances. The standard of proof to be applied by a claims officer in all matters before him will be the balance of probabilities.

20. Where a claims officer considers that an examination of the injury is required before a decision can be reached, the Authority will make arrangements for such an examination by a duly qualified medical practitioner. Reasonable expenses incurred by the applicant in that connection will be met by the Authority.

21. A Guide to the operation of this Scheme will be published by the Authority. In addition to explaining the procedures for dealing with applications, the Guide will set out, where appropriate, the criteria by which decisions will normally be reached.

Types and limits of compensation

22. Subject to the other provisions of this Scheme, the compensation payable under an award will be:

(a) a standard amount of compensation determined by reference to the nature of the injury in accordance with paragraphs 25-29;

(b) where the applicant has lost earnings or earning capacity for longer than 28 weeks as a direct consequence of the injury (other than injury leading to his death), an additional amount in respect of such loss of earnings, calculated in accordance with paragraphs 30-34;

(c) where the applicant has lost earnings or earning capacity for longer than 28 weeks as a direct consequence of the injury (other than injury leading to his death) or, if not normally employed, is incapacitated to a similar extent, an additional amount in respect of any special expenses, calculated in accordance with paragraphs 35-36;

(d) where the victim has died in consequence of the injury, the amount or amounts calculated in accordance with paragraphs 37-43;

(e) where the victim has died otherwise than in consequence of the injury, a supplementary amount calculated in accordance with paragraph 44.

23. The total maximum amount payable in respect of the same injury will not exceed £500,000. For these purposes, where the victim has died in consequence of the injury, any application made by the victim before his death and any application made by any qualifying claimant or claimants after his death will be regarded as being in respect of the same injury.

24. The injury must be sufficiently serious to qualify for an award equal at least to the minimum amount payable under this Scheme in accordance with paragraph 25.

Standard amount of compensation

25. The standard amount of compensation will be the amount shown in respect of the relevant description of injury in the Tariff appended to this Scheme, which sets out:

(a) a scale of fixed levels of compensation; and

(b) the level and corresponding amount of compensation for each description of injury. Level 1 represents the minimum amount payable under this Scheme, and Level 25 represents the maximum amount payable for any single description of injury. Where the injury has the effect of accelerating or exacerbating a

pre-existing condition, the compensation awarded will reflect only the degree of acceleration or exacerbation.

26. Minor multiple injuries will be compensated in accordance with Note 1 to the Tariff. The standard amount of compensation for more serious but separate multiple injuries will be calculated as:

(a) the Tariff amount for the highest-rated description of injury; plus (b) 10 per cent of the Tariff amount for the second highest-rated description of injury; plus, where there are three or more injuries

(c) 5 per cent of the Tariff amount for the third highest-rated description of injury.

27. Where a woman has become pregnant as a result of rape and an award is made to her in respect of non-consensual vaginal intercourse,

an additional amount will be payable equal to Level 10 of the Tariff in respect of each child born alive which she intends to keep.

28. Where the Authority considers that any description of injury for which no provision is made in the Tariff is sufficiently serious to qualify for at least the minimum amount payable under this Scheme, it will, following consultation with the Panel, refer the injury to the Secretary of State. In doing so the Authority will recommend to the Secretary of State both the inclusion of that description of injury in the Tariff and also the amount of compensation for which it should qualify. Any such consultation with the Panel or reference to the Secretary of State must not refer to the circumstances of any individual application for compensation under this Scheme other than the relevant medical reports.

29. Where an application for compensation is made in respect of an injury for which no provision is made in the Tariff and the Authority decides to refer the injury to the Secretary of State under the preceding paragraph, an interim award may be made of up to half the amount of compensation for which it is recommended that such description of injury should qualify if subsequently included in the Tariff. No part of such an interim award will be recoverable if the injury is not subsequently included in the Tariff or, if included, qualifies for less compensation than the interim award paid.

Compensation for loss of earnings

30. Where the applicant has lost earnings or earning capacity for longer than 28 weeks as a direct consequence of the injury (other than injury leading to his death), no compensation in respect of loss of earnings or earning capacity will be payable for the first 28 weeks of loss. The period of loss for which compensation may be payable will begin 28 weeks after the date of commencement of the applicant's incapacity for work and continue for such period as a claims officer may determine.

