

STATES OF JERSEY



CRIMINAL INJURIES COMPENSATION BOARD: REPORT AND ACCOUNTS FOR 2007

**Presented to the States on 10th July 2008
by the Minister for Home Affairs**

STATES GREFFE

REPORT

1. The States, on 4th December 1990, approved a draft Act (R&O.8143, as subsequently amended by R&Os 8239, 8497, 8769, 9234 and 51/2002) establishing a Scheme to provide compensation for victims of crimes of violence to replace the Scheme set out in the Act of the States dated 12th May 1970 (R&O.5350). Article 10(a) of the 1990 Act sets out the scope of the Scheme, the essence of which is as follows –

the Board may make ex gratia payments of compensation in any case where the applicant or, in the case of an application by a spouse or dependant, the deceased –

- (i) sustained, in the Island or on a Jersey ship, personal injury directly attributable to a crime of violence (including arson or poisoning) or 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 a police officer who is engaged in any such activity, or
 - (ii) sustained personal injury directly attributable to a crime of violence (including arson or poisoning) in respect of which a court in the Island has jurisdiction by virtue of section 686 or 687 of the Merchant Shipping Act 1894 or such enactments as from time to time replace them.
2. The then Defence Committee, conscious of the limitations of the 1970 Scheme (which provided for compensation only in cases where members of the public came voluntarily to the aid of another member of the public or the police and were injured in so doing), widened the scope of the Scheme to include crimes of violence generally. The 1990 Scheme came into force on 1st May 1991 in respect of injuries suffered on or after that date. Applications in respect of injuries suffered before 1st May 1991 are dealt with under the terms of the 1970 Scheme.
 3. A number of amendments have been made to the 1990 Scheme, which are reflected in the current version of the guide to the Scheme (entitled “Victims of Crimes of Violence”).
 4. The Criminal Injuries Compensation Board comprises Advocate C.J. Dorey (Chairman, from June 2006), Advocates R.J. Michel and L.M. Gould (former Chairmen), Advocates A.S. Regal, P. de C. Mourant and P.M. Livingstone – these are the members who are “advocates or solicitors of the Royal Court of not less than 5 years’ standing” – and ‘lay’ members Dr. M.P. Bruce, Mrs. B.M. Chiang, Mr. M.A. Payne and Mrs. C.L. Jeune. The Minister for Home Affairs approved the re-appointment of the current members of the Board, for a further period of 5 years with effect from 1st May 2006. The Minister wishes to record her appreciation to all members of the Board for the work they have undertaken.
 5. Under Article 15 of the Scheme, the Board may withhold or reduce compensation if it considers that–
 - (i) the applicant has not taken all reasonable steps to inform the police;
 - (ii) the applicant has failed to give all reasonable assistance to the Board;
 - (iii) having regard to the conduct of the applicant before, during or after the events giving rise to the claim or to his character and way of life, it is inappropriate that a full award, or any award at all, be granted; and

furthermore, compensation will not be payable –

- (iv) if the injury was sustained accidentally, unless the Board is satisfied that the applicant was at the time taking an exceptional risk which was justified in all the circumstances.
6. The Board received 60 applications for the award of compensation under the 1990 Scheme during the period 1st January to 31st December 2007. Because of the length of time it sometimes takes to finalize an

award, not all applications are concluded in the calendar year they are received. Examples of the nature of applications and awards made in 2007 are as follows –

