



Association for Criminal Justice Research and Development (ACJRD)

Submission to the Law Reform Commission on Compensating Victims of Crime

ACJRD seeks to inform the collaborative development of effective
evidence-based policy and practice in criminal justice

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1. Introduction

- 1.1** The Association for Criminal Justice Research and Development (ACJRD) is a nongovernmental, voluntary organisation which seeks to inform the collaborative development of effective evidence-based policy and practice in criminal justice. It does so mainly by providing a forum where experienced personnel can discuss ways of working in an informal setting, by promoting study and research in the field of criminal justice and by promoting the highest standards of practice by professionals associated with criminal justice.
- 1.2** The ACJRD's membership is varied but is largely comprised of organisations which, and individuals who, have experience working within the criminal justice system with a strong interest in criminological matters. These include legal practitioners, academics, Criminal Justice Agencies and NGOs.
- 1.3** The ACJRD's approach and expertise is therefore informed by the 'hands on' expertise of practitioners, academics and agencies who deal with various aspects of the criminal justice system enhanced by the contribution of people with diverse experiences, understandings and practices.
- 1.4** However, the views expressed in this submission are those of ACJRD in its independent capacity and are not those of individual ACJRD members or member organisations or agencies or their employees.

2. Principles of Compensating Victims of Crime

2.1. The realm of victims' rights has broad public appeal, is non-controversial, and has not been subject to any serious criticism¹, attributable perhaps to the randomness of crime, and that no individual is immune from becoming a victim of crime². *Miers* notes that the role of the victim in the criminal justice system has undergone a 'rebirth', or 'rediscovery', in the last 50 years³. Compensation is viewed as a critical first step towards victim recovery, and the State has a moral obligation not only to protect its citizens from crime, but also the adverse effects of crime⁴. *Kunst et al* notes that although most victims appear to adapt well to stress experienced after victimisation, and return shortly to their previous state of functioning, some will still suffer from distress after many months have passed and may indeed experience symptoms of Post-Traumatic Stress Disorder⁵.

2.2. In response to the adverse effect of crime on victims, almost all western liberal democracies make financial provision to compensate victims of crime⁶. In Ireland, the Criminal Injuries Compensation Scheme (hereafter 'the Scheme') was established in 1974, with the intent of reimbursing expenses that victims have incurred, or losses suffered, as a direct result of crime of violence⁷. The Scheme is administered on a non-statutory basis.

2.3. In a study amongst victims applying for State compensation in The Netherlands, approximately 1 of 2 victims applying under the requisite scheme still had PTSD many years after victimisation and claim settlement⁸. Support After Homicide, a non-governmental organisation that provides emotional support and practical information

¹ McGrath, A. (2009). 'In Whose Service? The Use and Abuse of Victims' Rights in Ireland'. *Judicial Studies Institute Journal*, 2009 (1) at 78, para 1.

² *Ibid.*, para 1

³ Miers, D. (2019). 'Victims, Criminal Justice and State Compensation'. *Societies* 9, no 2:29, para 1: Victims and the Criminal Justice System.

⁴ Wemmers, J.A. (2021). 'Report Prepared for the Office of the Federal Ombudsman for Victims of Crime' [online]. Available from: https://www.victimfirst.gc.ca/res/cor/CCV-CCV/index.html#_Toc75175014 (Accessed 5 April 2022).

⁵ Kunst, M., Winkel, F.W., Bogaerts, S. (2010). 'Prevalence and Predictors of Posttraumatic Stress Disorder Amongst Victims of Violence Applying for State Compensation'. *Journal of Interpersonal Violence*, 25 (9), at 1631, para 2

⁶ Vanfraechem, I., Pemberton, A., Ndahinda, F.W. (2014). 'Justice for Victims: Perspectives on Rights, Transition and Reconciliation'. Chapter 6: State Compensation for Victims of Violent Crime, pp 105 para 1.

⁷ Law Reform Commission, (2022). 'Consultation Paper – Compensating Victims of Crime' CP, 67-2022, Available from: <https://www.lawreform.ie/fileupload/consultation%20papers/Compensating%20Victims%20of%20Crime%20LR%20CP%2067-2022%20b.pdf> (accessed 3 April 2022), pp 6, para 1.5.

⁸ Kunst, M., Winkel, F.W., Bogaerts, S. Prevalence and Predictors of Posttraumatic Stress Disorder Amongst Victims of Violence Applying for State Compensation' at p 1646, para 2

to those affected by homicide⁹ (for example, family of the primary victim), recently identified several issues with the Scheme, citing the application process as a source of stress and a sense of being overwhelmed (particularly when they were vulnerable after the crime).

2.3. The Law Reform Commission (LRC) has identified several developments in regards to State compensation for victims of violent crime giving rise to examination of the Scheme, with a view for reform.¹⁰ It is important to review the Scheme not only in the context of Ireland's obligations as a Member State of the EU, but also in the context of the victim's lived experience of the Scheme as it is currently administered.

2.3. The Victims' Charter¹¹ describes the criminal justice system from a crime victim's point of view. It sets out rights and entitlements to the services offered by the various state agencies working with crime victims¹². It outlines that through its Crime Victims Helpline it can give information about compensation¹³, and it links to the Victims of Crime Act 2017¹⁴ which gave effect to the Victims' Directive¹⁵, which established minimum standards on the rights, support and protection of victims of crime and focuses on the needs of victims as individuals.¹⁶

2.4. Recently, the Minister for Justice announced the removal of the pre-existing prevention of awards where the perpetrator is a family member.¹⁷ This is a welcome development from the perspectives of those victimised through domestic homicide and familicide.

2.5. The following sections will address the issues identified by the LRC in the Consultation Paper as being in need of reform, with a view to making recommendations to remedy the issues.

3. Enacting Legislation to Place the Scheme on Statutory Footing

3.1. The LRC has recommended that, in order to give effect to Ireland's international law obligations, the Criminal Injuries Compensation Scheme requires a legislative

⁹ Support After Homicide, 'About Us'. Available from <https://supportafterhomicide.ie> (accessed 5 April 2022)

¹⁰ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 19 [1.38].