31. For a period of loss ending before or continuing to the time the claim is assessed, the net loss of earnings or earning capacity will be calculated on the basis of:

(a) the applicant's emoluments (being any profit or gain accruing from an office or employment) at the time of the injury and what those emoluments would have been during the period of loss; and

(b) any emoluments which have become payable to the applicant in respect of the whole or part of the period of loss, whether or not as a result of the injury; and (c) any changes in the applicant's pension rights; and

(d) in accordance with paragraphs 45-47 (reductions to take account of other payments), any social security benefits, insurance payments and pension which have become payable to the applicant during the period of loss; and

(e) any other pension which has become payable to the applicant during the period of loss, whether or not as a result of the injury.

32. Where, at the time the claim is assessed, a claims officer considers that the applicant is likely to suffer continuing loss of earnings or earning capacity, an annual rate of net loss (the multiplicand) or, where appropriate, more than one such rate will be calculated on the basis of:

(a) the current rate of net loss calculated in accordance with the preceding paragraph; and

(b) such future rate or rates of net loss (including changes in the applicant's pension rights) as the claims officer may determine; and

(c) the claims officer's assessment of the applicant's future earning capacity; and

(d) in accordance with paragraphs 45-47 (reductions to take account of other payments), any social security benefits, insurance payments and pension which will become payable to the applicant in future; and (e) any other pension which will become payable to the applicant in future, whether or not as a result of the injury.

The compensation payable in respect of such continuing loss will be a lump sum which is the product of that multiplicand and an appropriate multiplier. The summary table given in Note 3 illustrates the multipliers applicable to various periods of future loss to allow for the accelerated receipt of compensation. In selecting the multiplier, the claims officer may refer to the Actuarial Tables for use in Personal Injury and Fatal Accident Cases published by the Government Actuary's Department, and take account of any factors and contingencies which appear to him to be relevant.

33. Where a claims officer considers that the approach in the preceding paragraph is impracticable, the compensation payable in respect of continuing loss of earnings or earning capacity will be such other lump sum as he may determine.

34. Any rate of net loss of earnings or earning capacity (before any reduction in accordance with this Scheme) which is to be taken into account in calculating any compensation payable under paragraphs 30-33 must not exceed one and a half times the gross average industrial earnings at the time of assessment according to the latest figures published by the Department of Education and Employment.

Compensation for special expenses

35. Where the applicant has lost earnings or earning capacity for longer than 28 weeks as a direct consequence of the injury (other than injury leading to his death), or, if not normally employed, is incapacitated to a similar extent, additional compensation may be payable in respect of any special expenses incurred by the applicant from the date of the injury for:

(a) loss of or damage to property or equipment belonging to the applicant on which he relied as a physical aid, where the loss or damage was a direct consequence of the injury;

(b) costs (other than by way of loss of earnings or earning capacity) associated with National Health Service treatment for the injury;

(c) the cost of private health treatment for the injury, but only where a claims officer considers that, in all the circumstances, both the private treatment and its cost are reasonable;

(d) the reasonable cost, to the extent that it falls to the applicant, of (i) special equipment, and/or

(ii) adaptations to the applicant's accommodation, and/or

(iii) care, whether in a residential establishment or at home, which are not provided or available free of charge from the National Health Service, local authorities or any other agency, provided that a claims officer considers such expense to be necessary as a direct consequence of the injury.

In the case of (d)(iii), the expense of unpaid care provided at home by a relative or friend of the victim will be compensated by assessing the carer's loss of earnings or earning capacity and/or additional personal and living expenses, as calculated on such basis as a claims officer considers appropriate in all the circumstances. Where the foregoing method of assessment is considered by the claims officer not to be relevant in all the circumstances, the compensation payable will be such sum as he may determine having regard to the level of care provided.

36. Where, at the time the claim is assessed, a claims officer is satisfied that the need for any of the special expenses mentioned in the preceding paragraph is likely to continue, he will determine the annual cost and select an appropriate multiplier in accordance with paragraph 32 (future loss of earnings), taking account of any other factors and contingencies which appear to him to be relevant.

Compensation in fatal cases

37. Where the victim has died in consequence of the injury, no compensation other than funeral expenses will be payable for the benefit of his estate. Such expenses will, subject to the application of paragraph 13 in relation to the actions, conduct and character of the deceased, be payable up to an amount considered reasonable by a claims officer, even where the person bearing the cost of the funeral is otherwise ineligible to claim under this Scheme.

38. Where the victim has died since sustaining the injury, compensation may be payable, subject to paragraph 14 (actions, conduct and character), to any claimant (a "qualifying claimant") who at the time of the deceased's death was:

(a) the spouse of the deceased, being only, for these purposes:

(i) a person who was living with the deceased as husband and wife in the same household immediately before the date of death and who, if not formally married to him, had been so living throughout the two years before that date, or

(ii) a spouse or former spouse of the deceased who was financially supported by him immediately before the date of death; or (b) a parent of the deceased, whether or not the natural parent, provided that he was accepted by the deceased as a parent of his family; or

(c) a child of the deceased, whether or not the natural child, provided that he was accepted by the deceased as a child of his family or was dependent on him.

