From: THE PRIVATE SECRETARY

Gov. Mach

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

22 Jan '82

Dear Clive,

THE EFFICIENCY STRATEGY 1982 -
THE SCRUTINY PROGRAMME

Your letter of 15th December 1981 asked Ministers to send their proposals for the 1982 Scrutiny Programme to the Prime Minister by 15th January. I am sorry we are a little late.

The Home Office is already committed to two major scrutinies this year; a "resource control review" of prison manpower, and participation, together with half a dozen other departments, in a scrutiny of personnel management. We are therefore putting forward a proposal of comparatively limited scope for our third scrutiny: the administration of the Criminal Injuries Compensation Scheme. This seems to us to fit in well with the intention that the 1982 programme should include a number of scrutinies related to schemes which affect the individual citizen. I enclose the relevant particulars together with a copy of the Scheme.

We have seen the correspondence relating to Post Office Agency Services. The Home Office's main concern here is with television licences. We do not ourselves propose to undertake a scrutiny in this area in 1982. If anything is to be done, there might, in view of what the Secretary of State for Industry says in his letter of 12th January about the sensitivity of such studies from the Post Office point of view, be some advantage in a single study covering all the departments concerned. If it were decided to proceed in this way we would of course be prepared to participate.

I am copying this letter to Muir Russell in the Scottish Office in view of their responsibility for the Criminal Injuries Compensation Scheme in Scotland. I am also sending a copy to the private secretaries to the Chancellor of the Exchequer, the Secretary of State for Northern Ireland, the Secretary of State for Industry, the Secretary of State for Transport, the Secretary of State for Social Services, the Chancellor of the Duchy of Lancaster, Clive Priestley and David Wright.

Yours ever,

Tony Halliday

J. F. HALLIDAY

Clive Whitmore Esq.

PROPOSAL FOR 1982 EFFICIENCY SCRUTINY

1. Subject: the administration of the Criminal Injuries Compensation Scheme.

2. Costs (1980/81): compensation - £21,462,464
administration - £ 2,930,210

3. Reasons for selecting the subject: the importance of the services provided by the Criminal Injuries Compensation Board to many thousands of victims of crime and the considerable scale of expenditure from public funds.

4. Terms of reference: To review the efficiency of the present arrangements for the processing and consideration by the Criminal Injuries Compensation Board of applications for compensation under the Criminal Injuries Compensation Scheme and for payment and administration of compensation awards, but excluding any review of the terms of the Criminal Injuries Compensation Scheme.

5. Starting date: 1 February 1982

Finishing date: as soon as possible after 1 May 1982.

6. Examining officer: Mr D J Belfall (Principal)

Minister: Mr Patrick Mayhew MP
Minister of State, Home Office.

THIS REVISED 1979 SCHEME ONLY APPLIES TO INCIDENTS OCCURRING ON AND AFTER 1 OCTOBER 1979. FOR INCIDENTS OCCURRING BEFORE 1 OCTOBER 1979 SEE THE 1969 REVISED "OLD" SCHEME MARKED A.

B

Criminal Injuries Compensation Scheme

The Scheme for compensating victims of crimes of violence was announced in both Houses of Parliament on 24th June 1964, and in its original form came into operation on 1st August 1964.

The Scheme has since been modified in a number of respects. The revised 1979 Scheme which applies to all incidents occurring on and after 1 October is set out below.

Requests for application forms and all inquiries should be addressed to:

Criminal Injuries Compensation Board,
10-12 Russell Square,
LONDON WC1B 5EN
Tel. 01-636 2812
01-636 4201

THE SCHEME

Administration

1. The Compensation Scheme will be administered by the Criminal Injuries Compensation Board, which will be assisted by appropriate staff. Appointments to the Board will be made by the Secretary of State*, after consultation with the Lord Chancellor and, where appropriate, the Lord Advocate. The Chairman and members of the Board, who will be legally qualified, will be appointed to serve for five years in the first instance, and their appointment will be renewable for such periods as the Secretary of State considers appropriate. The Board members and Chairman will not serve on the Board beyond the age of 72, or after retirement from legal practice, whichever is the earlier, except that, where the Secretary of State considers it to be in the interests of the Scheme to extend a particular appointment beyond the age of 72 or after retirement from legal practice, he may do so. The Secretary of State may, if he thinks fit, terminate a member's appointment on the ground of incapacity or misbehaviour.

2. The Board will be provided with money through a Grant-in-Aid out of which payments for compensation awarded in accordance with the principles set out below will be made. Their net expenditure will fall on the Votes of the Home Office and the Scottish Home and Health Department.