¹¹ Government of Ireland, (2020). 'Victims Charter' Available at: <https://www.victimscharter.ie/wp-content/uploads/2020/04/Victims-Charter-22042020.pdf> (accessed April 18 2020)

¹² Ibid., p 2

¹³ Government of Ireland, 'Victims Charter', p 6

¹⁴ Criminal Justice (Victims of Crime) Act 2017

¹⁵ Directive 2012/29/EU

¹⁶ Government of Ireland, 'Victims Charter', p 87

¹⁷ Department of Justice. (20 April 2021). 'Minister McEntee announces reforms to the Criminal Injuries Compensation Scheme' [online]. Available from <https://www.justice.ie/en/JELR/Pages/PR21000092> (accessed 3 April 2022).

footing.¹⁸ Currently, the Scheme operates on a non-statutory, administrative basis. It operates outside the realm of civil litigation. There is no legislative enactment of the Oireachtas guiding the Scheme. The basis for non-statutory footing is dual fold - to adopt an informal, flexible approach to compensating victims of crime and to avoid the formality and delay of the legal process generally.¹⁹

3.2. In reality, the Tribunal has been the subject of recent litigation involving the issue of delay in *Byrne v Criminal Injuries Compensation Tribunal*.²⁰ The High Court found that the thirteen-year delay between the Applicant's application to the Tribunal, and the final award of compensation, was a breach of the Applicant's right to constitutional justice. Counsel for the Applicant commented that delay within the Tribunal appears to be 'endemic'.²¹ The Minister for Justice, Helen McEntee, has also concluded in principle that the Scheme should be operated on a statutory basis.²²

3.3. The LRC has noted that the key advantage of placing the scheme on a statutory basis would strengthen not only the rights of victims themselves, but also the enforceability of these rights, and the augmentation of the Tribunal's processes and procedures.²³ The basis for placing the Scheme on a statutory footing is rooted in the jurisprudence of the Court of Justice of the European Union (hereafter 'CJEU') in *Presidenza del Consiglio dei Ministri v BV*.²⁴ The CJEU interpreted Article 12 (2) of the Compensation Directive²⁵ as giving victims of violent crime the right to obtain fair and appropriate compensation not only in other Member States of the EU, but also within their domestic territory. As noted by the LRC, this decision should be read in light of jurisprudence of the CJEU on Article 288 TFEU, namely *Commission v Ireland*²⁶, where the Court found that the method of implementing the provisions of a Directive should have unquestionable binding force, and be specific, precise and clear to satisfy the principle of legal certainty, so that those so affected can ascertain their rights under the Directive.

3.3. Recommendation: It is recommended that the Scheme is placed on a legislative footing.

¹⁸ *Ibid.*, p 59 [3.18]

¹⁹ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', pp 55 [3.7.]

²⁰ [2017] IEHC 28

²¹ The Irish Times. (Jan 27 2017). 'Iron bar assault: Delay to award a 'breach of duty' over justice' [online]. Available from <https://www.irishtimes.com/news/crime-and-law/courts/high-court/iron-bar-assault-delay-to-award-a-breach-of-duty-over-justice-1.2953866> (accessed 3 April 2022).

²² Department of Justice. (20 April 2021). 'Minister McEntee announces reforms to the Criminal Injuries Compensation Scheme' [online].

²³ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 57 [3.09]

²⁴ Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566.

²⁵ Directive 2004/80/EC, Article 12(2).

²⁶ Case 427/07 *Commission v Ireland* [2009] ECLI:EU:C:2009:457

3.4. In placing the Scheme on a statutory basis, the LRC has identified that there must be a clear set of guiding principles for the Scheme to operate in. It is submitted that any approach to identifying these principles and applying them in operating the Scheme must be victim-centred, and sensitive to the risk of secondary traumatisation, defined as ‘victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim’.²⁷ Guiding principles must also consider the Scheme’s obligations under the Victim’s Charter²⁸, particularly the obligation to work with the victim in a polite and professional way.²⁹

3.5. Guiding principles for the Scheme should take inspiration from the principle of procedural justice. Procedural justice in the criminal context focuses on the way that police and legal authorities interact with the public and how the characteristics of these interactions shape the public’s view of the criminal justice system³⁰, and speaks to the idea of fair processes.³¹ The four pillars of procedural justice are treating individuals with dignity and respect, giving citizens a voice during encounters, being neutral in decision making, and conveying trustworthy motives.³²

3.6. *Hamilton and Black* suggests that procedural justice is more central to confidence levels in the criminal justice system than other instrumental aspects of the justice system, for example the police’s ability to bring offenders to justice.³³ They highlighted that empathy is an important element of a procedurally just approach to policing and cited a U.S. study where perceived police empathy in recent police contact with individuals was a predictor of perceptions of procedural justice³⁴ and significant increase in perceived fairness and confidence that the police were doing a good job.³⁵ *Healy* cited an Australian study that found victims who perceived police procedures as fair tended to report greater levels of satisfaction and legitimacy to believe that the outcome of the case was fair.³⁶ Furthermore, a sense of procedural justice can aid

²⁷ Council of Europe, Committee of Ministers (14 June 2006). Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims [online]. Available from <https://rm.coe.int/16805afa5c> (accessed 3 April 2022).

²⁸ Government of Ireland, ‘Victims Charter’, p 76

²⁹ *Ibid.*, p 79.

³⁰ National Initiative for Building Community Trust & Justice, ‘Procedural Justice’ [online], para 1. Available from <https://trustandjustice.org/resources/intervention/procedural-justice> (accessed April 18 2022).

³¹ Yale Law School, ‘Procedural Justice’, *The Justice Collaboratory* [online]. Available from <https://law.yale.edu/justice-collaboratory/procedural-justice> (accessed April 18 2022).

³² National Initiative for Building Community Trust & Justice, ‘Procedural Justice’, para 1.

