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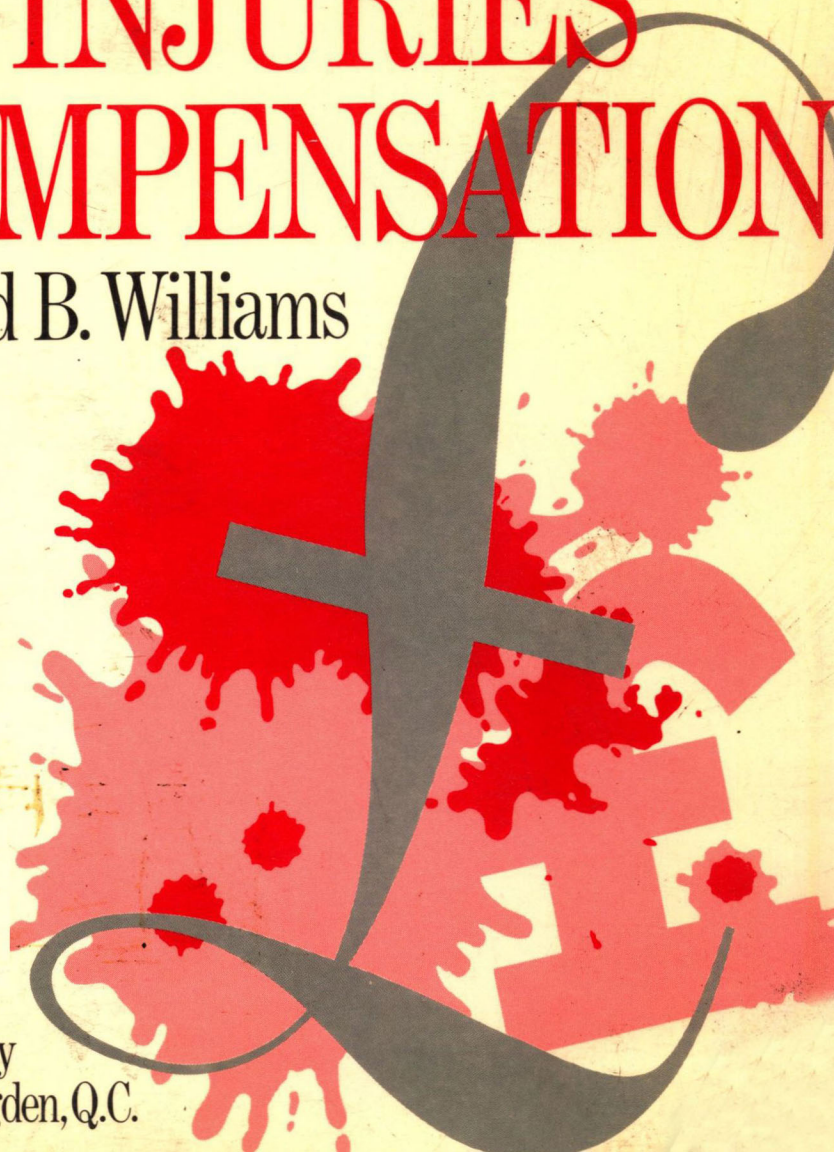
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CRIMINAL INJURIES COMPENSATION

Donald B. Williams

Foreword by
Michael Ogden, Q.C.



Criminal Injuries Compensation

2nd Edition

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Foreword

BY THE CHAIRMAN OF THE CRIMINAL INJURIES
COMPENSATION BOARD

The Criminal Injuries Compensation Board is required to conduct its proceedings in private. Consequently, without the labour of combing through a number of Annual Reports and a few reported cases it is very difficult for lawyers and others who have to conduct cases before the Board to understand its practices and procedure and, more important, the principles upon which it acts when applying the discretionary provisions in the Scheme. This book performs that function and gives an admirable insight into the way in which the Board functions; it gives me great pleasure to commend it to people who have to appear before the Board or advise about applications to the Board.

I should perhaps add one word of warning. As time has passed, the Scheme has been amended and the Board has modified its principles and practices. Some of our older cases should be read with this point in mind.

Michael Ogden

Acknowledgements

The Criminal Injuries Compensation Scheme and the Statement issued in February 1983 are official publications and copyright vests in the Crown. I am obliged to the Controller of HM Stationery Office for permission to reproduce these documents.

My thanks are due to Mr David North, Secretary and Solicitor to the Criminal Injuries Compensation Board, for his assistance which included making available to me the forms and precedents used by the Board. I am also grateful to Juliet Mitchell for secretarial assistance.

