
STATES OF JERSEY



CRIMINAL INJURIES COMPENSATION BOARD: REPORT AND ACCOUNTS FOR 2008

Presented to the States on 29th July 2009
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 Mrs. B.M. Chiang, Mr. M.A. Payne, Mrs. C.L. Jeune and Dr. G. Llewellyn, the latter having been appointed in August 2008 to replace Dr. M.P. Bruce, who retired in June 2008. The Minister wishes to record his 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 –
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- (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 44 applications for the award of compensation under the 1990 Scheme during the period 1st January to 31st December 2008. 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 2008 are as follows –

- (a) B had been drinking during the course of an evening out. He drank to excess. In the early hours of the morning, he was punched in the head. He had little recollection of the incident. After police investigation a person was convicted of a breach of the peace, but no prosecution was brought in respect of the punch which allegedly caused B the injuries as the Crown Legal Advisor thought there was insufficient evidence. However, the Board felt able to find that B was the victim of a crime of violence since it is the Civil Standard of Proof that is applied rather than the Criminal Standard. B sustained a fractured skull, facial nerve palsy, hearing loss and loss of sense of smell and taste. The gross award for general damages was £71,000. However, by reason of the applicant's heavy drinking, previous convictions and character the award was reduced by 75%. After adding in special damages and deducting social security benefits, B received £10,634.94;
- (b) G was sixteen at the time of incident. She went with some friends one evening to Liberation Square to meet up with others. Whilst talking with a group and without provocation she was struck in her left eye. The Board concluded that G was the victim of a crime of violence, but the damages for the physical injuries sustained fell below the statutory minimum of £750;
- (c) B was sexually assaulted over a period of 3 years when he was a child by a friend who lived nearby. Over this period there were about 50 assaults. B suffered from post-traumatic stress as a result, notwithstanding huge efforts to overcome the effects of the assault. However, notwithstanding those efforts recovery was some way off. The Board awarded £26,000;

- (d) The applicant, K, had spent an evening in town with friends and had been drinking. In the early hours, whilst at one of the pubs, K went to the toilet and whilst there, someone went to head-butt him. In attempting to prevent the same a struggle ensued and K injured his right ankle. There were no independent witnesses and no-one was charged with the assault upon K. The Board held there was insufficient evidence to establish that K was the victim of a crime of violence and accordingly no award was made;
- (e) C and his girlfriend were in town late one evening. A male was making a nuisance of himself. Without any provocation C was assaulted and sustained a serious injury to his left eye. There is permanent impaired vision. In addition there was a claim for loss of earnings. The Board awarded £16,000 with regard to general damages and special damages of £1,070.
7. During 2008, the Board received 7 requests for hearings, all of which related to claims where the applicant had appealed against the decision of the two-member Panel's initial award. The Hearing Board determined that there was justification for making an award, or a revised award, in respect of 3 hearings. In 2 other cases, an initial hearing was held, with further information being required prior to determination of the outcome. In the another 3 cases, further information is being obtained prior to a hearing being held at a later date; one being deferred pending the receipt of legal advice from the Law Officers' Department.
8. Of the 1,197 applications received since 1st May 1991 – 1,118 had been resolved as at 31st December 2008. Of the 79 applications in the process of resolution as at the end of 2008, 8 related to hearings which remained unresolved, 15 had received awards which included an element of interim payment and 19 others had been determined which awaited acceptance by the applicant. A total of 37 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 44 applications received in 2008, 27 of those (that is 61%) 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 2008.