3. The Board will be entirely responsible for deciding what compensation should be paid in individual cases and their decisions will not be subject to appeal or to Ministerial review. The general working of the Scheme will, however, be kept under review by the Government and the Board will submit annually to the Home Secretary and the Secretary of State for Scotland a full report on the operation of the Scheme, together with their accounts. The report and accounts will be open to debate in Parliament.

Scope of the Scheme

4. The Board will entertain applications for *ex gratia* payments of compensation in any case where the applicant or, in the case of an application by a spouse or dependant (see paragraphs 15 and 16 below), the deceased, sustained in Great Britain, or on a British vessel, aircraft or hovercraft or on, under or above an installation in a designated area within the meaning of Section 1 subsection (7) of the Continental Shelf Act 1964 or any waters within 500 metres of such an installation, or in a lighthouse off the coast of the United Kingdom, personal injury directly attributable

(a) to a crime of violence (including arson or poisoning) or
(b) to the apprehension or attempted apprehension of an offender or a suspected offender or to the prevention or attempted prevention of an offence or to the giving of help to any constable who is engaged in any such activity.

Applications for compensation will be entertained only if made within three years of the incident giving rise to the injury, except that the Board may in exceptional cases waive this requirement. A decision by the Chairman not to waive the time limit will be final. In considering for the purpose of this paragraph whether any act is a criminal act, any immunity at law of an offender, attributable to his youth or insanity or other condition, will be left out of account.

5. Compensation will not be payable unless the Board are satisfied that the injury was one for which the total amount of compensation payable after deduction of social security benefits, but before any other deductions under the Scheme, would not be less than the minimum amount of compensation. This shall be £150 except for cases of violence within the family under paragraph 8 below, where the minimum shall be £500. The application of the minimum level shall not, however, affect the payment of funeral expenses under paragraph 15 below:

6. The Board may withhold or reduce compensation if they consider that:-

(a) the applicant has not taken, without delay, all reasonable steps to inform the police, or any other authority considered by the Board to be appropriate for the purpose, of the circumstances of the injury and to co-operate with the police or other authority in bringing the offender to justice; or
(b) the applicant has failed to give all reasonable assistance to the Board or other authority in connection with the application; or
(c) having regard to the conduct of the applicant before, during or after the events giving rise to the claim or to his character and way of life — and, in applications under paragraphs 15 and 16 below, to the character, conduct and way of life of the deceased and of the applicant — it is inappropriate that a full award, or any award at all, be granted.

Furthermore, compensation will not be payable:-

(d) in the case of an application under paragraph 4(b) above where the injury was sustained accidentally, unless the Board are satisfied that the applicant was at the time taking an exceptional risk which was justified in all the circumstances.

**** In practice this function will be exercised, as appropriate, by the Home Secretary or the Secretary of State for Scotland.***

7. In order to determine whether there was any responsibility, either because of provocation or otherwise, on the part of the victim, the Board will scrutinise with particular care all applications in respect of sexual offences or other offences which arise out of a sexual relationship or where the relationship between the victim and the offender is such that there may be difficulty in establishing the facts or it seems possible that the offender might benefit from any award of compensation made to the applicant. In such cases the Board will especially have regard to any delay that has occurred in submitting the application. Compensation will not be payable unless the Board are satisfied that the offender will not benefit from an award.

8. Where the victim and any person responsible for the injuries which are the subject of the application (whether that person actually inflicted them or not) were living in the same household at the time of the injuries as members of the same family, compensation will be paid only where:-

(a) the person responsible has been prosecuted in connection with the offence, except where the Board consider that there are practical, technical or other good reasons why a prosecution has not been brought: and

(b) the injury was one for which compensation — as assessed under paragraph 5 above — of not less than £500 would be awarded: and

(c) in the case of violence between adults in the family, the Board are satisfied that the person responsible and the applicant stopped living in the same household before the application was made and seem unlikely to live together again; and

(d) in the case of an application under this paragraph by or on behalf of a minor, ie a person under 18 years of age, the Board are satisfied that it would not be against the minor's interests to make a full or reduced award.

For the purposes of this paragraph, a man and a woman living together as husband and wife shall be treated as members of the same family.

9. If in the opinion of the Board it is in the interests of the applicant (whether or not a minor or a person under an incapacity) so to do, the Board may pay the amount of any award to any trustee or trustees to hold on such trusts for the benefit of all or any of the following persons, namely the applicant and any spouse, widow or widower, relatives and dependants of the applicant and with such provisions for their respective maintenance, education and benefit and with such powers and provisions for the investment and management of the fund and for the remuneration of the trustee or trustees as the Board shall think fit. Subject to this the Board will have a general discretion in any case in which they have awarded compensation to make special arrangements for its administration. In this paragraph "relatives" means all persons claiming descent from the applicant's grandparents and "dependants" means all persons who in the opinion of the Board are dependant on him wholly or partially for the provision of the ordinary necessities of life.