This book is dedicated to those victims injured or killed as a result of crimes of violence left without a remedy before the Criminal Injuries Compensation Scheme came into operation on 1 August 1964.

D.B.W.

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CHAPTER 1

The Position before 1964

The Criminal Law Act 1826 was aimed at “improving the administration of criminal justice in England” (Northern Ireland was not included). S. 28 of the Act gave the court power to order the sheriff of the county where an offence had been committed to pay a sum of money which it considered “reasonable and sufficient to compensate” anyone who had “been active in or towards the apprehension of any person charged with” certain offences.

The section is still law and now applies to arrestable offences as defined by the Criminal Law Act 1967, s. 2(1).

The provision for payment of “compensation” is restricted to those persons who assist in the apprehension of the offender. The decided cases cover what most law-abiding citizens would regard as their duty as such. Examples of payments under the section have ranged from those for giving a description of the accused to one for blowing a police whistle!

The sheriff of the county is entitled to claim repayment of such sums ordered by the court from the Treasury (s. 29, 1826 Act). Under s. 30 of the Act, if a man is killed while endeavouring to apprehend a person charged with an arrestable offence, the court has power to order the sheriff to pay compensation to his widow. If the deceased happened to be a widower, payment may be ordered to his children. If he left behind neither widow nor children, his father or mother may be compensated. The court has complete discretion as to the amount to be awarded. This section still applies today.

The Forfeiture Act 1870 s. 4, provides for compensation (not exceeding £400) to be paid to anyone who has suffered a loss of property arising out of any offence tried on indictment. The section provides for the sum to be recoverable as a judgment debt from the person convicted of the felony. The section does not include loss or damage caused by an accident involving the use of a motor vehicle on a road.

It will be seen that the compensation allowable under these Acts is very restricted. The Criminal Law Act 1826 only provides for those *actually* assisting in the apprehension of a criminal.

The Forfeiture Act only provides for compensation for loss of *property* as a result of certain crimes and is restricted as to amount. It does *not* provide for compensation to those suffering physical injuries arising as a result of crime.

It is possible for a victim of a crime to bring a civil claim against the criminal. In the vast majority of cases, however, such a remedy would be fruitless and any litigation pursued to judgment would, in the usual course of events, be difficult to enforce.

It is therefore clear that, before the Criminal Injuries Compensation Board was set up in 1964, persons injured as a result of a crime, or the dependants of those who had the misfortune to be killed by the criminal, were left virtually without any remedy. Naturally some might have been prudent enough to have arranged a personal accident policy. This would have provided some monetary consolation to the victim for the injuries sustained or to any dependants for the loss of their breadwinner.

The position in 1964 has to some extent been affected by s. 35 of the Powers of the Criminal Courts Act 1973 (as amended by the Criminal Justice Act 1982), under which the criminal courts have powers to make compensation orders. The Magistrates' Court has a limit of £1,000 for each offence. The court may make a compensation order either instead of, or in addition to, dealing with offender in any other way (i.e. fine, imprisonment etc). The order may require him to pay compensation for personal injury, loss or damage resulting from the offence, or any other offence taken into consideration, in determining the sentence.

A compensation order should only be made in "simple, straightforward cases and generally where no great amount is at stake." (Widgery, CJ in *R v Kneeshaw* [1974] 1 All ER 896).

Thus an order should not be made where the legal position is not clear. It must be precise and, if payment is directed by instalments, it should not be oppressive or involve payment over a long period (e.g. six years); see *R v Daly* (1973) 58 Cr.App.R. 333. It may include interest if the circumstances are appropriate. It must not be such as to tempt the defendant to commit further offences to provide the cash in order to satisfy the order. In short, the order must be realistic.

CHAPTER 2

Background to the Scheme

"Penal Practice in a Changing Society—Aspects of Future Development (England and Wales)" (Cmnd. 645; February 1959) refers at para. 26 to the view of Miss Margery Fry who had proposed a scheme for the payment of compensation to those who had suffered personal violence. The paper announced the government's decision "to set up an official working party to examine the proposal in detail and see whether, if the principle were accepted, a workable scheme could be devised." The proposal was based on the view that the "obligation to the victim of crime rests primarily on the society which has failed to protect him against crime and can alone effectively compensate him." The document dealt in great depth and detail with the punishment of offenders and with the research that was, at that time, being done. However, its relevance, as far as we are concerned, is that the research of the working party referred to was reported in the paper, "Compensation for Victims of Crimes of Violence" (Cmnd. 1406; June 1961). The urgency of the problem was reflected in the comparatively short period between the two papers.