11. **Appendix 2(a)** shows, in the form of a bar graph, the rate of applications received during 2008 (44); and **Appendix 2(b)** shows in tabular form month by month, the total number of applications received annually from 1999 to 2008.
12. **Appendix 3** shows the range of awards made by the Board during the period 1st May 1991 to 31st December 2008.
13. **Appendix 4** shows the accounts of the Board for the period 1st January to 31st December 2008 and for the years 2000 to 2007, 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 hitherto has been provided from within the budget of the Home Affairs Department and which, in 2008, 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 is therefore pleased to report that, from 2009, its budget will be provided through the Criminal Offences Confiscation Fund (COCF). The Board notes, however, that 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. Between 2007 and 2008, a number of 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, 2006 and 2007, 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 authorize the preparation of a draft amendment to the Scheme for presentation to the States. The Board is pleased to note that, in 2008, the Minister for Home Affairs has

authorized the preparation of draft amendments to the Scheme to address *inter alia* the use of this Jersey-specific data.

16. The Board has also requested a number of ‘housekeeping’ amendments to the scheme and the preparation of these has been authorized by the Minister for Home Affairs, with draft legislation presently undergoing consideration by the Board. A further proposed amendment will provide that if after 6 months of being informed of an award an applicant does not accept it, then the award lapses and is no longer payable (subject always to the discretion of the Chairman to waive the time limit).