Where the victim has died in consequence of the injury, compensation may be payable to a qualifying claimant under paragraphs 39-42 (standard amount of compensation, dependency, and loss of parent). Where the victim has died otherwise than in consequence of the injury, compensation may be payable to a qualifying claimant only under paragraph 44 (supplementary compensation).

39. In cases where there is only one qualifying claimant, the standard amount of compensation will be Level 13 of the Tariff. Where there is more than one qualifying claimant, the standard amount of compensation for each claimant will be Level 10 of the Tariff. A former spouse of the deceased is not a qualifying claimant for the purposes of this paragraph.

40. Additional compensation calculated in accordance with the following paragraph may be payable to a qualifying claimant where a claims officer is satisfied that the claimant was financially dependent on the deceased. A dependency will not be established where the deceased's only normal income was from:

(a) United Kingdom social security benefits; or

(b) social security benefits or similar payments from the funds of other countries.

41. The amount of compensation payable in respect of dependency will be calculated on a basis similar to paragraphs 31-34 (loss of earnings). The period of loss will begin from the date of the deceased's death and continue for such period as a claims officer may determine, with no account being taken, where the qualifying claimant was formally married to the deceased, of remarriage or prospects of remarriage. In assessing the dependency, the claims officer will take account of the qualifying claimant's income and emoluments (being any profit or gain accruing from an office or employment), if any. Where the deceased had been living in the same household as the qualifying claimant before his death, the claims officer will, in calculating the multiplicand, make such proportional reduction as he considers appropriate to take account of the deceased's own personal and living expenses.

42. Where a qualifying claimant was under 18 years of age at the time of the deceased's death and was dependent on him for parental services, the following additional compensation may also be payable:

(a) a payment for loss of that parent's services at an annual rate of Level 5 of the Tariff; and

(b) such other payments as a claims officer considers reasonable to meet other resultant losses.

Each of these payments will be multiplied by an appropriate multiplier selected by a claims officer in accordance with paragraph 32 (future loss of earnings), taking account of the period remaining before the qualifying claimant reaches age 18 and of any other factors and contingencies which appear to the claims officer to be relevant.

43. Application may be made under paragraphs 37-42 (compensation in fatal cases) even where an award had been made to the victim in respect of the same injury before his death. Any such application will be subject to the conditions set out in paragraphs 56-57 for the re-opening of cases, and any compensation payable to the qualifying claimant or claimants, except payments made under paragraphs 37 and 39 (funeral expenses and standard amount of compensation), will be reduced by the amount paid to the victim. The amounts payable to the victim and the qualifying claimant or claimants will not in total exceed £500,000.

44. Where a victim who would have qualified for additional compensation under paragraph 22(b) (loss of earnings) and/or paragraph 22(c) (special expenses) has died, otherwise than in consequence of the injury, before such compensation was awarded, supplementary compensation under this paragraph may be payable to a qualifying claimant who was financially dependent on the deceased within the terms of paragraph 40 (dependency), whether or not a relevant application was made by the victim before his death. Payment may be made in accordance with paragraph 31 in respect of the victim's loss of earnings (except for the first 28 weeks of such loss) and in accordance with paragraph 35 in respect of any special expenses incurred by the victim before his death. The amounts payable to the victim and the qualifying claimant or claimants will not in total exceed £500,000.

Effect on awards of other payments

45. All awards payable under this Scheme, except those payable under paragraphs 25, 27, 39 and 42(a) (Tariff-based amounts of compensation), will be subject to a reduction to take account of social security benefits or insurance payments made by way of compensation for the same contingency. The reduction will be applied to those categories or periods of loss or need for which additional or supplementary compensation is payable, including compensation calculated on the basis of a multiplicand or annual cost. The amount of the reduction will be the full value of any relevant payment which the applicant has received, or to which he has any present or future entitlement, by way of: (a) United Kingdom social security benefits;

(b) social security benefits or similar payments from the funds of other countries;

(c) payments under insurance arrangements, including, where a claim is made under paragraphs 35(c) and (d) and 36 (special expenses), insurance personally effected, paid for and maintained by the personal income of the victim or, in the case of a person under 18 years of age, by his parent. Insurance so personally effected will otherwise be disregarded.

In assessing the value of any such benefits and payments, account may be taken of any income tax liability likely to reduce their value.

