



THE
COMPENSATION
Agency



**A Guide to Applicants for
Loss of Earnings and
Special Expenses**

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Glossary

Listed below are a glossary of terms which you may find helpful when you are completing your application form and reading this guide.

“Victim”	means the person (including an unborn child) who has sustained a criminal injury.
“Applicant”	means the person entitled to claim on behalf of the victim, if the applicant is a different person than the victim.
“Representative”	means the person or other body representing the victim with their application.
“Minor”	means a person who has not attained the age of 18 years.
“Tariff”	means a set amount of money which will be paid for each kind of injury





A Guide to Applicants for Loss of Earnings and Special Expenses

(Made under the Criminal Injuries
Compensation (NI) Order 2002)

Introduction

1. The Scheme provides that in addition to a standard tariff amount for your injury, payment may also be made for your loss of earnings or earning capacity, and/or special expenses, provided that you have been incapacitated for more than a full 28 weeks.
2. This guide explains the circumstances in which you may qualify for these additional payments and tells you how we calculate them. It is not a substitute for the provisions of the Scheme itself, under which your claim will be assessed according to your particular circumstances, but is simply aimed at enabling you to understand how these provisions work and to make a claim with as little trouble as possible. You may, of course, wish to seek professional or other advice. We do not require you to do so, but if you choose to get such advice, you are reminded that the Scheme does not allow us to pay your costs.
3. You may have available the services of a Trade Union or staff association with arrangements to provide you with professional advice on the calculation of your claim and to present us with the details. If that is so, or you are otherwise represented, we will correspond with those acting on your behalf unless you tell us not to. In all cases, we will also correspond directly with you to explain our assessment of your claim.
4. Where references are made in this guide to paragraphs of the Scheme, the paragraph numbers are given in **bold** type.

Eligibility

5. The main eligibility rules for applications under the Scheme as a whole are in **Paragraphs 6-13** and explained in the 'Guide to NI Criminal Injuries Compensation Scheme 2009'.
6. There are additional rules and provisions applicable to claims for loss of earnings and special expenses, which this section explains.

Loss of earnings (Paragraph 31)

7. The main rules are:
 - The injury must have been the **direct cause** of your loss of earnings, or your loss of capacity to earn your living; and
 - Your loss must have **lasted longer than 28 full weeks.**

The period of 28 weeks will usually run from the date of your first absence from work.

8. **No compensation for loss of earnings is payable for the first 28 weeks.** The calculation of your loss of earnings therefore starts at week 29 from the date on which the loss began and runs to the date on which you returned to work, or for such period as is considered by us to be reasonable on the information we have about your claim.
9. If you were not in work at the time of the injury but had an offer of employment, which the injury prevented you from taking up, we will take evidence you can provide about this into account.

Special expenses (Paragraph 36)

10. The main eligibility rule for a claim for special expenses is that the expenses must be a direct result of an injury, which has caused you to lose earnings or earning capacity, or to be similarly incapacitated, **for longer than 28 weeks.**
11. If you are not normally employed (for example retired, in full-time education or looking for work) we will assess from the medical information the extent to which you were incapacitated (ie prevented from going about the ordinary business of life) and whether the period of incapacity was, or is likely to be, longer than 28 weeks.

12. Provided that you are incapacitated for a full 28 weeks, special expenses incurred by you from the date of injury (provided the minimum qualifying period as above is met) can be taken into account in our assessment of the amount payable.

Calculation of loss of earnings

13. The calculation is based on the comparison of your earnings or other income before and after injury. If there is a loss to you as a **direct result of the injury**, we take that figure and deduct from it any financial benefit you have received which also result from the injury.
14. **Paragraphs 31-35 (Compensation for Loss of Earnings) and 46-51 (Effect on awards of other payments)** are the detailed provisions. Before explaining these, the next paragraph gives examples of the factors, which we take into account in our assessment.
15. We must be sure that your loss of earnings results from the criminal injury and not wholly or in part from other factors, for example:
 - Health problems before the injury;
 - A previous injury (caused perhaps by sport, or an accident at work);
 - The insecurity of your type of employment; or
 - If you are self-employed, trading and cash flow problems unconnected with the injury.