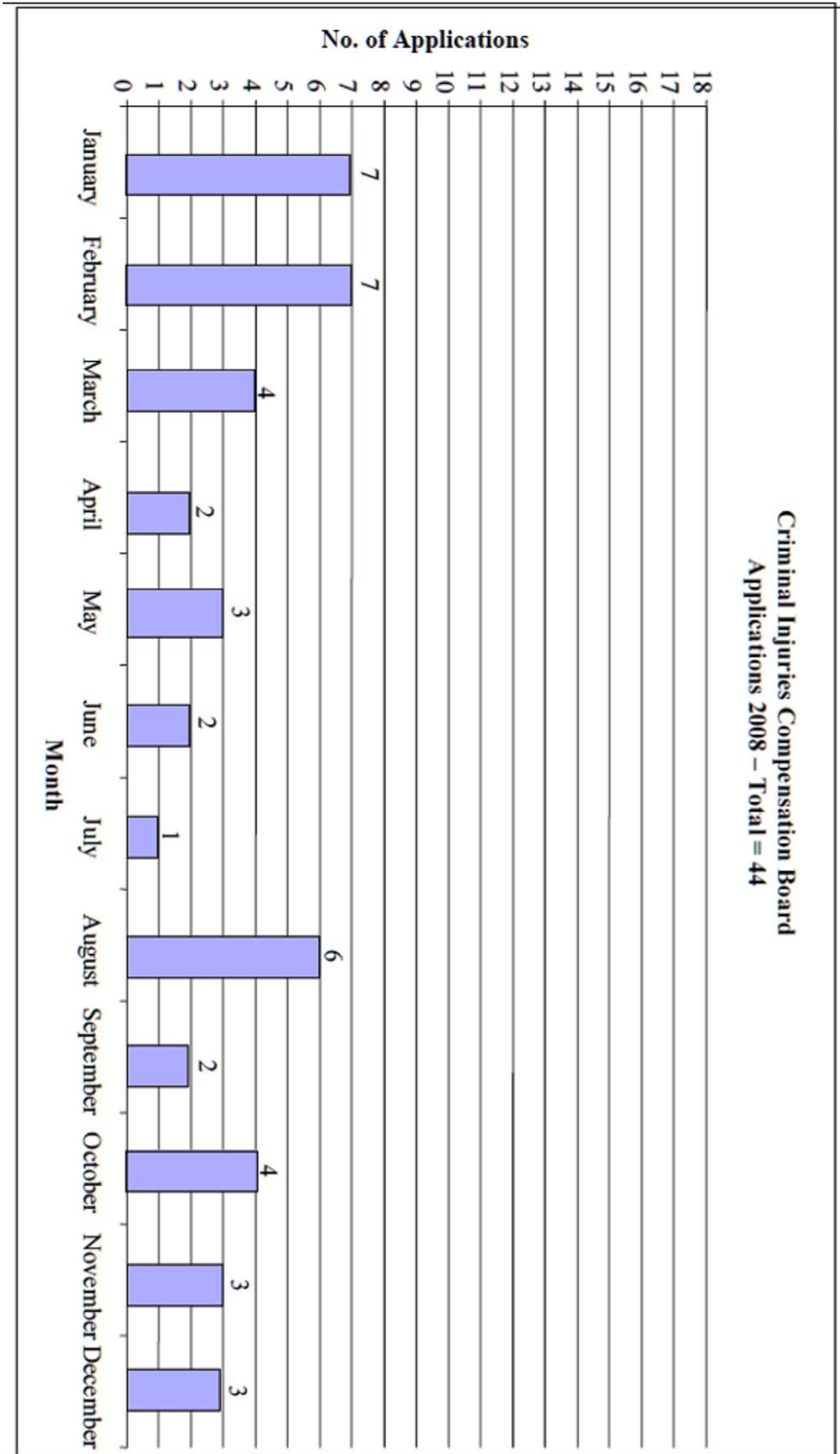
APPENDIX 1

RATE OF APPLICATIONS 1ST JANUARY TO 31ST DECEMBER 2008

Month	Received	Applications on which reports sent to Board	Applications determined	Amount awarded £
2008				
January	7	6	4	34,351
February	7	–	3	6,550
March	4	14	5	13,345
April	2	7	10	37,510
May	3	6	4	4,581
June	2	4	8	12,143
July	1	2	5	7,884
August	6	–	7	37,375
September	2	3	4	9,244
October	4	2	17	44,408
November	3	2	8	25,579
December	3	1	4	45,013
	44	47	79	277,983

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.

APPENDIX 2(a)



APPENDIX 2(b)

CRIMINAL INJURIES COMPENSATION BOARD

Applications received for the period 1st January to 31st December 2008
(and comparative figures for 1999 to 2007)

	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999
January	7	5	2	5	3	6	7	7	4	8
February	7	9	4	3	8	2	6	12	8	4
March	4	3	5	6	4	6	7	8	13	5
April	2	4	5	3	11	4	7	6	5	4
May	3	5	7	4	5	10	4	8	3	5
June	2	2	3	5	9	3	6	8	9	10
July	1	4	11	2	10	1	9	13	12	6
August	6	3	5	4	2	10	13	10	9	7
September	2	6	6	8	5	4	6	5	10	8
October	4	9	8	2	4	2	7	12	6	5
November	3	5	7	5	5	3	10	7	17	8
December	3	5	6	2	6	3	1	10	6	6
	44	60	69	49	72	54	83	106	102	76

APPENDIX 3

RANGE OF AWARDS 1ST MAY 1991 TO 31ST DECEMBER 2007

Total number of applications received = 1,197

Total number of applications determined = *1,118

nil	£1 to £999	£1,000 to £1,999	£2,000 to £2,999	£3,000 to £3,999	£4,000 to £4,999	£5,000 to £9,999	£10,000 and over	TOTAL
1991	£	£	£	£	£	£	£	£
–	–	1,706	–	–	–	–	–	1,706
(–)	(–)	(1)	(–)	(–)	(–)	(–)	(–)	(1)
1992								
–	3,901	8,160	5,452	3,886	–	5,899	–	27,298
(7)	(6)	(6)	(2)	(1)	(–)	(1)	(–)	(23)
1993								
–	3,919	8,985	17,444	6,641	–	11,500	53,084	101,573
(5)	(6)	(7)	(7)	(2)	(–)	(2)	(3)	(32)
1994								
–	10,411	8,728	14,735	9,678	17,900	28,121	–	89,573
(11)	(16)	(6)	(6)	(3)	(4)	(4)	(–)	(50)
1995								
–	10,000	8,095	2,438	10,254	17,346	13,690	–	61,823
(16)	(17)	(5)	(1)	(3)	(4)	(2)	(–)	(48)
1996								
–	13,485	18,183	28,131	20,289	9,232	48,573	131,248	269,141
(28)	(19)	(13)	(11)	(10)	(3)	(7)	(9)	(100)
1997								
–	6,608	10,557	18,216	6,825	4,500	33,178	–	79,884
(28)	(9)	(7)	(8)	(2)	(1)	(5)	(–)	(60)
1998								
–	11,896	27,984	16,412	22,338	9,047	50,272	53,320	191,269
(48)	(20)	(19)	(7)	(7)	(2)	(7)	(2)	(112)
1999								
–	10,897	16,829	19,312	9,938	–	37,360	34,744	129,080
(34)	(16)	(12)	(8)	(3)	(–)	(6)	(2)	(81)
2000								
–	11,874	14,080	15,904	20,157	13,112	35,361	180,491	290,979
(46)	(18)	(11)	(6)	(6)	(3)	(5)	(8)	(103)
2001								
–	16,035	17,367	11,920	21,084	4,612	77,468	141,400	289,886
(42)	(23)	(13)	(5)	(6)	(1)	(11)	(4)	(105)

