

## CHAPTER 10 - COMPENSATION BY OFFENDERS

### 10.01 1995 ACT

Under the provisions of Sections 249 to 253 of the Criminal Procedure (Scotland) Act 1995 any criminal court in Scotland has power in appropriate cases to order an offender to pay some compensation to the victim of his crime for any injury, loss or damage which the victim has suffered as a result of the crime, without the need for a separate civil action. The procedures governing the making of compensation orders are contained in Rule 20.13 of the Act of Adjournal (Criminal Procedure Rules) 1996.

### LIAISON WITH CRIMINAL INJURIES COMPENSATION AUTHORITY

Procurators Fiscal should refer to para 19.31 for guidance regarding liaison with the CICA.

### 10.02 CIVIL REMEDIES

Under existing law a victim has the right to sue the offender for damages in a civil court or (if he sustained physical injuries) to seek an award from the Criminal Injuries Compensation Authority (CICA). The ordering of compensation by the criminal courts does not affect these rights, although any award made to the victim by the civil courts or the CICA will be reduced by the amount paid under the compensation order. However, since the victim may be unwilling or unable to contemplate the expense and difficulty of a civil action, and since the CICA only make awards where injury is sustained for which compensation of not less than a fixed sum (currently £1,000) would be awarded, the criminal courts may frequently represent the only practicable means by which the victim can secure some reparation.

### 10.03 CRIMINAL INJURIES COMPENSATION ACT 1995

The attention of Procurators Fiscal is drawn to the Criminal Injuries Compensation Act 1995 which received Royal Assent on 8 November 1995. The Act created new rules to determine compensation payable under a scheme established by the Secretary of State. Previously, compensatory payments for criminal injuries were determined on common law principles, and this Act now repeals sections 108 to 117 of the Criminal Justice Act 1988 which provided for a scheme based on those principles. Copies of the Criminal Injuries Compensation Scheme are available in office libraries.

There will now be a payment of a standard amount of compensation, made with reference to the nature of the injury, and calculated in accordance with a tariff prepared by the Secretary of State.

### 10.04 MAKING OF COMPENSATION ORDER

In terms of Section 249(4) of the Act, a compensation order cannot be made in respect of any loss suffered in consequence of the death of any person by any criminal act, or in respect of any injury, loss or damage caused by a road traffic accident (except in the circumstances specified in section 249(3)).

Since the Act does not provide for a victim to make application to a court for a compensation order, the victim is dependent upon the matter being dealt with by the court in the normal course of the criminal process: the Procurator Fiscal may raise the question with the court in appropriate cases. In all cases the Procurator Fiscal should provide the court

with available information about the extent and value of any injury, loss or damage sustained. Care should be taken in providing such information, since a compensation order may be quashed or reduced where it is based on an error of fact in relation to the nature of the item in respect of which it is imposed (**McMahon v Hamilton 1990 GWD 37-2124; Hughes v Brown 1990 GWD 13-670; Wilson v Brown 1992 GWD 6-288**).

#### 10.05 ASCERTAINMENT OF AMOUNT PAYABLE

The court must have reliable information which is sufficiently specific to enable an assessment to be made of the amount of compensation to be paid (**Currie v Webster, 1992 GWD 13-722**). Speculation is an insufficient basis for the making of a compensation order. However, uncorroborated evidence of the amount of loss may suffice. Credible evidence of the loss is sufficient and this need not derive from more than one source (**Goodhall v Carmichael 1984 SCCR 247 - see also "Corroboration and Compensation Orders", 1984 SLT (News) 125**).

#### 10.06 WHEN COMPENSATION MAY BE APPROPRIATE

The loss or damage in respect of which compensation is paid need not be directly attributable to the offence. In **Goodhall v Carmichael supra**, the offence was reckless discharge of a firearm, but the compensation award was in respect of a show pigeon which was shot by the accused. In **Carmichael v Siddique 1985 SCCR 145** the accused was convicted of the statutory offence of selling a firework to a child under 16. The child was injured when his friend set off one of the fireworks, and the shopkeeper was ordered to pay compensation to the injured child. Inconvenience due to the loss may also be a basis for compensation (**Stewart v HMA**

**1982 SCCR 203; Collins v Lowe 1990 SCCR 605**) but alarm suffered as a result of a breach of the peace does not justify a compensation order (**Smillie v Wilson 1990 SCCR 133**) where there is no personal injury, loss or damage. It is not appropriate where the victim has been the subject of unfounded allegations of disreputable and criminal conduct in the course of cross examination as a witness in the performance of a public duty (**Robertson v Lees 1992 SCCR 545**).

**10.07** Where a victim had provoked the accused to the extent that the Criminal Injuries Compensation Authority would not have granted him an award of compensation for the injuries resulting from the subsequent assault, the court will not do so either (**Brown v Normand 1988 SCCR 229; see also Crawford v McGlennan 1990 GWD 21-1170**). A lesser degree of provocation, amounting only to a challenge to a fight, will not be a bar to compensation (**McPhail v Hamilton 1991 GWD 24-1375**).

#### 10.08 OBTAINING DETAILS OF INJURY, LOSS OR DAMAGE

When reporting a case to the Procurator Fiscal the police are required to include details of any injury, loss or damage which the victim has sustained.

#### 10.09

In addition the Procurator Fiscal may send to the victim, either in the absence of information from the police, or with a view to clarifying the amount of loss sustained, a copy of a pamphlet entitled "Compensation by Offenders to the Victims of Crime" together with a compensation form for completion by the victim and return to the Procurator Fiscal within 7 days.