We need to be satisfied also that the loss could not reasonably be offset, at least in part, by other earnings, for example by your finding another job within your physical/intellectual capacity, if you lost your job because of the injury.

Calculation up to date of assessment (past loss)

16. **Paragraph 32** deals with claims where the loss of earnings has ended before, or continues to the date on which your claim is assessed. The calculation in most cases should be quite simple because it is based on the information you can provide as to what has actually happened to your earnings or other income, and our confirmation of any financial benefits you have received, as a result of the injury. The financial benefits have to be taken into account because you are not entitled to be compensated for the same amount of loss from more than one source of public money.

17. The following calculation is an example of how this is done.

Case Summary 1

The applicant was assaulted, suffering a fractured femur in his left leg. His regular net weekly pay (ie after deduction of income tax and national insurance contributions) was £400 at the time of the injury. He was unable to return to his job for 12 months, during which period he received Social Security Benefits (assumed for this example to be £100 per week.) In the meantime, his assailant had been convicted and ordered to pay him £500 under a Court Compensation Order, of which £200 had been paid when his claim was assessed.

Calculation of award

(a) Standard amount under Tariff of Injuries	£3,800 (a)
(b) Past loss of earnings	
24 weeks (week 29 to 52) at £400 per week	£9,600
less Social Security Benefits	
24 weeks at £100	<u>£2,400</u>
Net loss	£7,200 (b)
Total award (a+b) =	£11,000
Less court compensation paid	<u>£200</u>
Award payable	£10,800

Calculation of loss continuing from date of assessment (future loss)

18. The calculation of what loss of earnings you can reasonably be expected to suffer in future as a result of the injury may be more complicated. It often involves some assessment, at the time when the loss as in the example above is calculated, about whether it will continue, for how long and at what rate. Because ordinary life is subject to so many uncertainties, no one can say for sure what your future earnings would have been had you not been injured. The calculation of future loss may therefore be based on an estimate of what your future earnings might have been without the injury and what you can still earn.

The multiplicand (annual rate of loss)

19. The first step in the calculation is to work out the annual rate of loss, otherwise known as the multiplicand (**Paragraph 33**). That is done from the figures given in the example above, with adjustments to take account of any changes to the annual rate of loss, which are likely to arise in the future. You may, for example, have had a valid expectation of promotion, which would have increased your earnings, or, you can only work reduced hours in the future. Or where the injury caused your early/medical retirement under an occupational pension scheme, we assess your claim on the basis of your pension and any benefits or earnings to the point of normal occupational retirement and for periods beyond. We therefore need to obtain as much information as we can from you, your employer(s) and the Social Security Agency where appropriate.
20. It follows that there may be different multiplicands applicable to different future periods of loss. In all cases, an assessment of how long the period or periods will be, in terms of years, is made.

The multiplier

21. The multiplier is the number by which the multiplicand is to be multiplied in order to convert your future annual losses into a single capital lump sum payable now.
22. Because this lump sum is intended to be the present value of losses which will be incurred in future, account has to be taken of the interest which you could receive from investing it.
23. **Paragraph 33** of the scheme says that, in choosing a multiplier, we may refer to Actuarial Tables for use in personal injury and fatal accident cases published by the Government Actuary's Department and take account of any factors and contingencies which we think are relevant.
24. The Agency use of 6th Edition OGDEN (GAD) Actuarial Tables, which can be purchased from the Stationery Office or downloaded from the Government Actuary's Department www.gad.gov.uk. These provide a range of multipliers according to age, the different life expectancy of men and women, their different retirement ages, and when the loss starts (either from the present or at some future point). We use them where appropriate, based upon individual case facts, to refine our selection of multiplier.
25. The tables include additional multipliers which take account of other life risks (contingencies other than mortality) such as illness, redundancy, temporary unemployment, accident, career breaks, or carers' duties etc.
26. The following is an example of a future loss assessment in a case where the applicant, although having to change his job as a result of the injury, remains capable of earning, albeit at a lower income level than before the injury.

Case Summary 2

This example follows on from the previous one and assumes that the fractured femur in his left leg has resulted in continuing significant disability, which prevents the applicant, now aged 40, from returning to the job he had before the injury. He is nevertheless re-employed on other work by this company where his net pay is now £300 instead of £400 per year. His future net earnings loss is therefore assessed at £100 per week, or £5,200 per year.