In the meantime, attempts had been made to introduce a private member's bill to deal with the problem. Mr. R. E. Prentice, M.P., introduced a private bill on the subject in the 1959–60 session. It sought to provide for compensation to be paid from the Industrial Injuries Fund, established under the Social Security Scheme, to persons directly injured and to the dependants of persons killed or disabled as a result of crimes of violence. Unfortunately for the Bill, it was not reached on the days set down in Parliament for discussion. A similar fate lay in store for a private member's bill along the same lines introduced by Mr. Carol Johnson, M.P., during the following year.

In the course of the paper "Compensation for Victims of Crimes of Violence," the working party laid down criteria to be satisfied by any scheme to be set up to deal with the victims of crimes of violence. These are:

(1) It must be possible to justify it on grounds which do not postulate state liability for the consequences of all crimes, whether against the person or against property.

(2) It must provide an effective practical means, whether by definition

or otherwise, of distinguishing the types of crime for which compensation is to be paid from those for which it is not.

(3) It must provide means of distinguishing the deserving claimant from the undeserving or fraudulent which will both be effective in operation and appear manifestly fair.

(4) It must not prejudice the work of the criminal courts or the police.

(5) It must not have undesirable repercussions on the National Insurance or Industrial Injuries Scheme.

(6) The cost of administration must not be disproportionately high.

The working party found some difficulty in dealing with possible definitions to limit the scope of the proposed scheme. One definition considered was that "a person should be regarded as a victim of a crime of violence if he suffered a personal injury directly caused by a criminal act." This would have included victims of motoring offences, victims of accidents to trains and aircraft caused by a criminal act, and victims of certain abortions. That definition was found to be unsatisfactory as a qualification for compensation. The working party then went on to consider an alternative definition on the basis of injury or death "caused directly by a criminal act for which the victim or his dependants would have a right to recover damages, other than a motoring offence." This was also rejected as unsatisfactory at the time as it would have excluded certain abortions.

The definition of a crime of violence is the most difficult part of any clear thinking on this topic. It caused difficulty to the working party and it has provided a number of problems which have not been easy to resolve in the Board's application of the scheme as well as the exercise of the court's powers of supervision of the operation of the Scheme. A consideration of the cases referred to later in this book should make the matter a little clearer. There is, however, a distinct advantage in having a looser application of the concept of "victims of crimes of violence", as the scheme is not a statutory one and was intended to be flexible and to be adapted to changing circumstances. The Board is thus given a very wide discretion within the limits imposed by the scheme.

One of the express objects in the paper referred to was that the scheme should limit "frivolous and fraudulent claims." Among the cases summarised later will be found the basic principle that an incident giving rise to a claim should be reported with alacrity by the victim himself, or by someone on his behalf, in order to give him a right to claim. This is but one of the practical ways of safeguarding against such frivolous and fraudulent claims.

The Scheme for compensating victims of crimes of violence was announced in both Houses of Parliament on 24 June 1964, and the

Criminal Injuries Compensation Board set up. The Scheme in its original form came into operation on 1 August 1964. It has since been modified in a number of respects. The current revised Scheme applies to all incidents occurring on or after 1 October 1979. (The text is set out in Appendix 1.)



CHAPTER 3

How the Scheme Operates

Who Can Claim Under the Current Scheme?

3.01 A claimant must have sustained personal injury on or after 1st October 1979 which was directly attributable to a crime of violence. The present scheme extends to arson and poisoning.

Alternatively, such injury must be attributable to the apprehension or attempted apprehension, of an offender or a suspected offender or to the prevention, or attempted prevention, of an offence or to the giving of help to any constable engaged in such activity. A claim must be made within three years of the incident giving rise to the injury.

Where the victim has died either as a result of the incident or otherwise, the widow, widower or other dependant may put forward a claim.

Initial Application

3.02 An application for compensation for injury or death resulting from a crime is made initially to the Criminal Injuries Compensation Board, 19 Alfred Place, London WC1E 7EA. The usual practice is for the Board to send an application form to the applicant or to his or her representative on request.

Information Required

3.03 There are basically two types of forms, those relating to personal injuries and those claims made by dependants arising out of the death of their breadwinner. In personal injury cases, the applicant is required to give his full name, age, status, address and occupation. He must give the date, time and place of the injury and, if possible, the name and address of the offender or offenders. He must also describe in his own words the incident out of which the claim arises. If the incident has been reported to the police, details as to when, by whom and to which police station it was reported should be given. If the offender has been prosecuted, particulars must also be stated. The applicant must, of course, set out the injuries he sustained together with details of hospital or dental treatment, if any, and the name and address of his doctor.

The period of absence from work is also required, as loss of earnings