³³ Hamilton, C., Black, L. (2019) ‘An Evidence Review of Confidence in Criminal Justice Systems’, *Department of Justice and Equality*. Available from [https://www.justice.ie/en/JELR/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_\(2019\).pdf/files/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_\(2019\).pdf](https://www.justice.ie/en/JELR/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_(2019).pdf/files/An_Evidence_Review_of_Confidence_in_Criminal_Justice_Systems_(2019).pdf) (accessed April 18 2022).

³⁴ *Ibid.*, p 75 para 2

³⁵ Hamilton, C., Black, L., ‘An Evidence Review of Confidence in Criminal Justice Systems’, p 75 para 2

³⁶ Healy, D. (2019), ‘Exploring Victims’ Interactions with the Criminal Justice System’, *Department of Justice and Equality* [online], p 18 para 3. Available from https://www.justice.ie/en/JELR/Pages/Exploring_Victims_Interactions_with_the_Criminal_Justice_System:_A_Literature_Review (accessed April 18 2022)

victim recovery in the aftermath of a crime.³⁷ Victims who reported a sense of procedural justice were less likely to report negative emotions, feelings of social isolation or that their quality of life was diminished by fear of crime.³⁸

3.7. When administering the Scheme, it is necessary that the Tribunal and its staff has recourse to a clear set of guiding principles that are victim-centred, and have at their core a sense of fairness. Difficulties associated with applying for compensation under the Scheme are often associated with a lack of consistent decision-making that has recourse to a set of guidelines influencing the discretion of the Tribunal. A set of cohesive guidelines on a statutory footing for the Tribunal to have recourse will increase public confidence in the administration of the Scheme in a procedurally fair and victim-centred way.

3.8. Recommendation: Guiding principles for the Scheme should be based on the principle of procedural justice and should be sensitive to the risk of secondary victimisation.

4. Determining whether existing bodies or a New Body should Administer the Scheme

4.1. Currently, the Department of Justice is responsible for administering the Scheme, and provides support for the Tribunal.³⁹ The Minister for Justice stated that officials in the Department of Justice will examine the management of the Scheme and whether another State body, for example a body such as the Personal Injuries Assessment Board (hereafter 'PIAB'), or the State Claims Agency (hereafter 'SCA') would be appropriate to take charge of the Scheme.⁴⁰ In assessing the functioning of the Scheme as it stands, the LRC has identified victim dissatisfaction with the functioning of the Scheme under the remit of the Department of Justice. They identified a lack of sensitivity and empathy to the trauma experienced by those applying to the Scheme.⁴¹ In light of Ireland's obligations under the Victims' Directive⁴², particularly the obligation to prevent exposure to secondary victimisation from any service that provides assistance to victims⁴³, the issue of who exactly looks after the administration of the scheme requires analysis and a consultation process informed by the lived experience of victims.

4.2. Recommendation: It is recommended that the Scheme should not continue to be administered under the remit of the Department of Justice.

³⁷ Ibid., para 4

³⁸ Healy, D. (2019), 'Exploring Victims' Interactions with the Criminal Justice System', p 18 para 4

³⁹ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 76 [3.59]

⁴⁰ Ibid., p 76 [3.59]

⁴¹ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime' p 81 [3.76].

⁴² Directive 2012/29/EU

⁴³ Ibid., Recital 9

4.3. PIAB began operations in 2004 as a means of reducing the costs and lengthy delays associated with the litigation of personal injury claims.⁴⁴ Before any personal injury claim can be issued in the Courts, the claim must be submitted to PIAB for assessment of damages of the claim.⁴⁵ PIAB emphasises its greater expediency and economy over the litigation system.⁴⁶ There is no determination of the respondent's liability for the accident and does not consider any contributory negligence by the Claimant.⁴⁷ The Claimant is required to notify PIAB of the claim within two years from the date of the incident or knowledge of the injury, whichever is later.⁴⁸ Within 90 days, the Respondent either accepts or declines the PIAB assessment; where the assessment is accepted, PIAB assesses the claim within nine months but most cases are assessed within seven months.⁴⁹ Should the Claimant decline the award, an 'authorisation' will issue and the Claimant can issue proceedings.⁵⁰

4.4. The main advantages of PIAB is that it can achieve early resolution resulting in saving significant legal costs⁵¹ and the delivery of an award in nine months may relieve the stress that can be involved in litigation of personal injury claims.⁵² Delay has been cited by victims as a source of dissatisfaction in applying to the Scheme⁵³ and in *Byrne*⁵⁴ the lengthy delay between the Plaintiff's initial application and the award of damages was held to be a breach of the constitutional right to fair procedures. Should the Scheme operate under the remit of PIAB, the timeframe with which PIAB assesses and makes awards could potentially be incorporated as part of a new framework for the administration of compensation under the Scheme on a statutory basis.

4.5. The time limit to apply to PIAB for an assessment of damages is also longer than the time limit to apply under the Scheme. Currently, applications under the Scheme must be made within three months of the date of the offence that caused the injuries⁵⁵,

⁴⁴ Ilan, D. (2009). 'Four Years of the Personal Injuries Board: Assessing Its Impact'. *Compensation Culture Project Working Paper No. 2* [online], p 3 para 1: Introduction, Available from: https://www.ucd.ie/roads/roads_documents/compcultwp%20no2.pdf (accessed April 18 2022).

⁴⁵ O'Mahony, M. (2019) 'The PIAB: the pros and cons of Ireland's resolution to the assessment of damages' [online], para 3, Available from <https://kennedyslaw.com/thought-leadership/article/the-piab-the-pros-and-cons-of-ireland-s-resolution-to-the-assessment-of-damages/> (accessed April 18 2022).

⁴⁶ Ilan, D. 'Four Years of the Personal Injuries Board: Assessing Its Impact', p 7 para VII: Claimed Advantages

⁴⁷ O'Mahony, M. 'The PIAB: the pros and cons of Ireland's resolution to the assessment of damages', para 5

⁴⁸ *Ibid.*, para 6

⁴⁹ O'Mahony, M. 'The PIAB: the pros and cons of Ireland's resolution to the assessment of damages', para 6

⁵⁰ *Ibid.*, para 6

⁵¹ O'Mahony, M. 'The PIAB: the pros and cons of Ireland's resolution to the assessment of damages', para

⁵² Hogan, V. (2006) 'A Cost-Benefit Analysis of the Personal Injuries Assessment Board', p 2 para 5, Available from <https://www.piab.ie/eng/news-publications/Corporate-publications/Cost-Benefit-Analysis-2006.pdf> (accessed April 18 2022).