10. The Board will consider applications for compensation arising out of acts of rape and other sexual offences both in respect of pain, suffering and shock and in respect of loss of earnings due to consequent pregnancy, and, where the victim is ineligible for a maternity grant under the National Insurance Scheme, in respect of the expenses of childbirth. Compensation will not be payable for the maintenance of any child born as a result of a sexual offence.

11. Applications for compensation for personal injury attributable to traffic offences will be excluded from the Scheme, except where such injury is due to a deliberate attempt to run the victim down.

Basis of compensation

12. Subject to the other provisions of this Scheme, compensation will be assessed on the basis of common law damages and will normally take the form of a lump sum payment, although the Board may make alternative arrangements in accordance with paragraph 9 above. More than one payment may be made where an applicant's eligibility for compensation has been established but a final award cannot be calculated in the first instance — for example, where only a provisional medical assessment can be given. In a case in which an interim award has been made, the Board may decide to make a reduced award, increase any reduction already made or refuse to make any further payment at any stage before receiving notification of acceptance of a final award.

13. Although the Board's decisions in a case will normally be final, they will have discretion to reconsider a case after a final award of compensation has been accepted where there has been such a serious change in the applicant's medical condition that injustice would occur if the original assessment of compensation were allowed to stand, or where the victim has since died as a result of his injuries. A case will not be re-opened more than three years after the date of the final award unless the Board are satisfied, on the basis of evidence presented with the application for re-opening the case, that the renewed application can be considered without a need for extensive enquiries. A decision by the Chairman that a case may not be re-opened will be final.

14. Compensation will be limited as follows:-

(a) the rate of net loss of earnings or earning capacity to be taking into account shall not exceed twice the gross average industrial earnings at the date of assessment (as published in the Department of Employment Gazette and adjusted as considered appropriate by the Board);

(b) there shall be no element comparable to exemplary or punitive damages.

15. Where the victim has died in consequence of the injury, no compensation other than funeral expenses will be payable for the benefit of his estate, but the Board will be able to entertain applications from his spouse and dependants. For this purpose, compensation will be payable, in accordance with the other provisions of this Scheme, to any person entitled to claim under the Fatal Accidents Act 1976 or any Act repealed by that Act or under the relevant Scottish law. For the avoidance of doubt "spouse" will not include for the purposes of this paragraph or paragraph 16 so-called common-law wives or persons alleged to be married by habit and repute. Funeral expenses to an amount considered reasonable by the Board will be paid in appropriate cases, even where the person bearing the cost of the funeral is otherwise ineligible to claim under this Scheme. Applications may be made under this paragraph where the victim has died from his injuries even if an award has been made to the victim in his lifetime. Such cases will be subject to the conditions set out in paragraph 13 for the re-opening of cases and compensation payable to the applicant will be reduced by the amount paid to the victim.

16. Where the victim has died otherwise than in consequence of the injury, the Board may make an award in respect of loss of wages, expenses and liabilities incurred before death as a result of the injury whether or not application for compensation in respect of the injury has been made before the death.

17. Compensation will be payable for loss of or damage to clothing and other personal adjuncts arising from the injury. Personal adjuncts do not include jewellery, watches or rings lost or damaged, whether at the time of the offence or afterwards or in the course of medical or other treatment arising from the offence. Save as aforesaid, compensation will not be payable for loss of or damage to property.

18. The cost of private medical treatment will be payable by the Board only if the Board consider that, in all the circumstances, both the private treatment and the cost of it are reasonable.

19. Compensation will be reduced by the full value of any present or future entitlement to:-

(a) UK social security benefits
(b) compensation awards under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977
(c) social security benefits, compensation awards or similar payments whatsoever from the funds of other countries, or
(d) payments under insurance arrangements except as excluded below which may accrue, as a result of the injury or death, to the benefit of the person to whom the award is made.

In assessing this entitlement, account will be taken of any income tax liability likely to reduce the value of such benefits and, in the case of an application under paragraph 15, the value of such benefits will not be reduced to take account of prospects of remarriage. If, in the opinion of the Board, an applicant may be eligible for any such benefits the Board may refuse to make an award until the applicant has taken such steps as the Board consider reasonable to claim them. Subject to paragraph 18 above, the Board will disregard monies paid or payable to the victim or his dependants as a result of or in consequence of insurance personally effected, paid for and maintained by the personal income of the victim or, in the case of a person under the age of 18, by his parent.

