

## **The Criminal Injuries Compensation (Overseas) Scheme 2003**

### **Guidance on the exclusion of compensation payments when the injury or death is the result of war operations or military activity by warring factions**

1. The terms of the Criminal Injuries Compensation (Overseas) Scheme (the Scheme) provide that compensation is not payable where death or injury is the result of war operations or military activity by warring factions. This exclusion has existed since the Scheme's commencement in 1979. The intention of the scheme is to provide, as nearly as possible, compensation equivalent to that for which members of the Armed Forces would have been eligible (under the terms of the Criminal Injuries Compensation Scheme<sup>1</sup>) if the criminal act had been committed in Great Britain and to exclude such injuries the risk of which members of the Armed Forces undertake as a result of their serving in a combatant or peace-keeping capacity.
2. When considering whether or not to make an award under the Scheme, the Service Awards Panel (the Panel) will first consider whether the death or injury was the result of either war operations or military activity by warring factions. If the Panel determines that a death or injury was the result of either war operations or military activity by warring factions, the claim will be rejected.
3. This guidance sets out the factors that will be taken into account by the Panel in considering whether a death or injury was the result of either war operations or military activity by warring factions. There has been no change to the terms of the Scheme.

#### **a. War Operations**

'War Operations' refers to operations carried on in preparation for, or directly in support of a war (whether it be declared or not) or other international armed conflict. In order for a death or injury to be excluded, it would need to be as a result of activities carried out in preparation for or in support of the conflict, i.e. injuries resulting from a mugging carried out in the theatre of an international armed conflict could still be eligible for an award.

#### **b. Military Activity by Warring Factions**

The Panel will come to a conclusion, having looked at all the relevant circumstances, whether the death or injury was the result of military activity by warring factions. The Panel will in particular take the following factors into account:

- Identity and motive of the perpetrator(s): A death or injury caused by an individual acting for his or her own motives or personal gain is unlikely to be excluded. But actions carried out by an organised military force, or other force with ideological or political aims to be

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<sup>1</sup> The Criminal Injuries Compensation Scheme 2001 made under the powers conferred by sections 1 to 6 and 12 of the Criminal Injuries Compensation Act 1995 (c.53)

achieved by violent means in the course of an armed struggle being waged with other rival forces in the State or with the Government of the State, is likely to be excluded.

- Does the perpetrator(s) form part of a force which has a territorial base, exercising such control over a part of the state's territory as to enable it to carry out sustained and concerted military operations. If so, then it is likely to point towards it being a warring faction.
- The extent to which the incident was part of a regular attack or campaign, a one-off incident may not have the necessary qualities of planning or cohesive action to be excluded.
- Internal disturbances and tensions which lead to riots, looting, sporadic outbreaks of violence or terrorism or other such incidents is unlikely to amount to military activity by warring factions. However an incident can involve the commission of a criminal offence and still be excluded – the two are not mutually exclusive.
- The type of weapon used: Is it one which would ordinarily be used by the armed force of a state.
- What was the role of the UK Armed Forces at the time of the incident.
- What was the role of the service person at the time of the incident: Note that a death or injury could still be the result of military activity by warring factions even where the service person was off-duty.
- Was the service person specifically targeted in his or her role as a member of the Armed Forces
- The extent to which civil law and order had broken down in the region at the time the death or injury occurred.
- Whether the situation in which the death or injury occurs is one which can be classified as taking place as part of an internal armed conflict (many of the factors listed above are relevant to this assessment). In order for the death or injury to be excluded, it would need to be as a result of activities carried out in support of the conflict, i.e. injuries resulting from a mugging carried out in the theatre of an internal armed conflict could still be eligible for an award.

4. No single factor is conclusive, the list is not exhaustive and each claim will be considered on a case-by-case basis taking all the available circumstances into account.