- (a) C was working at her computer at her home in the early hours of the morning. She heard a noise and went to investigate. She discovered a masked man on the landing. He proceeded to tie her up. All the while he is wielding a knife and swearing that he would kill her. He squeezed her throat so that she lost consciousness and he then proceeded to both indecently assault and rape her. C kept her head and after a considerable period of time persuaded her assailant to leave. The Board commented favourably on C's strength of character, bravery and determination. The assault and rape resulted in some post-traumatic stress which impacted upon promotion prospects. The applicant was awarded £15,000 to cover the physical injuries, including the sexual assaults and the rape and £4,000 with regard to loss of promotion prospects;
 - (b) C was a serving Police Officer. Whilst apprehending a suspect he was punched in the face and then wrestled to the ground where he sustained various injuries including an aggravated injury to his shoulder. C underwent physiotherapy and the pain gradually subsided over approximately 21 months. However, minor neck problems still troubled C. He was awarded £8,500 with regard to damages;
 - (c) A applied to the Scheme for an award after suffering a broken tooth, cuts on her arm and scratches to her face. On her application form she stated that she had been out with her boyfriend at a bar in town and when leaving had been repeatedly punched in the face by one of a group of girls. She alleged that when she left the Bar she was again jumped on by the same group and again punched until the Police ran over and intervened. Two girls were arrested and duly interviewed. They told a completely different story. Further, the statement from the Police relating to what they saw when they became involved did not corroborate the allegations of the claimant. Accordingly, the Board took the view that the claimant had failed to establish that she was victim of a crime of violence and there was a nil award;
 - (d) The applicant, B, was seriously assaulted in Colomberie when he was punched resulting in a fractured skull and multiple injuries. At the time of the assault the applicant had been drinking heavily. The Police investigated the incident; in light of the evidence they merely charged the assailant with a breach of the peace. The Board noted that the criminal burden of proof is higher than that required to be applied by the Board, which is the civil burden of proof. On that basis the Board was able to find that the applicant was the victim of a crime of violence. However, by reason of the amount of alcohol consumed by the applicant prior to the incident and by reason of his previous convictions and his previous character the Board deducted 75% from the gross award. After deduction of social security benefits this reduced the gross award down from £76,752.95 to £10,634.94.
7. The Board received 3 requests for hearings during 2007, all of which related to claims where the applicant had appealed against the decision of the 2-member Panel's initial award. The Hearing Board determined that there was justification for making an award, or a revised award, in respect of one hearing. The other hearings will be held at a later date.
 8. Of the 1,153 applications received since 1st May 1991– 1,063 had been resolved as at 31st December 2007. Of the 90 applications in the process of resolution as at the end of 2007, 4 related to hearings which remained unresolved, 11 had received awards which included an element of interim payment and 9 others had been determined which awaited acceptance by the applicant. A total of 66 applications awaited reports and/or further information.
 9. Alcohol-related incidents. The Board receives many applications in which drink has been a substantial cause of the victim's misfortune. From information available on the 60 applications received in 2007, 42 of those (that is 70%) involved the consumption of alcohol by either the assailant or the victim, either on licensed premises or elsewhere. Many of these incidents occur in places and situations which the victims might have avoided had they been sober or not willing to run some kind of risk. In such circumstances the