⁵³ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 81 [3.76]

⁵⁴ [2017] IEHC 28

⁵⁵ Department of Justice, (20 April 2021). 'Scheme of Compensation for Personal Injuries Criminally Inflicted' [online], para 20. Available from

https://www.justice.ie/en/JELR/Scheme_of_Compensation_for_Personal_Injuries_Criminally_Inflicted_effective

whereas an application for assessment by PIAB within two years. Under the Scheme, the Tribunal has discretion to waive this time limit where the circumstances justify exceptional treatment, but only up to two years after the offence occurred.⁵⁶ The LRC notes that the criteria used by the Tribunal in determining whether to waive the time limit are not clearly defined⁵⁷ and publicly available past decisions demonstrate that the Tribunal's approach to waiving the time limit is inconsistent.⁵⁸ The LRC notes that the Tribunal has recognised victim dissatisfaction with the three-month time limit⁵⁹ and has considered that a longer time limit would relieve applicants of the difficulty in making a special case for the time limit to be extended by up to two years.⁶⁰ Although it appears that the Tribunal allows for exceptional treatment where the victim suffers from grief or trauma following the crime, the burden is on the Applicant to provide detailed reasons to explain why the application is late.⁶¹

4.6. *Healy* identified that supportive, and victim-centred responses from the criminal justice system are important at all stages of the criminal justice process⁶², and recommends that criminal justice professionals incorporate the principles of procedural justice into practice.⁶³ As previously outlined, one of the pillars of procedural justice is that all individuals are treated with dignity and respect.⁶⁴ Victims applying under the Scheme have been placed in a difficult position that can involve a range of physical or psychological injury; asking the victim to justify why they require exceptional treatment in applying to the Scheme seems to lack respect for the dignity of the victim. The Tribunal should be sensitive to the risk of secondary victimisation through their processes, and it seems that proving the effect of their injury on making an application to the Scheme does not align with the principle of treating victims with dignity and respect.

4.7. Recommendation: It is recommended that the current three-month time limit is extended to two years for all Applicants under the Scheme, therefore eliminating the requirement for Applicants to justify why they require exceptional treatment.

4.8. The main difficulty of administering the Scheme under PIAB or the SCA is that under the Terms of the Criminal Injuries Compensation Scheme as it stands, applicants are entitled to appeal the first-instance decision of the Tribunal. This

[from 20 April 2021.pdf/Files/Scheme of Compensation for Personal Injuries Criminally Inflicted effective from 20 April 2021.pdf](#) (accessed 4 April 2022)

⁵⁶ *Ibid.*, para 20

⁵⁷ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 180 [6.22]

⁵⁸ *Ibid.*, p 181 [6.24]

⁵⁹ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 182 [6.28]

⁶⁰ *Ibid.*

⁶¹ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p180 [6.22]

⁶² Healy, D. (2019), 'Exploring Victims' Interactions with the Criminal Justice System', p 95 [5.3].

⁶³ *Ibid.*

⁶⁴ Yale Law School, 'Procedural Justice', *The Justice Collaboratory* [online]. Available from <https://law.yale.edu/justice-collaboratory/procedural-justice> (accessed April 18 2022).

consists of an oral hearing, whereby three members of the Tribunal make a fresh decision on the application.⁶⁵ The applicant will present their case and call, examine and cross-examine witnesses. The Tribunal is permitted to do same. Neither PIAB nor the SCA serves an adjudicatory function in this regard, therefore in circumstances where they were designated to administer the Scheme, the victims' access and representation process would be less than what is currently available. The LRC has also identified that although PIAB and the SCA may have the logistical capacity to administer a victim compensation scheme, neither are specifically designed to deal with victims of crime or to have face-to-face engagement with the public.⁶⁶ Such gaps may be alleviated through the provision of training to those engaged within PIAB in administering the Scheme. The LRC has highlighted the need for appropriate training for the Scheme's staff to develop sensitivity and specialist experience in dealing with victims of crime.⁶⁷ This should be extended to staff in PIAB, should the Scheme be placed under its remit.

4.9. There is also the possibility of establishing a new, specialist body, staffed with full-time employees. This body would operate as a 'one-stop shop' for victims, in accordance with Recital 62 of the Victims' Directive. The Tribunal is currently staffed by legal professionals that work on a part-time basis within the Tribunal. They are also active members of the solicitor and barrister professions outside of their work within the Tribunal. A new, focused body operating on a full-time basis to administer the Scheme and act in an adjudicatory capacity may allow applications to progress without unnecessary delay through the process. This would operate as a centralised body for victims, with care taken to avoid secondary victimisation of applicants. A 'hub' for victims may also assist the general experience of victims within the criminal justice system. Instead of recourse to various bodies, a centralised hub may simplify victim navigation through the system.

4.10. The appointment of a 'victim advocate' to assist victims in applying to the Scheme should be an integral aspect of the staffing the specialised body. A victim advocate is an individual trained to support victims of crime, offering emotional support, victims' rights information, assisting in finding resources or filling out crime victim related forms.⁶⁸ They work with other agencies within the criminal justice system to get help or information for victims.⁶⁹ *Healy* noted that in England and Wales, advocates were considered to play a vital role in keeping victims informed about their case and reassuring them about the criminal justice process.⁷⁰ The provision of a victim advocate that is specially trained and tasked with liaising between the Applicant and

⁶⁵ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 10 [1.18]

⁶⁶ *Ibid.*, p 83 [3.83].

⁶⁷ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 63 [3.27]

⁶⁸ Victim Support Services, 'What is a Victim Advocate' [online]. Available from <https://victimssupportservices.org/help-for-victims/what-is-a-victim-advocate/> (accessed April 18 2020).