46. Where, in the opinion of a claims officer, an applicant may be eligible for any of the benefits and payments mentioned in the preceding paragraph, an award may be withheld until the applicant has taken such steps as the claims officer considers reasonable to claim them.

47. Where the victim is alive, any compensation payable under paragraphs 30-34 (loss of earnings) will be reduced to take account of any pension accruing as a result of the injury. Where the victim has died in consequence of the injury, any compensation payable under paragraphs 40-41 (dependency) will similarly be reduced to take account of any pension payable, as a result of the victim's death, for the benefit of the applicant. Where such pensions are taxable, one half of their value will be deducted, but they will otherwise be deducted in full (where, for example, a lump sum payment not subject to income tax is made). For the purposes of this paragraph, "pension" means any payment payable as a result of the injury or death in pursuance of pension or any other rights connected with the victim's employment, and includes any gratuity of that kind and similar benefits payable under insurance policies paid for by the victim's employers. Pension rights accruing solely as a result of payments by the victim or a dependant will be disregarded.

48. An award payable under this Scheme will be reduced by the full value of any payment in respect of the same injury which the applicant has received by way of:

(a) any criminal injury compensation award made under or pursuant to arrangements in force at the relevant time in Northern Ireland;

(b) any compensation award or similar payment from the funds of other countries;

(c) any award where: (i) a civil court has made an order for the payment of damages;

(ii) a claim for damages and/or compensation has been settled on terms providing for the payment of money;

(iii) payment of compensation has been ordered by a criminal court in respect of personal injuries.

In the case of (a) or (b), the reduction will also include the full value of any payment to which the applicant has any present or future entitlement.

49. Where a person in whose favour an award under this Scheme is made subsequently receives any other payment in respect of the same injury in any of the circumstances mentioned in the preceding paragraph, but the award made under this Scheme was not reduced accordingly, he will be required to repay the Authority in full up to the amount of the other payment.

Determination of applications and payment of awards

50. An application for compensation under this Scheme will be determined by a claims officer, and written notification of the decision will be sent to the applicant or his representative. The claims officer may make such directions and arrangements, including

the imposition of conditions, in connection with the acceptance, settlement, payment, repayment and/or administration of an award as he considers appropriate in all the circumstances. Subject to any such arrangements, including the special procedures in paragraph 52 (purchase of annuities), and to paragraphs 53-55 (reconsideration of decisions), title to an award offered will be vested in the applicant when the Authority has received notification in writing that he accepts the award.

51. Compensation will normally be paid as a single lump sum, but one or more interim payments may be made where a claims officer considers this appropriate. Once an award has been paid to an applicant or his representative, the following paragraph does not apply.

52. Where prior agreement is reached between the Authority and the applicant or his representative, an award may consist in whole or in part of an annuity or annuities, purchased for the benefit of the applicant or to be held on trust for his benefit. Once that agreement is reached, the Authority will take the instructions of the applicant or his representative as to which annuity or annuities should be purchased. Any expenses incurred will be met from the award.

Reconsideration of decisions

53. A decision made by a claims officer (other than a decision made in accordance with a direction by adjudicators on determining an appeal under paragraph 77) may be reconsidered at any time before actual payment of a final award where there is new evidence or a change in circumstances. In particular, the fact that an interim payment has been made does not preclude a claims officer from reconsidering issues of eligibility for an award.

54. Where an applicant has already been sent written notification of the decision on his application, he will be sent written notice that the decision is to be reconsidered, and any representations which he sends to the Authority within 30 days of the date of such notice will be taken into account in reconsidering the decision. Whether or not any such representations are made, the applicant will be sent written notification of the outcome of the reconsideration, and where the original decision is not confirmed, such notification will include the revised decision.

55. Where a decision to make an award has been made by a claims officer in accordance with a direction by adjudicators on determining an appeal under paragraph 77, but before the award has been paid the claims officer considers that there is new evidence or a change in circumstances which justifies reconsidering whether the award should be withheld or the amount of compensation reduced, the Authority will refer the case to the Panel for rehearing under paragraph 82.

Re-opening of cases

56. A decision made by a claims officer and accepted by the applicant, or a decision made by the Panel, will normally be regarded as final. The claims officer may, however,

subsequently re-open a case where there has been such a material change in the victim's medical condition that injustice would occur if the original assessment of compensation were allowed to stand, or where he has since died in consequence of the injury.

57. A case will not be re-opened more than two years after the date of the final decision unless the claims officer is satisfied, on the basis of evidence presented in support of the application to re-open the case, that the renewed application can be considered without a need for further extensive enquiries.

