

Compensation for persons wrongfully imprisoned

Information for claimants

The Government is prepared under certain circumstances to pay compensation to those who have spent time in custody following a wrongful conviction or charge. There are two compensation schemes, one under statutory provisions and the other under administrative arrangements.

No general entitlement

2. There is no general entitlement to recompense for wrongful conviction or charge. For example, compensation will not be awarded in cases where at the trial or on appeal the prosecution was unable to prove its case beyond reasonable doubt against the accused person, or where the conviction was quashed on a technicality. Where circumstances are such that compensation could be awarded, it may be refused or reduced if the claimant was wholly or partly to blame for his misfortune: for example, where he deliberately withheld evidence which would have demonstrated his innocence.

3. The Department of Justice will nevertheless consider any application which is made, examining it as appropriate under the statutory provisions and the *ex gratia* arrangements.

Statutory provisions

4. Briefly, compensation is payable under Article 11(5) of the Hong Kong Bill of Rights Ordinance (Cap. 383):

if a conviction is quashed on an out-of-time appeal; or

if a conviction is quashed after the case has been referred to the Court of Appeal by the Chief Executive; or

if a Free Pardon is granted,

in each case after the emergence of a new or newly discovered fact showing conclusively that there has been a miscarriage of justice, and provided the non-disclosure of this fact was not wholly or partially attributable to the applicant.

5. If a claim under Article 11(5) cannot be resolved with the Government amicably it will have to be adjudicated by the court like any other civil claim.

***Ex gratia* arrangements**

6. Alternatively, the Government may make an *ex gratia* payment, in certain exceptional cases, where the claimant has spent time in custody following a wrongful conviction or charge resulting from serious default by the police or other public authority. This might be the case, for example, when bail was refused because of incorrect information given to the court by the prosecutor or the police, or where police suppressed material evidence which would have helped to exonerate a convicted person. Compensation may also be payable on this basis where the wrongful act was that of a judge or magistrate, but payment in such cases should only be made on the recommendation of the judiciary.

How to apply for compensation

7. Applications should be made in writing to the Department of Justice, 23rd Floor, High Block, Queensway Government Offices, 66 Queensway, Hong Kong. Alternatively, you may apply by fax at (852) 2877 2353 or by e-mail to dojinfo@doj.gov.hk.

8. There is no standard application form. Applications should include the applicant's full name, date of birth, place and date of conviction or details of charge, the circumstances in which the conviction was reversed or the charge dropped, and the reasons why the applicant considers that compensation is due to him or her. Where charges were dropped it would be helpful to know which police, ICAC or correctional

services unit was involved.

Awards of compensation

9. The Secretary for Financial Services and the Treasury will take the final decision as to whether an applicant qualifies for payment, and if so, the amount of payment, after considering the circumstances of the individual case and the views of the Secretary for Justice and any other department or bureau concerned. It is not the Government's normal practice to publish details of individual awards.

Department of Justice
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