

Chapter 34

Compensation for miscarriages of justice

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Chapter 34

Compensation for miscarriages of justice

Introduction

1. This chapter sets out the circumstances in which the Secretary of State has a duty to pay compensation for miscarriages of justice. It also specifies the person in the MOD to whom applications for such compensation should be submitted and the factors that will be considered in assessing the amount of compensation payable. This chapter also lists the qualifications needed to be an assessor.

Right to compensation

2. It is for the Secretary of State to determine whether a person has a right to compensation for a miscarriage of justice. If he determines that there is such a right, the amount of compensation is to be determined by an assessor to be appointed by the Secretary of State. Subject to certain exceptions, if a person has been convicted by the Court Martial (CM) and subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State must pay him compensation¹. Where the person who is the subject of the miscarriage of justice is dead, compensation must be paid to his personal representatives. The exceptions to this general rule are that compensation is not payable:

a. If the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted²; and

b. Unless an application for compensation has been made to the Secretary of State³ before the end of the period of 2 years beginning with the date on which the conviction of the person concerned is reversed or he is pardoned.⁴

3. For these purposes, a conviction is deemed to have been reversed if it has been quashed⁵:

a. On an appeal out of time;

b. On a reference under the Court Martial Appeals Act 1968 section 34; or

c. On a reference under the Criminal Appeal Act 1995 section 12A.

However, in a case where a person's conviction for an offence is quashed on an appeal out of time and the person is subject to a retrial, the conviction is not to be treated for these purposes as 'reversed' unless and until the person is acquitted of all offences at the retrial or the prosecution indicates that it has decided not to proceed with the retrial.

¹ Section 276(1) of the Act.

² Section 276(2) of the Act.

³ Section 276(3) of the Act.

⁴ The Secretary of State may direct that an application for compensation made after the end of that period is to be treated as if it had been made within that period if the Secretary of State considers that there are exceptional circumstances which justify doing so. See section 296(3) of the act.

⁵ Section 276(7) of the Act.

Submission of claims for compensation

4. Claims for compensation for miscarriages of justice at the Court Martial should be submitted to the Senior Claims Officer, DS&C (Claims), Zone A, 7th Floor, St George's Court, 2-12 Bloomsbury Way, London WC1A 2SH. An assessor will be appointed on a case by case basis in line with the qualifications outlined at paragraph 7 below to deal with any claim.

Assessment of compensation

5. In making his assessment, the assessor will apply principles analogous to those governing the assessment of damages in civil wrongs. The assessment will take account of both pecuniary and non-pecuniary loss arising from the conviction and any loss of liberty. Further provision is made⁶ as to the limits on the amount of compensation payable. In assessing the amount of compensation payable for suffering, harm to reputation or similar damage, the assessor must have regard in particular to the following⁷:

- a. The seriousness of the offence of which the person was convicted and the severity of the resulting punishment; and
- b. The conduct of the investigation and prosecution of the offence.

6. The assessor may take from the total amount of compensation that he would otherwise have assessed as payable any deduction or deductions that he considers appropriate by reason of either or both of the following:

- a. Any conduct of the person appearing to the assessor to have directly or indirectly caused, or contributed to, the conviction concerned; and
- b. Any other convictions of the person and any punishment resulting from them⁸.

If, having had regard to any matters falling within (a) or (b), the assessor considers that there are exceptional circumstances which justify doing so, he may determine that the amount of compensation is to be a nominal amount only.

Qualifications to be an assessor

7. A person is qualified to be an assessor if he⁹:

- a. Has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
- b. Is an advocate or solicitor in Scotland;
- c. Is a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland, of at least seven years' standing;
- d. Holds or has held judicial office in any part of the United Kingdom;
- e. Is a member (whether the chairman or not) of the Criminal Injuries Compensation Board; or

⁶ Section 276A(5) of the Act.

⁷ Section 276(6) of the Act.

⁸ Section 276A(3) of the Act.

⁹ Schedule 9 Para 1(1) of the Act.

f. Has in a relevant territory¹⁰ rights and duties similar to those of a barrister or solicitor in England and Wales, has had those rights and duties for at least seven years and is subject to punishment or disability for breach of professional rules.

¹⁰ A relevant territory for the purposes of Paragraph 7(f) above is¹⁰: (a) any of the Channel Islands; (b) the Isle of Man; (c) a Commonwealth country; (d) a British Overseas Territory. Schedule 9 paragraph 1(2) of the Act.