Review of decisions

58. An applicant may seek a review of any decision under this Scheme by a claims officer:

(a) not to waive the time limit in paragraph 17 (application for compensation) or paragraph 59 (application for review); or

(b) not to re-open a case under paragraphs 56-57; or

(c) to withhold an award, including such decision made on reconsideration of an award under paragraphs 53-54; or

(d) to make an award, including a decision to make a reduced award whether or not on reconsideration of an award under paragraphs 53-54; or

(e) to seek repayment of an award under paragraph 49.

An applicant may not, however, seek the review of any such decision where the decision was itself made on a review under paragraph 60 and either the applicant did not appeal against it or the appeal was not referred for determination on an oral hearing, or where the decision was made in accordance with a direction by adjudicators on determining an appeal under paragraph 77.

59. An application for the review of a decision by a claims officer must be made in writing to the Authority and must be supported by reasons together with any relevant additional information. It must be received by the Authority within 90 days of the date of the decision to be reviewed, but this time limit may, in exceptional circumstances, be waived where a claims officer more senior than the one who made the original decision considers that:

(a) any extension requested by the applicant within the 90 days is based on good reasons; or

(b) it would be in the interests of justice to do so.

60. All applications for review will be considered by a claims officer more senior than any claims officer who has previously dealt with the case. The officer conducting the review will reach his decision in accordance with the provisions of this Scheme applying to the original application, and he will not be bound by any earlier decision either as to the eligibility of the applicant for an award or as to the amount of an award. The applicant will be sent written notification of the outcome of the review, giving reasons for the review decision, and the Authority will, unless it receives notice of an appeal, ensure that a determination of the original application is made in accordance with the review decision.

Appeals against review decisions

61. An applicant who is dissatisfied with a decision taken on a review under paragraph 60 may appeal against the decision by giving written notice of appeal to the Panel on a form obtainable from the Authority. Such notice of appeal must be supported by reasons for the appeal together with any relevant additional material which the appellant wishes to submit, and must be received by the Panel within 30 days of the date of the review decision. The Panel will send to the Authority a copy of the notice of appeal and supporting reasons which it receives and of any other material submitted by the appellant. Where the applicant is represented for the purposes of the appeal, the costs of representation will not be met by the Authority or the Panel.

62. A member of the staff of the Panel may, in exceptional circumstances, waive the time limit in the preceding paragraph where he considers that:

(a) any extension requested by the appellant within the 30 days is based on good reasons; or

(b) it would be in the interests of justice to do so.

Where, on considering a request to waive the time limit, a member of the staff of the Panel does not waive it, he will refer the request to the Chairman of the Panel or to another adjudicator nominated by the Chairman to decide requests for waiver, and a decision by the adjudicator concerned not to waive the time limit will be final. Written notification of the outcome of the waiver request will be sent to the appellant and to the Authority, giving reasons for the decision where the time limit is not waived.

63. Where the Panel receives notice of an appeal against a review decision relating to a decision mentioned in paragraph 58(a) or (b), the appeal will be dealt with in accordance with paragraphs 66-68 (appeals concerning time limits and re-opening of cases). Where the Panel receives notice of an appeal against a review decision relating to a decision mentioned in paragraph 58(c), (d) or (e), the appeal will be dealt with in accordance with paragraphs 69-71 (appeals concerning awards) and may under those provisions be referred for an oral hearing in accordance with paragraphs 72-78. The Panel may publish information in connection with individual appeals, but such information must not identify any appellant or other person appearing at an oral hearing or referred to during an appeal, or enable identification to be made of any such person.

64. The standard of proof to be applied by the Panel in all matters before it will be the balance of probabilities. It will be for the appellant to make out his case including, where appropriate:

(a) making out his case for a waiver of the time limit in paragraph 61 (time limit for appeals); and

(b) satisfying the adjudicator or adjudicators responsible for determining his appeal that an award should not be reconsidered, withheld or reduced under any provision of this Scheme. Subject to paragraph 78 (determination of appeal in appellant's absence), the adjudicator or adjudicators concerned must ensure, before determining an appeal, that the appellant has had an opportunity to submit representations on any evidence or other material submitted by or on behalf of the Authority.

65. The Panel may make such arrangements for the inspection of the injury as it considers appropriate. Reasonable expenses incurred by the appellant in that connection will be met by the Panel.

Appeals concerning time limits and re-opening of cases

66. The Chairman of the Panel or another adjudicator nominated by him will determine any appeal against a decision taken on a review:

(a) not to waive the time limit in paragraph 17 (application for compensation) or paragraph 59 (application for review); or

(b) not to re-open a case under paragraphs 56-57. Where the appeal concerns a decision not to re-open a case and the application for re-opening was made more than two years after the date of the final decision, the adjudicator must be satisfied that the renewed application can be considered without a need for further extensive enquiries by the Authority.