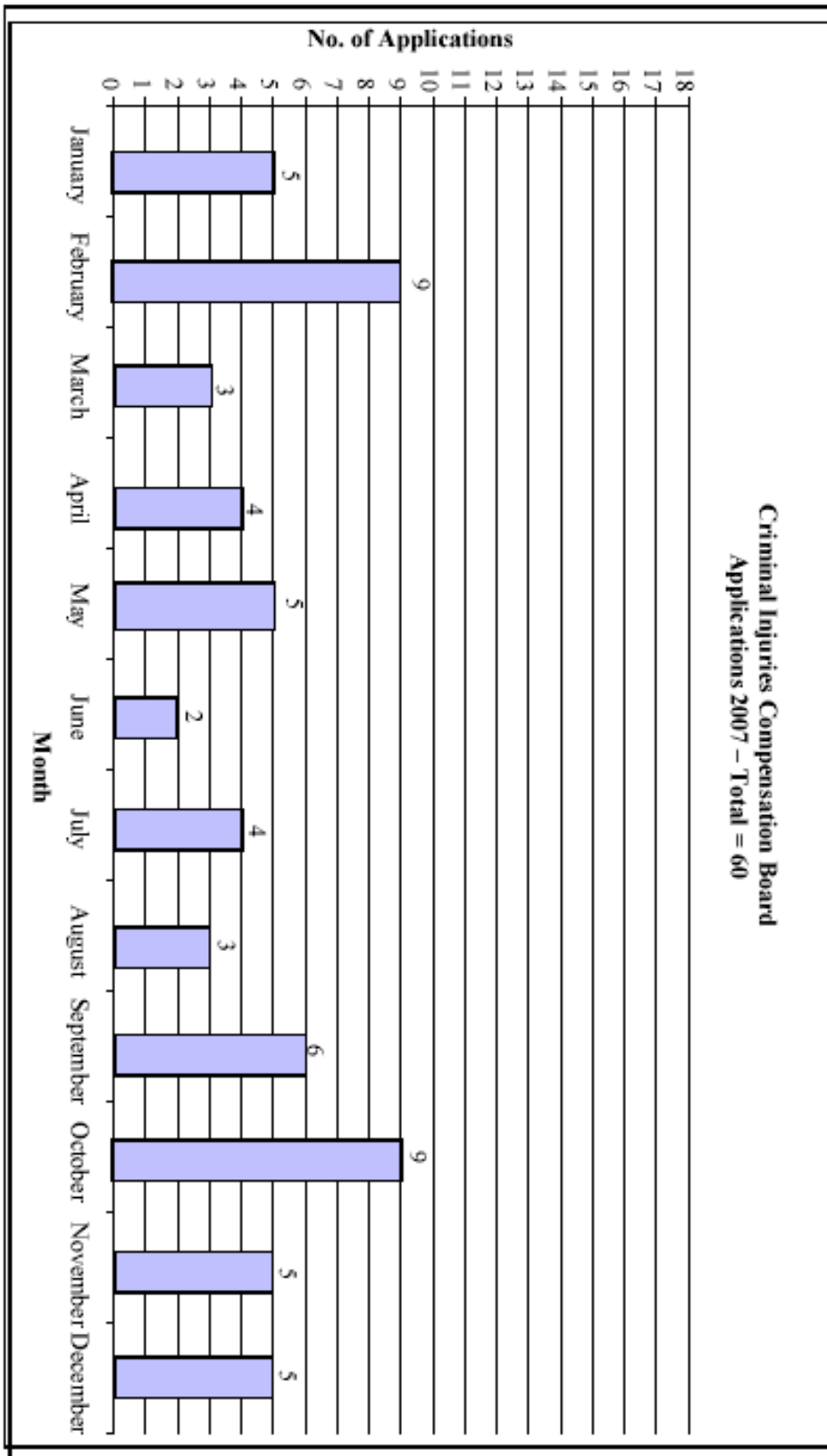
Board may make an award but only after looking very carefully at the circumstances to ensure that the applicant's conduct "before, during or after the events giving rise to the claim" was not such that it would be inappropriate to make a payment from public funds.

10. **Appendix 1** sets out statistics relating to claims made under the Criminal Injuries Compensation Scheme during the period 1st January to 31st December 2007.
11. **Appendix 2(a)** shows, in the form of a bar graph, the rate of applications received during 2007 (60); and **Appendix 2(b)** shows in tabular form month by month, the total number of applications received annually from 1998 to 2007.
12. **Appendix 3** shows the range of awards made by the Board during the period 1st May 1991 to 31st December 2007.
13. **Appendix 4** shows the accounts of the Board for the period 1st January to 31st December 2007 and for the years 1999 to 2006, for comparative purposes.
14. The Board was generally satisfied with the working of the 1990 Scheme, as amended, except for concern regarding the funding of the Scheme which is presently provided from within the budget of the Home Affairs Department and which, in 2007, again came under severe pressure. The Board notes that Article 6 of the Scheme specifically states that all payments made and expenses incurred in carrying out the Scheme will be paid out of the general revenues of the States (and thus not from the budget of any one Minister). The Board also notes there has still been no progress in relation to its recommendation made in 2002 that there should be an increase in the maximum award (which is currently £100,000) to £250,000 in order to bring it into line with similar awards made in respect of common law damages. It is worthy of note that, in 2006, 2 particularly substantial awards were made – one of £100,000 and another of approximately £93,000. In 2007, 2 applications had the potential for an award exceeding £100,000. Had the Board's recommendation that the maximum award payable under the Scheme be increased been implemented, it is likely that the award payable to some applicants who are presently limited to receiving £100,000 would be significantly higher. The Board is concerned that some very deserving applicants are suffering considerable hardship as a result of this failure to increase the maximum award.
15. As referred to in the Board's Reports for 2005 and 2006, the Board concurred with the suggestion that rather than use United Kingdom data on "gross average industrial earnings... (as published by the United Kingdom Department of Employment Gazette)..." [Article 24(a) of the Scheme refers], given that this is no longer available, it would be preferable instead to use Jersey figures as even the use of the U.K. Annual Survey of Hours and Earnings (ASHE) renders the Jersey Criminal Injuries Compensation Scheme out of kilter with the equivalent U.K. Scheme. The Statistics Unit compiles earnings data in Jersey every year – collected by way of a survey of the private sector; and a census of the public sector – in order to determine the Jersey Average Earnings Index. The mean ('average') earnings of full-time equivalent (F.T.E.) employees is published regularly and the Board considers that this would be an improvement upon using U.K. figures. Consequently, in 2005, the Board requested the Minister for Home Affairs to authorise the preparation of a draft amendment to the Scheme for presentation to the States. To date, this has not been progressed.
16. The Board has also requested a number of 'housekeeping' amendments to the scheme. The Board understands that such amendments, along with the amendment proposed at paragraph 15, are subject to bids for law drafting time and that owing to bids with higher priorities time has not yet been made available. It is hoped that such amendments will be included in a bid for contingency law drafting time in due course.