⁶⁹ *Ibid.*

⁷⁰ Healy, D. (2019), 'Exploring Victims' Interactions with the Criminal Justice System', p 22 para 1

the Tribunal would assist in supporting victims through the process, eliminate the need for legal professionals to become involved with the application process in assisting the Applicant, and reduce the risk of secondary victimisation.

4.11. In applying to the Scheme, the applicant must submit details of the Gardaí report of the incident, including a copy of their statement to the Gardaí. The applicant must also provide details relating to civil or criminal proceedings that are ongoing, anticipated, or concluded, relating to the incident and compensation already received for the injuries. It is also necessary that the applicant must also authorise the Tribunal to seek these same documents.⁷¹ The proposed body should operate to act as a liaison between the Gardaí, the Director of Public Prosecutions' Office (hereafter 'the DPP') and the victim. This would follow Ireland's obligations under the Victims' Directive, as an element of prevention of secondary victimisation is to co-ordinate services for victims in a way to reduce repeated interactions with a variety of agencies. A team of staff, working full-time solely within the agency and with specialist training sensitive to the needs of victims, should be tasked with liaising between the Tribunal, Gardaí, DPP and the victim to compile the requisite documents for the application. In addition to this, the provision of an online service to facilitate the upload of any additional documentation, and the updating of the victim on the status of their application, should be introduced. This would be in line with the recommendation under the *Milquet Report*.⁷² Recommendation 28 of the Report states that, as a general recommendation, Member States should endeavour to simplify their national compensation schemes, for example, by facilitating online systems of claiming compensation and creating an online chat and or telephone helpline for victims. The EU Victims' Rights Strategy identified that Member States should take a comprehensive and holistic approach to victims' rights and involve all actors likely to come into contact with victims.⁷³ It is submitted that a central hub would align Ireland's policy on victims in line with the aims of the Strategy.

4.12. Recommendation: It is recommended that either a specialist body with dedicated staff be introduced through the enactment of legislation placing the Scheme on a statutory footing, or alternatively that the Scheme could be placed under the remit of PIAB. Both of these options should incorporate a trauma-responsive, and sensitive approach to the needs and support of victims that involves specialist training for staff administering the Scheme.

⁷¹ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime' p 178 [6.18]

⁷² J. Milquet, (2019). 'Strengthening Victims' Rights: From Compensation to Reparation' for a new EU Victims' rights strategy 2020-2025' [online], p 54. Available from https://ec.europa.eu/info/sites/default/files/strengthening_victims_rights_-_from_compensation_to_reparation_rev.pdf (accessed 4 April 2022).

⁷³ European Commission, (2020). 'EU Victims' Rights Strategy' [online], para 5: Strengthening Cooperation And Coordination Among All Relevant Actors. Available from https://ec.europa.eu/info/sites/default/files/research_and_innovation/knowledge_publications_tools_and_data/documents/0_victimscrimers_factsheet_v4_web.pdf (accessed 4 April 2022)

5. Awarding Damages for Pain and Suffering to All Applicants

5.1. *Miers* notes that, taken in the broadest sense, the implication of compensating victims of crime is to restore the victim to, as far as is possible, the position that they were in before the commission of the offence.⁷⁴ The CJEU has supported a similar view in *BV*, finding that compensation under the Directive aims not only to ensure complete reparation of all material and non-material losses, but also makes a contribution by the Member State towards reparation of the harm the victim has suffered as a result of the criminal behaviour.⁷⁵ As an EU Member State, Ireland is required by the Compensation Directive to create a victim compensation scheme in national law that will provide fair and appropriate compensation to victims of violent crime. Ireland is also bound by Article 16 of the Victims' Directive⁷⁶, requiring the facilitation of victims to obtain a decision on compensation by the offender during or ancillary to criminal proceedings.

5.2. The LRC considers whether provision may be made within the Scheme for the award of damages for pain and suffering in all claims. Currently, damage for pain and suffering are solely awarded in claims limited to fatal injury. Previously, general damages were recoverable under the Scheme generally, but in 1986 such compensation was removed from the Scheme entirely. Damages for pain and suffering are distinct from an award of compensation to reimburse costs from the mental health effects of the crime⁷⁷ (for example, reimbursement of costs for provision of counselling).

5.3. The issue of general damages has been subject to litigation by various Applicants. In *AD v Ireland*⁷⁸, the Court rejected the Applicant's argument that her right to bodily integrity had been breached, in light of the refusal by the State to compensate her pain and suffering after she had been subject to a sexual offence. The Court left the question of compensation to the Government and the Oireachtas to answer in the context of public policy considerations. In *Kelly and Doyle v Criminal Injuries Tribunal*⁷⁹, the Court of Appeal adopted the same approach on the question, following argument by the Applicants that compensation under Article 12 (2) of the Directive, specifically the requirement of 'fair and appropriate compensation', included general damages for pain and suffering. The Court found that it was not clear whether this requirement included an award of damages for pain and suffering, and it reserved a reference

⁷⁴ Miers, D. (2014). 'Offender and state compensation for victims of crime: Two decades of development and change'. *International Review of Victimology* 2014 [online], 20 (1), pp 147, para 3. Available from: <https://journals.sagepub.com/doi/abs/10.1177/0269758013508683> (accessed 3 April 2022).

⁷⁵ Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566.

⁷⁶ Directive 2012/29/EU, Article 16.

⁷⁷ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 115 [4.45]

⁷⁸ [1992] 1 IR 369.

⁷⁹ [2020] IECA 342.

under Article 267 TFEU. On the other hand, Ireland is amongst a handful of countries within the EU that does not compensate for pain and suffering.⁸⁰

5.3. Within the context of the introduction of the Scheme on a statutory basis, it is necessary to examine the decisions of *AD*⁸¹ and *Kelly and Doyle*⁸² as in these cases, the judiciary left policy decisions on introducing the award of general damages to the Government and the Oireachtas.

5.4. Recommendation: It is recommended that the award of general damages be extended to all claims but subject to various limitations, for example, a system of capping. Limitations could be operated through a tariff system, like that utilised in the Northern Ireland, whereby fixed amounts of compensation are attached to injuries listed within the terms of the scheme.⁸³ It is difficult to assess whether a tariff system as such would be appropriate in the context of general damages, for example, whether the same fixed amount attached to general damages would be sufficient in each individual case.