Calculation of award

(a) Standard amount under Tariff of Injuries	£6,600 (a)
(b) Past loss of earnings (as in Case Summary 1)	£7,200 (b)
(c) Future loss of earnings (from 40 to 65)	
Net annual loss or multiplicand	£5,500
Period of loss – 25 years	
Multiplier	18
Less 10% Contingencies	
Adjusted multiplier	16.2
Net future loss of earnings	£84,240 (c)
Total award (a+b+c)	£98,040

NB If the applicant's normal annual & lump sum retirement pension is reduced due to early retirement or if the applicant sustains a reduction in earning capacity as a direct result of the injury sustained then this can also be compensated for.

27. **Paragraph 35** of the Scheme applies a ceiling to the rate of net loss of earnings, which we can take into account. The figure is one and a half times the gross average industrial earnings for Northern Ireland at the time when your claim is assessed.

Calculation of special expenses

28. **Paragraph 36** of the Scheme enables us to consider claims for practical, medical and care costs, provided you have been incapacitated for longer than 28 weeks as a direct result of your injury. These costs are payable from the date of the injury. Social Security Benefits in respect of any of these costs will be deducted, as will payments from personal insurance claims as per Paragraph 46 of the Scheme.
29. **Paragraph 36(a)** covers damage to property or equipment belonging to you on which you relied as a physical aid. This is intended to enable us to make payments for such items as spectacles and dentures. We will ask you for the relevant receipts.
30. **Paragraph 36(b)** covers expenses such as NHS prescriptions, dental and optical charges and costs of travel to and from hospital for treatment. You must have met these. Help may be available for these costs from the Social Security Agency. You can obtain information from your local office or from the Social Security Agency, Benefits Branch, Castle Court, Belfast BT1.
31. **Paragraph 36(c)** enables us to consider the cost of private treatment. Both the treatment itself and the cost of it must be considered reasonable in the circumstances of your case. It may be that the particular kind of treatment you require is not routinely available under the NHS, ie some types of cosmetic surgery or special dental work for example – but it will be for you to show that private treatment is a reasonable option.
32. **Paragraph 36(d)** covers special equipment, adaptations to your home, and/or the cost of caring for you either at your home or, for example in a nursing home. Claims under this paragraph will usually come from those who are most seriously injured. If you are in that situation, the following notes may be helpful.
 - **Special Equipment** covers aids to mobility whether at home or outside, including specially adapted vehicles, wheelchairs, walking aids, and kitchen implements designed to help those with weakened grips. We will ask you for receipts or an estimate of costs as applicable.
 - **Adaptations to accommodation** can include both internal and external works to improve mobility and access. We will ask you for plans and estimates.

- **Care** costs are assessed on the basis of what is reasonably necessary in your case. We will consider your circumstances carefully, taking account of the services which may be provided to you free of charge from other sources, such as the NHS or local authority. If you are being looked after at home by a relative or friend we will consider what the costs are to the carer in question and the level of care provided.
33. Where there will be recurring annual, or periodic special expenses (for example in the replacement of equipment), we will calculate a multiplicand and select a multiplier (see Paragraphs 19-23 of this guide) to produce a lump sum payable against your future expenses.

Maximum amount payable and method of payment

34. There is no maximum upper limit payable in respect of a claim as a whole (covering standard tariff amount, loss of earnings, and/or special expenses).
35. Awards under the Scheme are normally paid as a single lump sum (**Paragraph 53**, which also covers interim payments) but **Paragraph 54** enables us, on the instructions of the applicant or his representative, to pay an award, or part of it, in the form of an annuity, which can provide a secure, tax-free income. Any expenses incurred in such instructions will be met from the award.

Re-opening, review and appeal

36. The Guide to the NI Criminal Injuries Compensation Scheme 2009 briefly explains the provisions for re-opening of cases (**Paragraphs 59-60**), review of decisions made by the Agency (**Paragraphs 61-63**), and for appeals against reviewed decisions to the Criminal Injuries Compensation Appeals Panel (**Paragraphs 64-85**). Your attention is simply drawn here to those rights to seek redress if you consider that our assessment is wrong.