APPENDIX 1**RATE OF APPLICATIONS 1ST JANUARY TO 31ST DECEMBER 2007**

| Month | Received | Applications on which reports sent to Board | Applications determined | Amount awarded £ |
|--------------|-----------------|--|--------------------------------|-----------------------------|
| 2007 | | | | |
| January | 5 | 4 | 8 | 10,522 |
| February | 9 | – | 2 | 1,397 |
| March | 3 | 7 | 9 | 38,555 |
| April | 4 | 7 | 4 | 14,495 |
| May | 5 | – | 8 | 34,240 |
| June | 2 | 3 | 9 | 20,115 |
| July | 4 | 10 | – | Nil |
| August | 3 | 4 | 5 | 41,076 |
| September | 6 | 1 | 2 | 867 |
| October | 9 | 4 | 6 | 62,094 |
| November | 5 | 3 | 8 | 13,355 |
| December | 5 | 7 | – | Nil |
| | 60 | 50 | 61 | 236,716 |

NOTE: The figure for the total “Amount awarded” in this Appendix does not match the figure for the total “Compensation paid” in Appendix 4 because some awards are not paid until the following year and/or some payments relate to awards made in a preceding year.



CRIMINAL INJURIES COMPENSATION BOARD

Applications received for the period 1st January to 31st December 2007
 (and comparative figures for 1998 to 2006)

| | 2007 | 2006 | 2005 | 2004 | 2003 | 2002 | 2001 | 2000 | 1999 | 1998 |
|-----------|-------------|------|------|------|------|------|------|------|------|------|
| January | 5 | 2 | 5 | 3 | 6 | 7 | 7 | 4 | 8 | 7 |
| February | 9 | 4 | 3 | 8 | 2 | 6 | 12 | 8 | 4 | 7 |
| March | 3 | 5 | 6 | 4 | 6 | 7 | 8 | 13 | 5 | 8 |
| April | 4 | 5 | 3 | 11 | 4 | 7 | 6 | 5 | 4 | 9 |
| May | 5 | 7 | 4 | 5 | 10 | 4 | 8 | 3 | 5 | 5 |
| June | 2 | 3 | 5 | 9 | 3 | 6 | 8 | 9 | 10 | 6 |
| July | 4 | 11 | 2 | 10 | 1 | 9 | 13 | 12 | 6 | 11 |
| August | 3 | 5 | 4 | 2 | 10 | 13 | 10 | 9 | 7 | 7 |
| September | 6 | 6 | 8 | 5 | 4 | 6 | 5 | 10 | 8 | 9 |
| October | 9 | 8 | 2 | 4 | 2 | 7 | 12 | 6 | 5 | 6 |
| November | 5 | 7 | 5 | 5 | 3 | 10 | 7 | 17 | 8 | 4 |
| December | 5 | 6 | 2 | 6 | 3 | 1 | 10 | 6 | 6 | 10 |
| | 60 | 69 | 49 | 72 | 54 | 83 | 106 | 102 | 76 | 89 |