6. Victim Eligibility and Methods of Administering Compensation Under the Scheme

6.1. Under the Terms of the Scheme, no compensation is payable or compensation may be reduced where the Tribunal is satisfied that the conduct of the victim or their character or way of life makes it inappropriate that they should be granted the full award or an award at all.⁸⁴ In *Kelly and Doyle*⁸⁵, the Court refused the Appellant's argument that the Compensation Directive⁸⁶ precludes matters relating to a victim's conduct, character or way of life from being relevant in a claim for compensation⁸⁷; the refusal of an award to a person coming under these matters would not constitute a form of discrimination. The real issue is when it is appropriate to refuse or reduce an award based on the conduct, character or way of life of the Applicant.⁸⁸ The Court stated that the Tribunal should strive for consistency in applying this provision and noted the lack of access to previous decisions of the Tribunal and absence of any other source of guidelines about the issue. The LRC has also noted that this limitation has been applied inconsistently⁸⁹; one applicant was refused compensation due to their prior conviction for assaulting a police officer thirteen years earlier, yet another

⁸⁰ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 117 [4.51]

⁸¹ [1992] 1 IR 369.

⁸² [2020] IECA 342.

⁸³ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 133 [4.89]

⁸⁴ Department of Justice, (20 April 2021). 'Scheme of Compensation for Personal Injuries Criminally Inflicted', para 13

⁸⁵ [2020] IECA 342.

⁸⁶ Directive 2004/80/EC.

⁸⁷ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 156 [5.58]

⁸⁸ *Ibid.*

⁸⁹ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 158 [5.61]

applicant's previous conviction was held not to affect their eligibility under the Scheme.⁹⁰

6.2. In comparison to other EU Member States, Ireland appears to have a restrictive approach in providing for this limitation under the Terms of the Scheme. For example, in Romania, their Scheme will only consider the Applicant's criminal record if they have been convicted of certain offences, such as murder or organised crime⁹¹, whereas Sweden ensures that the criminal record of the Applicant is not considered.⁹² The Criminal Injuries Compensation Authority (hereafter, the CICA) of England, Scotland and Wales make provision for restriction on eligibility relating to the conduct of the Applicant before, during or after the crime, if the Applicant has unspent convictions, or where the Applicant's character makes it inappropriate to make an award or an award in full.⁹³ *Miers* notes that the position in Britain is informed by the argument that the problem with victims who have these kinds of personal histories is that they either resemble too closely, or were once themselves offenders, and it would be inappropriate for them to receive compensation from public funds.⁹⁴

6.3. *Miers* also contrasts the position of CICA and the civil Courts in *Revill v Newberry*.⁹⁵ The Applicant had attempted to burgle a shed within a household, but the owner of the house lay in wait inside the shed due to a string of similar incidents. The householder injured the Applicant when he discharged a shotgun through the door of the shed. The Court of Appeal awarded damages to the Applicant but agreed with the Trial Judge's reduction for the burglar's contributory negligence.⁹⁶ On the other hand, CICA's appeal body found it inappropriate that someone who was injured while engaging in burglary should receive an award from public funds and rejected the claim.⁹⁷

6.4 In the context of the High Court's decision in *Kelly and Doyle*⁹⁸, it seems that the inclusion of this eligibility limitation, although restrictive compared to other EU Member States, is acceptable but should be applied in a consistent and transparent manner. Compensation is not about moral judgements and should not be restricted to ideal victims. As noted by the LRC, perceptions and stereotypes can directly and indirectly influence who will be considered deserving of compensation and therefore eligible for awards of State-funded compensation.⁹⁹ This limitation in effect can be interpreted by the Tribunal as reason to reduce or refuse an award of compensation, even if

⁹⁰ *Ibid.*

⁹¹ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 161 [5.66]

⁹² *Ibid.*

⁹³ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 160 [5.63]

⁹⁴ *Miers*, D. (2019). 'Victims, Criminal Justice and State Compensation', p 8

⁹⁵ [1996] QB 567 (CA)

⁹⁶ *Miers*, D. (2019). 'Victims, Criminal Justice and State Compensation', p 9

⁹⁷ *Ibid.*

⁹⁸ [2020] IECA 342.

⁹⁹ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 165 [5.73]

unrelated to the criminal act that inflicted their injuries and regardless of the extent of the injuries inflicted.¹⁰⁰ The Court in *Kelly and Doyle*¹⁰¹ recognised that issues surrounding proportionality, non-discrimination and fair and consistent treatment of Applicants may arise in applying this limitation.¹⁰² Previous decisions of the Tribunal applying this limitation on eligibility, alongside a written set of guidelines that the Tribunal uses for same, should be published. These guidelines should be applied consistently, and not in an arbitrary way. It may also be helpful to adopt a measure like in Romania, whereby only certain serious convictions are considered in administering compensation.

6.5. Recommendation: The Tribunal should publish an established set of guidelines that influence their discretion in refusing or restricting compensation based on the Applicant's conduct, character or way of life, and past decisions on this limitation.

6.6. Currently, awards made under the Scheme are paid in one lump sum. The Tribunal retains the discretion to make interim payments where a final award must be postponed until a final medical assessment of the victim's injuries is made; however these interim awards are made infrequently.¹⁰³ It is recommended that Periodic Payment Orders (hereafter 'PPOs'), that are a product of civil litigation, be utilised in this context. Under the provisions of Part IV B of the Civil Liability Act 1961¹⁰⁴, PPOs are to be utilised where the nature of the injury is ongoing and may require indefinite future care, and as such cannot be properly compensated in one lump sum. As noted by the LRC, all future healthcare and rehabilitation costs of the victim may not truly be foreseeable at the time of award of compensation.¹⁰⁵ The implementation of PPOs may also assist in reducing delay within the Scheme. As already mentioned, the Scheme has limited resources. The introduction of PPOs may assist in alleviating the challenge of delay associated with the finite nature of the annual budget for the Scheme. Instead of a single lump sum significantly impacting the finite budget, a smaller sum that is both predictable and clear, may be deducted.