67. In determining an appeal under the preceding paragraph, the adjudicator will allow the appeal where he considers it appropriate to do so. Where he dismisses the appeal, his decision will be final. Written notification of the outcome of the appeal, giving reasons for the decision, will be sent to the appellant and to the Authority.

68. Where the adjudicator allows an appeal in accordance with the preceding paragraph, he will direct the Authority:

(a) in a case where the appeal was against a decision not to waive the time limit in paragraph 17, to arrange for the application for compensation to be dealt with under this Scheme as if the time limit had been waived by a claims officer;

(b) in a case where the appeal was against a decision not to waive the time limit in paragraph 59, to conduct a review under paragraph 60;

(c) in a case where the appeal was against a decision not to re-open a case, to re-open the case under paragraphs 56-57.

Appeals concerning awards

69. A member of the staff of the Panel may refer for an oral hearing in accordance with paragraphs 72-78 any appeal against a decision taken on a review:

(a) to withhold an award, including such decision made on reconsideration of an award under paragraphs 53-54; or

(b) to make an award, including a decision to make a reduced award whether or not on reconsideration of an award under paragraphs 53-54; or

(c) to seek repayment of an award under paragraph 49.

A request for an oral hearing in such cases may also be made by the Authority.

70. Where a member of the staff of the Panel does not refer an appeal for an oral hearing under the preceding paragraph, he will refer it to an adjudicator. The adjudicator

will refer the appeal for determination on an oral hearing in accordance with paragraphs 72-78 where, on the evidence available to him, he considers:

(a) in a case where the review decision was to withhold an award on the ground that the injury was not sufficiently serious to qualify for an award equal to at least the minimum amount payable under this Scheme, that an award in accordance with this Scheme could have been made; or

(b) in any other case, that there is a dispute as to the material facts or conclusions upon which the review decision was based and that a different decision in accordance with this Scheme could have been made.

He may also refer the appeal for determination on an oral hearing in accordance with paragraphs 72-78 where he considers that the appeal cannot be determined on the basis of the material before him or that for any other reason an oral hearing would be desirable.

71. Where an appeal is not referred under paragraphs 69 or 70 for an oral hearing, the adjudicator's dismissal of the appeal will be final and the decision taken on the review will stand. Written notification of the dismissal of the appeal, giving reasons for the decision, will be sent to the appellant and to the Authority.

Oral hearing of appeals

72. Where an appeal is referred for determination on an oral hearing, the hearing will take place before at least two adjudicators. Where the referral was made by an adjudicator under paragraph 70, that adjudicator will not take part in the hearing. Subject to the provisions of this Scheme, the procedure to be followed for any particular appeal will be a matter for the adjudicators hearing the appeal.

73. Written notice of the date proposed for the oral hearing will normally be sent to the appellant and the Authority at least 21 days beforehand. Any documents to be submitted to the adjudicators for the purposes of the hearing by the appellant, or by or on behalf of the Authority, will be made available at the hearing, if not before, to the Authority or the appellant respectively.

74. It will be open to the appellant to bring a friend or legal adviser to assist in presenting his case at the hearing, but the costs of representation will not be met by the Authority or the Panel. The adjudicators may, however, direct the Panel to meet reasonable expenses incurred by the appellant and any person who attends to give evidence at the hearing.

75. The procedure at hearings will be as informal as is consistent with the proper determination of appeals. The adjudicators will not be bound by any rules of evidence which may prevent a court from admitting any document or other matter or statement in evidence. The appellant, the claims officer presenting the appeal and the adjudicators may call witnesses to give evidence and may cross-examine them.

76. Hearings will take place in private. The Panel may, however, subject to the consent of the appellant, give permission for the hearing to be attended by observers such

as representatives of the press, radio and television. Any such permission will be subject to written undertakings being given:

(a) that the identity of the appellant and of any other persons appearing at the hearing or referred to during the appeal will be kept confidential and will not be disclosed in any account of the proceedings which is broadcast or in any way published; and

(b) that no material will be disclosed or in any other way published from which those identities could be discovered.

77. Where the adjudicators adjourn the hearing, they may direct that an interim payment be made. On determining the appeal, the adjudicators will, where necessary, take such direction as they think fit as to the decision to be made by a claims officer on the application for compensation, but any such direction must be in accordance with the relevant provisions of this Scheme. Where they are of the opinion that the appeal was frivolous or vexatious, the adjudicators may reduce the amount of compensation to be awarded by such amount as they consider appropriate. The appellant and the Authority will be informed of the adjudicators' determination of the appeal and the reasons for it, normally at the end of the hearing, but otherwise by written notification as soon as is practicable thereafter.