| | | | | | | | | |
|---------------|--------------|--------------|--------------|-------------|-------------|-------------|-------------|----------------|
| | 11,930 | 13,533 | 19,772 | 6,437 | 13,829 | 27,177 | 38,995 | 131,673 |
| | (16) | (10) | (8) | (2) | (3) | (5) | (2) | (77) |
| 3 | | | | | | | | |
| | 6,465 | 11,133 | 20,390 | 7,612 | 8,485 | 33,883 | 65,715 | 153,683 |
| | (9) | (8) | (8) | (2) | (2) | (5) | (2) | (79) |
| 4 | | | | | | | | |
| | 4,783 | 10,669 | 19,784 | 13,919 | 31,581 | 67,240 | 93,294 | 241,270 |
| | (7) | (7) | (8) | (4) | (7) | (11) | (7) | (85) |
| 5 | | | | | | | | |
| | 4,909 | 17,889 | 19,115 | 10,698 | 12,142 | 51,997 | 74,650 | 191,400 |
| | (7) | (13) | (8) | (3) | (3) | (7) | (4) | (73) |
| 6 | | | | | | | | |
| | 6,570 | 9,608 | 14,698 | 3,972 | 26,214 | 45,029 | 334,241 | 440,332 |
| | (9) | (7) | (6) | (1) | (6) | (6) | (8) | (70) |
| 7 | | | | | | | | |
| | 3,022 | 5,815 | 9,829 | 19,819 | 13,327 | 75,558 | 110,246 | 237,616 |
| | (4) | (5) | (4) | (6) | (3) | (12) | (4) | (61) |
| TOTALS | | | | | | | | |
| | 136,705 | 209,321 | 253,552 | 193,547 | 181,327 | 642,306 | 1,311,428 | 2,928,186 |
|) | (202) | (150) | (103) | (61) | (42) | (96) | (55) | (1156)* |
| %] | [17%] | [13%] | [9%] | [5%] | [4%] | [8%] | [5%] | [100%] |

N.B. The lowest award (other than nil) was £149, and the highest £100,000.

(Numbers in brackets represent numbers of applications. *The two figures for the total number of applications determined do not match because some applications receive elements of an award in different calendar years.)

ACCOUNTS FOR THE PERIOD 1ST JANUARY TO 31ST DECEMBER 2007
(AND COMPARATIVE FIGURES FOR 1999 TO 2006)

| | 2007 | 2006 | 2005 | 2004 | 2003 | 2002 | 2001 | 2000 | 1999 |
|-----------------|----------------|---------|---------|---------|---------|---------|---------|---------|---------|
| | | £ | £ | £ | £ | £ | £ | £ | £ |
| ons | – | 261 | 251 | 143 | – | 20 | 85 | 100 | 374 |
| and y | 323 | – | – | 635 | 256 | 310 | 290 | 260 | 429 |
| to ; of d | 17,352 | 19,264 | 22,624 | 25,475 | 21,143 | 21,378 | 24,758 | 16,421 | 18,681 |
| | 565 | 669 | 1,730 | 1,785 | 1,095 | 2,569 | 2,235 | 2,119 | 2,766 |
| costs | – | – | – | 157 | 614 | – | 995 | 40 | – |
| sation | 182,842 | 418,763 | 180,767 | 230,219 | 162,952 | 156,885 | 298,222 | 281,322 | 118,003 |
| tration | 25,955 | – | 25,000 | 23,500 | – | – | – | – | – |
| | 227,037 | 438,957 | 230,372 | 281,914 | 186,060 | 181,162 | 326,585 | 300,262 | 140,253 |

- Notes:
1. From 1995, payment to members of the Board in respect of their time spent on applications has been made at a rate of £50 an hour, with 371 hours spent during 1995, 505 hours during 1996, 355 hours during 1997, 457 hours during 1998, 379 hours during 1999, 372 hours during 2000, 495 hours during 2001, 435 hours during 2002, 209 hours during 2003, 457 hours during 2004, 432 hours during 2005, 392 during 2006 and 280 during 2007.
 2. The figure for the total “Compensation paid” in this Appendix does not match the total “Amount awarded” in Appendix 1 because some awards are not paid until the following year and/or some payments relate to awards made in a preceding year.
 3. The heading “Administration” was introduced in 2004, as a consequence of the decisions made during the 2004 Fundamental Spending Review process, in order to reflect the payment by the Home Affairs Department to the States Greffe of a sum representing the cost incurred by the States Greffe in servicing the Board’s administrative needs. In 2006, in view of the pressure upon the Home Affairs budget at that time, this cost was not passed on for that year.
 4. The year 2006 saw a number of awards being made at or near the maximum permitted under the Scheme (£100,000). This led to a higher than usual call on the Scheme and necessitated a significantly increased allocation of funding to meet the awards made in that year.