6.7. Recommendation: The introduction of PPOs is recommended in order to reduce delay both for applicants on the outskirts of PPOs subject to the finite nature of the budget, and for applicants whose medical expenses may not be ascertainable in one single lump-sum.

6.8. As noted by the LRC, there are currently no caps on awards or a maximum amount payable to an Applicant under the scheme.¹⁰⁶ The exception to this is where

¹⁰⁰ Ibid., p 166 [5.76]

¹⁰¹ [2020] IECA 342.

¹⁰² Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 158 [5.59]

¹⁰³ Ibid., p 120 [4.56].

¹⁰⁴ As amended by the Civil Liability (Amendment) Act 2017, Part II.

¹⁰⁵ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 120 [4.59]

¹⁰⁶ Ibid., p 126 [4.73]. The minimum threshold as it stands is €500.

general damages are awarded for fatal injuries, whereby a €35,000 cap applies. The CJEU in *BV*¹⁰⁷ stated that capped schemes are permissible under the Compensation scheme, but should first, be capable of variation in accordance with the specifics of each individual case and second, be sufficiently clear and precise. As highlighted by the LRC, capping within a victim's compensation scheme is common¹⁰⁸, and depends on the economic resources of the State. It is submitted that the adoption of compensation capping within the Scheme could potentially ensure consistency within the Scheme and could work to alleviate the burden of the cash-limited grant scheme. The nature of this scheme is such that once the allocation has been used up, an applicant who is now outside of this must wait until the next allocation to receive their compensation. There will be certainty in the amount of money that will be allocated per applicant, and it therefore follows certainty in the amount of compensation that is definitively going to be awarded to any applicant under the Scheme.

6.9. Any system of capping within the Scheme should be maintained with a level of flexibility, as was identified in *BV*, in accordance with Ireland's obligations under the Compensation Directive. Whereas, as previously outlined, there is predictability in the maximum amount of compensation to be awarded where a capping scheme operates, but there is unpredictability in how many applications are made to the Scheme per year and the injuries that they are seeking compensation for. It is reasonable to say that those seeking compensation for more serious injuries, for example sexual crimes and serious assaults or fatalities should be prioritised in order to accommodate for the higher costs of expenses that these Applicants may face. In circumstances where the Tribunal must utilise their discretion in varying the cap on awards made in special circumstances, this may reduce the benefit of consistency and predictability, where the use of such discretion is frequent. In this respect, it would be useful in determining the statutory footing for the Scheme to assess circumstances where the cap would be varied.

6.10. Recommendation: It is recommended that a system of capping be introduced in line with placing the Scheme on statutory footing, but the Tribunal should maintain the discretion to vary a cap in accordance with an enumerated list of extenuating circumstances, as prescribed by the Oireachtas.

6.11. In tandem with the introduction of a system of capping, the introduction of a tariff compensation system which uses fixed amounts of compensation for an enumerated list of injuries may go towards increasing consistency, and accessibility for applicants of the Scheme. In addition to finding that a system of capping is permissible under the Compensation Directive, the Court in *BV* afforded the same compatibility to a system of tariffs. It is submitted that the LRC's recommendation to introduce a 'partial tariff' to

¹⁰⁷ Case C-129/19 *Presidenza del Consiglio dei Ministri v BV* EU:C:2020:566.

¹⁰⁸ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 127 [4.75-4.77].

assist in controlling the costs of the Scheme¹⁰⁹ is an efficient, logical method of ensuring consistency and transparency in how compensation under the Scheme is awarded. A partial tariff, rather than a Scheme that is solely administered through tariff, would afford more flexibility to the Tribunal in awarding compensation. The LRC points out that a tariff system with a set monetary amount of compensation may have the unintended consequence of trivialising or minimising the extent of the victim's injury and suffering by quantifying it through a fixed amount.¹¹⁰ A partial tariff would be applicable only in the context of specific sets of damages, for example general damages for both fatal and non-fatal injuries, with the Tribunal continuing to assess special damages individually.¹¹¹ It seems sensible to adopt this approach, offering the flexibility to both assess damages in a consistent and enumerated way, while also affording the Tribunal discretion to ascertain special damages in accordance with the individual circumstances of each applicant's case. A tariff system may also operate to reduce delay within the Scheme, providing a consistent amount of compensation that may be paid per injury. Working in tandem with capping, this may alleviate further the burden imposed by the cash-limited grant scheme. It is again difficult to assess however how many applicants will be applying per year, and what exactly their injuries may be.

6.12 Recommendation: It is recommended that the introduction of a system of tariffs, and a maximum cap on the award of compensation per applicant will alleviate the impact of the cash-limited grant scheme and will provide a transparent and consistent scheme of compensation.

6.13. Recommendation: It is also recommended that the Tribunal is given discretion in varying the application of the tariff system in examining each individual case, but that this does not go so far as to outweigh the benefits of consistency.

6.14. Recommendation: The Oireachtas and the Government should enumerate a non-exhaustive list of circumstances where flexibility should be exercised.

6.15. In assessing the resources that the Tribunal has to award damages, it is worth considering where exactly the funds awarded should come from. The LRC has proposed that additional funding for the Scheme could potentially be funded from court fines, or a general system of compensation directly from the offender, similar to S. 6 Orders under the Criminal Justice Act 1993.¹¹²

6.16. The Criminal Justice (Community Sanctions) Bill 2014, if enacted, would replace the Court Poor Box system with a statutory Reparation Fund, the aim of which would

¹⁰⁹ Ibid., p 134 [4.93]

¹¹⁰ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 134 [4.92]

¹¹¹ Ibid., p 134 [4.93]

¹¹² Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 78 [3.67].

be to fund services for the support of victims of crime and specifically the criminal injuries compensation scheme.¹¹³ It is submitted that this would be a useful source of additional funding to the scheme, considering the finite allocation of budget through the cash-limited grant scheme. Using funds from the Reparation Fund should solely operate as separate, and additional funding to the Scheme, rather than the sole source of funding to the Scheme. Utilising funds from the Reparation Fund under the guidance of a statutory scheme in this manner is also symbolic of reparation from offenders, immediately to victims.