78. Where an appellant who fails to attend a hearing gives no reasonable excuse for his non-attendance, the adjudicators may determine the appeal in his absence.

Rehearing of appeals

79. Where an appeal is determined in the appellant's absence, he may apply to the Panel in writing for his appeal to be reheard, giving the reasons for his non-attendance. Any such application must be received by the Panel within 30 days of the date of notification to the appellant of the outcome of the hearing which he failed to attend. The Panel will send a copy of the application to the Authority.

80. A member of the staff of the Panel may waive the time limit in the preceding paragraph where he considers that it would be in the interests of justice to do so. Where he does not waive the time limit, he will refer the application to the Chairman of the Panel or to another adjudicator nominated by the Chairman to decide such applications, and a decision by the adjudicator concerned not to waive the time limit will be final. Written notification of the waiver decision will be sent to the appellant and to the Authority, giving reasons for the decision where the time limit is not waived.

81. Where a member of the staff of the Panel considers that there are good reasons for an appeal to be reheard, he will refer it for a rehearing. Where he does not refer it for a rehearing, he will refer the application to the Chairman of the Panel or to another adjudicator nominated by the Chairman to decide such applications, and a decision by the adjudicator concerned not to rehear the appeal will be final. Written notification of the decision on the application for a rehearing will be sent to the appellant and to the Authority, giving reasons for the decision where the application is refused.

82. Where an appeal is to be reheard, the adjudicators who determined the appeal originally will not take part in the rehearing, and paragraphs 64 (onus on appellant), 65 (inspection of injury), and 72-78 (oral hearings) will apply.

Implementation and transitional provisions

83. The provisions of this Scheme come into force on 1 April 1996. All applications for compensation received by the Criminal Injuries Compensation Board ("the Board") on or after that date will be passed to the Authority to be dealt with under this Scheme.

84. Subject to paragraphs 85-87, applications for compensation received by the Board before 1 April 1996 will be dealt with according to the provisions of the non-statutory Scheme which came into operation on 1 February 1990 ("the old Scheme"), which includes the earlier Schemes mentioned therein insofar as they continue to have effect immediately before 1 April 1996 by virtue of the old Scheme or corresponding provisions in an earlier Scheme.

85. The Board will cease to exist on such date ("the transfer date") as the Secretary of State may direct. Immediately before the transfer date, the Board will transfer to the Authority all its records of current and past applications.

86. On and after the transfer date, applications required by paragraph 84 to be dealt with according to the provisions of the old Scheme will be so dealt with by the Authority, and:

(a) any decision authorised under the old Scheme to be made by a Single Member of the Board may be made by a single legally qualified member of the Panel appointed for the purposes of this Scheme;

(b) any decision authorised under the old Scheme to be made by at least two Members of the Board may be made by at least two legally qualified members of the Panel;

(c) any decision authorised under the old Scheme to be made by the Chairman of the Board may be made by the Chairman of the Panel.

In this paragraph "legally qualified" means qualified to practise as a solicitor in any part of Great Britain, or as a barrister in England and Wales, or as an advocate in Scotland.

87. On and after the transfer date, any application to re-open a case under paragraph 13 of the old Scheme (or any corresponding provision in any of the earlier Schemes) must be addressed to the Authority, which will deal with it according to the provisions of the old Scheme, applying paragraphs 84 and 86 above as appropriate.

Notes to the Scheme

(see paragraph 8)

Note 1 Definition of Great Britain

(a) For the purposes of paragraph 8 of this Scheme, an injury is sustained in Great Britain where it is sustained:

(i) on a British aircraft, hovercraft or ship (see Note 2); or

(ii) on, under or above an installation in a designated area within the meaning of section 1(7) of the Continental Shelf Act 1964 or any waters within 500 metres of such an installation; or

(iii) in a lighthouse off the coast of Great Britain.

(b) For the purposes of paragraph 8 of this Scheme-

(i) an injury is sustained in Great Britain where it is sustained in that part of the Channel Tunnel system incorporated into England under section 10 of the Channel Tunnel Act 1987. However, if such an injury is sustained or caused by a non-UK officer acting in the exercise of his functions under the 1993 Order no compensation shall be payable under this Scheme; and

(ii) any injury caused in the following circumstances shall be treated for the purposes of any application for compensation under this Scheme as if the circumstances giving rise to the claim had occurred in Great Britain.

(iii) an injury sustained by a UK officer acting in the exercise of his functions within French territory under the provisions of the 1993 Order; or

(iv) an injury caused by a UK officer acting in the exercise of those functions within French territory, other than an injury to any non-UK officer acting in the exercise of his functions.

