

# **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.

### **Statutory provisions**

3. Compensation is payable under Article 11(5) of the Hong Kong Bill of Rights, as provided for in the Hong Kong Bill of Rights Ordinance (Cap. 383). The Article provides that:

“When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered

punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.”

4. 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**

5. 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. The Government will assess these applications having regard to any relevant judicial views that the court(s) may have expressed during any appeal or review process(es) of the cases concerned and all other available and relevant materials.

### **How to apply for compensation**

6. Applications should be made in writing to the Department of Justice, Constitutional and Policy Affairs Division, 5th Floor, Main and East Wing, Justice Place, 18 Lower Albert Road Central, Hong Kong. Alternatively, you may apply by fax at (852) 3918 4799 or by e-mail to [cpad@doj.gov.hk](mailto:cpad@doj.gov.hk).

7. There is no standard application form. Applications should include the applicant's full name, date of birth, place and date of conviction and 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.

8. The Department of Justice will consider any application which is made, examining it as appropriate under the statutory provisions and the *ex gratia* arrangements. Applications for *ex gratia* payments under the administrative scheme are handled by the Solicitor General with the assistance of counsel within the Constitutional and Policy Affairs Division of the Department of Justice. Where necessary or appropriate, outside independent counsel's advice will also be sought. The Solicitor General is solely responsible for the final decision having regard to the administrative guidelines and all relevant circumstances of each case. If the Solicitor General decides that a particular case falls within the administrative guidelines, the amount payable will be determined by the Secretary for Financial Services and the Treasury, taking into account the views of the Department of Justice and any other affected department or bureau. It is not the Government's normal practice to publish details of individual awards.

**Department of Justice**  
**February 2021<sup>1</sup>**

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<sup>1</sup> The content of the Information Note as published in June 2014 remains unchanged, and only the contact details of the Constitutional and Policy Affairs Division (the then Legal Policy Division) have been updated in February 2021.