20. Where the victim is alive compensation will be reduced to take account of any pension accruing as a result of the injury. Where the victim has died in consequence of the injury, and any pension is payable for the benefit of the person to whom the award is made as a result of the death of the victim, the compensation will similarly be reduced to take account of the value of that pension. Where such pensions are taxable, one-half of their value will be deducted; where they are not taxable, eg where a lump sum payment not subject to income tax is made, they will be deducted in full. For the purposes of this paragraph, "pension" means any payment payable as a result of the injury or death, in pursuance of pension or other rights whatsoever connected with the victim's employment, and includes any gratuity of that kind and similar benefits payable under insurance policies paid for by employers. Pension rights accruing solely as a result of payments by the victim or a dependant will be disregarded.

21. When a civil court has given judgement providing for payment of damages or a claim for damages has been settled on terms providing for payment of money, or when payment of compensation has been ordered by a criminal court, in respect of personal injuries, compensation by the Board in respect of the same injuries will be reduced by the amount of any payment received under such an order or settlement. When a civil court has assessed damages, as opposed to giving judgement for damages agreed by the parties, but the person entitled to such damages has not yet received the full sum awarded, he will not be precluded from applying to the Board, but the Board's assessment of compensation will not exceed the sum assessed by the court. Furthermore, a person who is compensated by the Board will be required to undertake to repay them from any damages, settlement or compensation he may subsequently obtain in respect of his injuries. In arriving at their assessment of compensation the Board will not be bound by any finding or contributory negligence by any court, but will be entirely bound by the terms of the Scheme.

Procedure for determining applications

22. Every application will be made to the Board in writing as soon as possible after the event on a form obtainable from the Board's office. The initial decision on the amount of any compensation awarded will be taken by one member of the Board and where an award is made the applicant will be given a breakdown of the assessment of compensation, except where the Board consider this inappropriate, and where an award is refused or reduced, reasons for the decision will be given. If the applicant is not satisfied with the decision, he will be entitled to a hearing before three members of the Board other than the member who made the initial decision. An application for a hearing must be made within three months of notification of the initial decision; however the Board may waive this time limit where an extension is requested with good reason within the three month period, or where it is otherwise in the interests of justice to do so. A decision by the Chairman not to waive the time limit will be final. It will also be open to the Single member where he considers that he cannot make a just and proper decision himself, to refer the application to three other members of the Board for a hearing. An applicant will have no title to an award offered until the Board have received notification in writing that he accepts it.

23. It will be for the applicant to make out his case at the hearing, and where appropriate this will extend to satisfying the Board that compensation should not be withheld or reduced under the terms of paragraph 6 or paragraph 8. The applicant and a member of the Board's staff will be able to call, examine and cross-examine witnesses. The Board will be entitled to take into account any relevant hearsay, opinion or written evidence, whether or not the author gives oral evidence at the hearing. The Board will reach their decision solely in the light of the evidence brought out at the hearing, and all the information and evidence made available to the Board members will be made available to the applicant at, if not before, the hearing. While it will be open to the applicant to bring a friend or legal adviser to assist him in putting his case, the Board will not pay the cost of legal representation. They will, however, have discretion to pay the expenses of the applicant and witnesses at a hearing. If one of the three designated members is unable to take part in a hearing, the hearing may proceed, if the applicant consents, with two members.

24. Procedure at hearings will be as informal as is consistent with the proper determination of applications, and hearings will in general be in private. The Board will have discretion to permit observers, such as representatives of the press, radio and television, to attend hearings provided that written undertakings are given that the anonymity of the applicant and other parties will not in any way be infringed by subsequent reporting. The Board will have power to publish information about its decisions in individual cases: this power will be limited only by the need to preserve the anonymity of applicants and other parties.

Implementation

25. The provisions of this Scheme will take effect from 1 October 1979. Applications in respect of injuries incurred on or after 1 October 1979 will be dealt with under the terms of this Scheme. Applications in respect of injuries incurred before that date will be dealt with under the terms of the Scheme which came into operation on 21 May 1969, except that after 31 December 1979 applications relating to injuries incurred more than three years previously will be entertained only where the Board consider it appropriate exeptionally to waive this time limit. Where a decision by a Single Member in respect of an injury incurred before 1 October 1979:-

(a) is notified after that date, the time limit of three months under the terms of paragraph 22 of this Scheme will apply to any application for a hearing;

(b) was notified, but not accepted, before that date, an application for a hearing will not be entertained after 31 December 1979 except where the Board consider there is a good reason to extend this time limit.

Cases in respect of injuries incurred before 1 October 1979 may be re-opened, subject to the conditions set out in paragraphs 13 and 15 of this Scheme, for review under the terms of the Scheme which came into operation in May 1969. A decision by the Chairman not to waive or extend the time limits referred to in this paragraph will be final.