In this Note "the 1993 Order" means the Channel Tunnel (International Arrangements) Order 1993 (SI 1993/1813) and "officer" has the same meaning as in that Order.

Note 2 Definition of British craft

In Note 1 above:

(a) "British aircraft" means a British controlled aircraft within the meaning of section 92 of the Civil Aviation Act 1982 (application of criminal law to aircraft), or one of Her Majesty's aircraft;

(b) "British hovercraft" means a British controlled hovercraft within the meaning of that section (as applied in relation to hovercraft by virtue of provision made under the Hovercraft Act 1968), or one of Her Majesty's hovercraft; and

(c) "British ship" means any vessel used in navigation which is owned wholly by persons of the following descriptions, namely:

(i) British citizens, or

(ii) bodies corporate incorporated under the law of some part of, and having their principal place of business in, the United Kingdom, or

(iii) Scottish partnerships, or one of Her Majesty's ships.

The references in this Note to Her Majesty's aircraft, hovercraft or ships are references to aircraft, hovercraft or ships which belong to, or are exclusively used in the service of, Her Majesty in right of the government of the United Kingdom.

Note 3 Illustrative Multipliers

(see paragraph 32)

Years of Loss	Multiplier	Years of Loss	Multiplier
5	5	15	10.5
6	5.5	16	11
7	6	17	11.5
8	7	18	12
9	7.5	19	12.5
10	8	20	13
11	8.5	25	15
12	9	30	16
13	9.5	35	17
14	10	40	18

Criminal Injuries Compensation Scheme

Levels of compensation

Level 1	£1,000	Level 23	£100,000
Level 2	£1,250	Level 24	£175,000
Level 3	£1,500	Level 25	£250,000
Level 4	£1,750		
Level 5	£2,000		
Level 6	£2,500		
Level 7	£3,000		
Level 8	£3,500		
Level 9	£4,000		
Level 10	£5,000		
Level 11	£6,000		
Level 12	£7,500		
Level 13	£10,000		
Level 14	£12,500		
Level 15	£15,000		
Level 16	£17,500		
Level 17	£20,000		
Level 18	£25,000		
Level 19	£30,000		
Level 20	£40,000		
Level 21	£50,000		
Level 22	£75,000		

Tariff of Injuries Description of Injury - 1 Levels Standard

(...)

Description of Injury - 2 Level

(...)

Description of Injury - 3 Level Standard

(...)

Description of Injury - 4 Level Standard

(...)

Description of Injury - 5 Level Standard

(...)

Notes to the Tariff

1. Minor multiple injuries will only qualify for compensation where the applicant has sustained at least three separate injuries of the type illustrated below, at least one of which must still have had significant residual effects six weeks after the incident. The injuries must also have necessitated at least two visits to or by a medical practitioner within that six-week period. Examples of qualifying injuries are:

- (a) grazing, cuts, lacerations (no permanent scarring)
- (b) severe and widespread bruising
- (c) severe soft tissue injury (no permanent disability)
- (d) black eye(s)
- (e) bloody nose
- (f) hair pulled from scalp

(g) loss of fingernail². Shock or 'nervous shock' may be taken to include conditions attributed to post-traumatic stress disorder, depression and similar generic terms covering:

(a) such psychological symptoms as anxiety, tension, insomnia, irritability, loss of confidence, agoraphobia and pre-occupation with thoughts of guilt or self-harm; and

(b) related physical symptoms such as alopecia, asthma, eczema, enuresis and psoriasis. Disability in this context will include impaired work (or school) performance, significant adverse effects on social relationships and sexual dysfunction.

*

2. The Motor Insurers' Agreement 21 décembre 1998 (Extrait)

Basic obligation of MIB

2(1) If judgement in receipt of any relevant liability is obtained against any person or persons in any Court in Great Britain whether or not such a person or persons be in fact covered by a contract of insurance and nay such judgement is not satisfied in full within seven days from the date upon which the person or persons in whose favour the judgement was given became entitle to enforce it then MIB will, subject to the provisions of paragraphs (2), (3) and (4) below and to Clauses 4, 5 and 6 hereof, pay or satisfy or cause to be paid or satisfied to or to the satisfaction of the person or persons in whose favour the judgement was given any sum payable or remaining payable thereunder in respect of the relevant liability including any sum awarded by the court in respect of interest on that sum and any taxed costs or any costs awarded by the court without taxation (or such proportion thereof as is attributable to the relevant liability whatever may be the cause of the failure of the judgement debtor to satisfy the judgement.