#### 10.10

In order to allow the maximum flexibility each Procurator Fiscal will be responsible for drafting and producing his own compensation forms. Supplies of the pamphlet, copies of which should be displayed in a prominent position in the public areas of offices, may be obtained from The Scottish Office Home Department, St Andrew's House, Edinburgh.

### 10.11

Where property which has been damaged is capable of repair or replacement, victims to whom compensation forms are sent should be encouraged to seek estimates of the costs involved only from the firm which they would wish to carry out the work. In addition, it should be made clear to victims that there is no guarantee that a compensation order will be made and that the Procurator Fiscal will not be responsible for any costs or fees incurred in connection with consideration of questions of compensation. The Procurator Fiscal should keep in mind that compensation may also apply to property which has been recovered in a damaged condition, irrespective of whether such property is to be used as a production in the case.

### 10.12 TAKING PROCEEDINGS

In reaching a decision whether or not to institute proceedings and whether or not to accept a plea of not guilty to a charge, one factor to which the Procurator Fiscal will require to have regard is the question of compensation. If a Procurator Fiscal decides not to take or continue proceedings, the victim will be denied the opportunity of an award by the court of compensation from the person responsible for the injury, loss or damage.

### 10.13 POLICE OFFICERS

The legislation does not differentiate between categories of victim. The compensation provisions also apply to police officers who have sustained injury, loss or damage caused by acts which constitute offences in respect of which proceedings are taken by Procurators Fiscal.

### 10.14 LEGAL DISABILITY

When a court makes a compensation order and the Procurator Fiscal is aware that the person in whose favour the compensation is awarded is under any legal disability, he is under a duty so to inform the court. (Paragraph 20.14(1) of the Act of Adjournal (Criminal Procedure Rules) 1996). "Legal disability" is not defined but should be taken to include (a) any person under the age of 16 years, (b) any person subject to a judicial curatory or factory and (c) any person subject to an order in terms of Parts V or VI of the Mental Health (Scotland) Act 1984.

### 10.15 AMOUNT OF COMPENSATION

The amount of compensation which can be awarded in solemn proceedings is without limit.

In the Sheriff Court or before a Stipendiary Magistrate, the court may award in respect of each offence an amount not exceeding the prescribed sum in terms of section 249(8)(a) of the 1995 Act. In the District Court, awards of up to level 4 on the standard scale may be made in respect of each offence 249(8)(b).

Victims will be informed by the Clerk of Court of any award made in their favour.

### 10.16 REVIEW OF COMPENSATION ORDER

Section 251 provides that, on the application of the offender, the court enforcing a compensation order may, at

any time before the order has been fully complied with, discharge or reduce the amount to be paid in two particular circumstances, as follows:-

- (i) if the injury, loss or damage involved has been held by a civil court to be less than it was taken to be for the purposes of the compensation order;
- (ii) if the property the loss of which is reflected in the order is recovered.

The power contained in Section 251 is simply an enabling power, and the court is free to choose not to interfere with the order. The power to review an order in these limited circumstances is also without prejudice to the general power of the court to reduce or remit any compensation order (under section 213 of the 1995 Act, which is applied to compensation orders by Section 252).

Although the procedure described above does not directly involve the Procurator Fiscal, he will receive intimation thereof from the Clerk of Court (in terms of paragraph 20.16(2) of the Act of Adjournal (Criminal Procedure Rules) 1996) and should assist the court in any way possible, as for example by providing any information sought.

#### **10.17 PAYMENT OF COMPENSATION**

Payment of any amount under a Compensation Order is made to the Clerk of Court who has to account for the amount to the person entitled thereto. The minute in respect of the order should specify the name of the person entitled to the compensation payable (paragraph 20.13 of the Act of Adjournal). In most cases there will be no difficulty in identifying the person entitled to the compensation. Where, however, the victim has already been compensated by an Insurance Company or

the stolen/damaged property was on hire then the insurer or hirer would be the entitled person. The Procurator Fiscal should endeavour to assist the Clerk of Court in correctly identifying the person entitled to the compensation. For the procedure to be followed where the entitled person dies before the order has been fully complied with, see *Tudhope v Furphy; 1982 SCCR 575*.

#### **10.18 COMPENSATION FOR CONTRAVENTION OF SECTION 1 OF THE FIRE SERVICES ACT 1947**

When dealing with cases involving hoax fire calls, Procurators Fiscal should ensure that they are in a position to inform the court of the financial costs to the fire brigade of responding to the false alarm. This would enable the court to consider whether a compensation order should be made.

Her Majesty's Inspector of Fire Services in Scotland has reported on the growing problem of hoax fire calls. The monetary cost of turning out a fire appliance in response to a false alarm is of less importance than the diversion of fire crews to a non-event when a real emergency might occur elsewhere. Nevertheless, the cost is of relevance and is information which should be drawn to the attention of the court which might consider it appropriate to make an order requiring the accused to pay compensation for the loss or damage caused to the fire brigade as a result of the false alarm.

The Scottish Office Home Department has calculated that the average cost to a Scottish fire brigade is in the order of £145. This has been calculated on the basis of salary costs and fuel/running costs for the fire crew and appliance or appliances typically involved. Individual fire brigades will also have made their own calculation as to the average cost of a false alarm. For

example, Lothian and Borders Fire Brigade have calculated that the cost to the Brigade is in the region of £182 for each appliance turned out in response to a false alarm.

When reporting a possible contravention of the Fire Services Act 1947 the Police should include in the report an assessment of the cost to the fire brigade. If this information is not contained in the report, the reporting officer should be asked to obtain the relevant information from the local brigade. In the event of a conviction, the Procurator Fiscal should provide the court with the information and invite the court to consider whether it would be appropriate to make a compensation order.

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