2002								
–	11,930	13,533	19,772	6,437	13,829	27,177	38,995	131,673
(29)	(16)	(10)	(8)	(2)	(3)	(5)	(2)	(77)
2003								
–	6,465	11,133	20,390	7,612	8,485	33,883	65,715	153,683
(43)	(9)	(8)	(8)	(2)	(2)	(5)	(2)	(79)
2004								
–	4,783	10,669	19,784	13,919	31,581	67,240	93,294	241,270
(34)	(7)	(7)	(8)	(4)	(7)	(11)	(7)	(85)
2005								
–	4,909	17,889	19,115	10,698	12,142	51,997	74,650	191,400
(28)	(7)	(13)	(8)	(3)	(3)	(7)	(4)	(73)
2006								
–	6,570	9,608	14,698	3,972	26,214	45,029	334,241	440,332
(27)	(9)	(7)	(6)	(1)	(6)	(6)	(8)	(70)
2007								
–	3,022	5,815	9,829	19,819	13,327	75,558	110,246	237,616
(23)	(4)	(5)	(4)	(6)	(3)	(12)	(4)	(61)
2008								
–	3,345	19,642	24,306	6,359	12,921	73,454	137,956	277,983
(23)	(6)	(15)	(10)	(2)	(3)	(11)	(9)	(79)
TOTALS								
–	140,050	228,963	277,858	199,906	194,248	715,760	1,449,384	3,206,169
(470)	(208)	(165)	(113)	(63)	(45)	(107)	(64)	(1,235)
[38%]	[17%]	[13%]	[9%]	[5%]	[4%]	[9%]	[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.)

APPENDIX 4

ACCOUNTS FOR THE PERIOD 1ST JANUARY TO 31ST DECEMBER 2008

(AND COMPARATIVE FIGURES FOR 2000 TO 2007)

	2008 £	2007 £	2006 £	2005 £	2004 £	2003 £	2002 £	2001 £	2000 £
Publications	409	–	261	251	143	–	20	85	100
Printing and stationery	–	323	–	–	635	256	310	290	260
Payment to members of the Board	25,562	17,352	19,264	22,624	25,475	21,143	21,378	24,758	16,421
Medical reports	2,321	565	669	1,730	1,785	1,095	2,569	2,235	2,119
Hearing costs	–	–	–	–	157	614	–	995	40
Compensation paid	315,486	182,842	418,763	180,767	230,219	162,952	156,885	298,222	281,322
Administration	–	25,955	–	25,000	23,500	–	–	–	–
	343,778	227,037	438,957	230,372	281,914	186,060	181,162	326,585	300,262

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.

Year	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995
Hours	499	290	392	432	457	209	435	495	372	379	457	355	505	371

- 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.
- 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 and 2008, in view of the pressure upon the Home Affairs budget at the time, this cost was not passed on for those years.
- The years 2006 and 2008 saw a number of awards being made at or near the maximum permitted under the Scheme (£100,000). This led to higher than usual calls on the Scheme and necessitated a significantly increased allocation of funding to meet the awards made in those years.