6.17. Recommendation: It is recommended that funds from the Court Poor Box, which may be reconfigured as a statutory Reparation Fund, are used as a source of additional funding for the Scheme, with the aim of reparation by offenders towards victims.

7. Legal Aspects of Proceedings under the Scheme

7.1. Although the Scheme was set up on a non-statutory basis to act as an informal, flexible State body to compensate victims, it is submitted that the Tribunal's proceedings are legalistic, and not at all informal. For example, the appeals process as discussed involves an oral hearing, where the applicant is permitted to call, examine and cross-examine witnesses. The Tribunal is permitted to do same. The applicant is entitled to be accompanied by a legal advisor, but the Tribunal will not award legal costs.¹¹⁴ The applicant must establish their case¹¹⁵, and the civil standard of proof applied by the Tribunal in determining the claim is on the balance of probabilities.¹¹⁶ Recently in *Kelly and Doyle*¹¹⁷, the Court of Appeal considered whether there is a procedural right to have legal aid to make a compensation claim or to have an award of legal costs made at the end of the process. The Court found that the absence of legal aid or reimbursement of costs was not in breach of the principle of proportionality under *Heaney v Ireland*¹¹⁸, having regards to the financial viability of the Scheme.

7.2. It is submitted that the LRC is correct in stating that the Tribunal must operate on either an informal, non-legalistic basis or a quasi-judicial body.¹¹⁹ The lack of clarity on whether the scheme is based on formal legal processes, or an accessible and informal system, is a barrier to application for victims. Should a victim choose to initiate the internal appeals procedure, they may choose to seek legal assistance. This seems

¹¹³ Ibid., p 78 [3.67].

¹¹⁴ Department of Justice, (20 April 2021). 'Scheme of Compensation for Personal Injuries Criminally Inflicted' [online], para 25.

¹¹⁵ Ibid., para 26

¹¹⁶ Department of Justice, (20 April 2021). 'Scheme of Compensation for Personal Injuries Criminally Inflicted', para 30

¹¹⁷ [2020] IECA 342.

¹¹⁸ [1994] 3 IR 593.

¹¹⁹ Law Reform Commission, 'Consultation Paper – Compensating Victims of Crime', p 186 [6.39].

reasonable considering that they have a choice to call, examine and cross-examine witnesses.

7.3. The LRC has stated that the blanket exclusion of legal aid and costs does not consider the individual circumstances of each applicant and may also breach Article 47 of the EU Charter of Fundamental Rights (the right to an effective remedy and to a fair trial) and Article 6 of the European Convention of Human Rights (the right to a fair trial). Also, Recital 39 of the Victims' Directive also provides expressly for the provision of legal advice and advocacy for victims of crime.

7.4. On the other hand, the question of whether simplifying the process could reduce the need for legal professionals at all is worth examination. Simplifying the Scheme through, for example, the digitisation of the application process, a co-ordinated approach to sharing of documentation within agencies of the Criminal Justice System, and the introduction of victim advocates may increase victim confidence in the ability to engage in the application process without the assistance of a legal professional. *Healy* identified a co-ordinated, holistic and multi-disciplinary approach as an important process at the reporting, investigation and prosecution stages of the criminal justice process¹²⁰, using the co-ordinated legal and medical Sexual Assault Response Team model as an example of enhancing victims' help-seeking experiences, case outcomes and criminal justice response to sexual violence.¹²¹ It is difficult however to reconcile the simplification of the process with the quasi-legalistic nature of the Appeals process under the Act.

7.5. To prevent the risk of secondary victimisation, victims should not be placed under the unnecessary individual burden of establishing their case without recourse to adequate access to legal professionals. It is submitted that adequate access in this regard involves compensating victims for legal costs. This would be preferable to the final award of legal costs on the final decision of the Tribunal. As the Scheme currently stands, generally compensation is awarded in one lump-sum on the final decision of the Tribunal. The implication of this is that victims bear the costs of litigating to get compensation for their injuries in the interim and are reimbursed at the conclusion of their application. Adding the cost of hiring legal assistance until the conclusion of the case would impose an even heavier burden on those applicants seeking an oral hearing on appeal.

7.6. Recommendation: It is recommended that legal aid should be available to assist victims as their application moves through the Scheme, should they choose to avail of legal assistance. Such availability is preferable to the award of legal costs on the final

¹²⁰ Healy, D. (2019), 'Exploring Victims' Interactions with the Criminal Justice System', p 94

¹²¹ Ibid.

decision of the Tribunal and it would relieve the already heavy financial burden on victims in the interim, before the final award of compensation.

8. Recommendations

8.1. It is recommended that the Scheme is placed on a legislative footing.

8.2. Guiding principles for the Scheme should be based on the principle of procedural justice and should be sensitive to the risk of secondary victimisation.

8.3. It is recommended that administration of the Scheme should not remain under the remit of the Department of Justice.

8.2. It is recommended that either a specialist body be introduced to administer the Scheme or alternatively the Scheme should be placed under the remit of PIAB.

8.3. It is recommended that the current three-month time limit is extended to two years for all Applicants.

8.3. It is recommended that the award of general damages be extended to all claims but subject to a system of capping or through the introduction of a tariff system.

8.4. It is recommended that the Tribunal publish an established set of guidelines that influence their discretion in refusing or restricting compensation based on the Applicant's conduct, character or way of life, and past decisions on this limitation.

8.4. It is recommended that provision be made for the introduction of Periodic Payment Orders in the Scheme.

8.5. It is recommended that a system of capping be introduced while retaining discretion for the Tribunal to vary a cap in extenuating circumstances.

8.6. It is recommended that a system of tariffs is introduced.

8.7. It also recommended that the Tribunal is given discretion in varying the application of the tariff system in examining each individual case.

8.8. The Oireachtas and the Government should enumerate a non-exhaustive list of circumstances where flexibility should be exercised.

8.9. It is recommended that funds from the Court Poor Box be used as a source of additional funding for the Scheme.

8.10. It is recommended that legal aid is made available to those applying for compensation under the Scheme who choose to seek legal assistance.

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