

# Anti-Social Behaviour, Policing and Crime Bill

## Fact Sheet: Compensation for miscarriages of justice (clause 151)

### Background

1. The State is required by law to pay compensation where someone has suffered a miscarriage of justice. The legislation (section 133 of the Criminal Justice Act 1988) is very specific about the circumstances which make someone eligible for compensation: their conviction must have been reversed (defined to include quashing on an “out of time” appeal), or they must have been pardoned; and this must have been on the basis of a new or newly discovered fact (unless the non-disclosure of the fact was their fault).
2. However, the legislation does not define what a miscarriage of justice is. As a result, unsuccessful applicants for compensation frequently take their cases to court, seeking judicial review of the Secretary of State’s decision. The courts have made several important rulings over the years on what the judges consider to be a miscarriage of justice. The first significant decision was in the 2004 House of Lords case of *Mullen* where it was considered that only applicants who were “clearly innocent” should be paid compensation – this was the test which was subsequently applied between 2008 and 2011. The Supreme Court then considered this issue again in the case of *Adams* in May 2011. This judgment ruled that compensation should be paid not only where the new fact showed the person to be “clearly innocent”, but also where the new fact “so undermines the evidence against the defendant that no conviction could possibly be based upon it”.
3. In January 2013, the Divisional Court, in the case of *Ali & others*, reformulated this second category, ruling that compensation would be payable where “the claimant [has] established beyond reasonable doubt, that no reasonable jury (or magistrates), properly directed as to the law, could convict on the evidence now to be considered”. This is a complex test to apply, which may result in someone who was not innocent of the offence nevertheless being eligible for compensation.
4. The fact that the only definition of a miscarriage of justice is to be found in case law, which changes regularly and can appear impenetrable to the lay reader, is clearly unsatisfactory. It makes it difficult for people whose convictions have been quashed to know whether they will be eligible for compensation, and it means that many of the Secretary of State’s decisions are (usually unsuccessfully) challenged through judicial review, involving significant costs for tax payers (approximately £50,000 per case).
5. The Grand Chamber of the European Court of Human Rights recently ruled that the presumption of innocence is engaged when deciding

whether to pay compensation for a miscarriage of justice.<sup>1</sup> However, the proposed new test for determining eligibility for compensation (see below) does not require the applicant to demonstrate his or her innocence. It focuses on the new fact and whether it shows conclusively there was a miscarriage of justice. Accordingly, the European Court's decision does not alter the Government's view that the provisions in clause 151 are compatible with the Convention rights.

6. The amount of compensation which eligible applicants receive is decided by an Independent Assessor – a role currently held in relation to England and Wales by Dame Janet Smith and appointed on an ad hoc basis in relation to Northern Ireland. The Independent Assessor's decision is based on information supplied by the applicant. The Secretary of State has no involvement in deciding the amount of compensation, but it is limited by law to no more than £500,000, where the applicant spent less than 10 years in prison, and no more than £1,000,000, if the applicant spent more than 10 years in prison.

### **New statutory definition of a miscarriage of justice**

7. Clause 151 of the Anti-social Behaviour, Crime and Policing Bill will add a definition of a miscarriage of justice to the existing legislation (section 133 of the Criminal Justice Act 1988). It will ensure that only those people who are shown beyond reasonable doubt (by the new or newly discovered fact) to have been innocent of the crime for which they were convicted will be compensated. This is a clearer and fairer test, which will make decisions on compensation more straightforward, consistent and transparent.
8. There are currently 40 to 50 applications for compensation every year in England and Wales, of which only a few (2 to 4) are successful. In relation to Northern Ireland, a very small number of applications are dealt with by the Secretary of State. We do not expect the new legislation to reduce the number of successful applications significantly, but we would expect it to reduce the number of unmeritorious applications, and the number of judicial reviews of the Secretary of State's decisions.
9. Responsibility for compensation for miscarriages of justice is a devolved issue in Scotland, and in Northern Ireland except where a case involves information relating to national security. The new measure will only apply in England and Wales, and in certain cases in Northern Ireland which involve national security matters (and which are therefore decided by the Secretary of State for Northern Ireland). It will be for the Scottish Government and the Northern Ireland Administration to consider whether they wish to adopt similar provisions in due course.

Ministry of Justice

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<sup>1</sup> *Allen v UK*, decision of 12 July 2013.

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