

Restitution Orders for victims of assaults on police

Restitution Fund Operational Guidance

August 2021



Scottish Government
Riaghaltas na h-Alba
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Introduction

1. The Scottish Government is committed to putting victims' rights and needs at the centre of the criminal justice process and to improving the support, information and advice that is available to victims of crime. This includes victims of assault on police. We want to send a clear message that assault on police officers or staff is unacceptable.
2. The Victims and Witnesses (Scotland) Act 2014 introduced a range of measures to support this commitment, including provisions to introduce a new financial penalty of a restitution order to be available to the courts for those convicted of assault on police officers or police staff, and other specified persons (under section 90(1) of the Police and Fire Reform (Scotland) Act 2012).
3. Article 4 of The Restitution Fund (Scotland) Order 2021 requires that Scottish Ministers must publish guidance on the operation of the Fund 6 months after restitution orders came into Force – by 10 August 2021. This guidance fulfils this legal obligation, offering high-level information on the requirements an operator needs to meet.

Restitution Orders

4. Restitution Orders came into force on 10 February 2021. They are collected from offenders by the Scottish Courts and Tribunals Service (SCTS), in the same way they collect fines and compensation orders. Whether to impose a restitution order for the section 90(1) offence, and the level of that financial penalty, is a matter for the courts to decide.
5. Monies received from restitution orders are paid into the Restitution Fund, which will then be used to provide support services for victims of police assault. The Fund will be used to support both physical and mental health and wellbeing.

Restitution Fund

6. Under 253B of the Criminal Procedure (Scotland) Act 1995, Scottish Ministers must establish, maintain and administer the Restitution Fund to provide support services for persons who have been assaulted as mentioned in section 90(1) of the Police and Fire Reform (Scotland) Act 2012. Ministers can delegate these responsibilities to an operator of the Fund, and the operator should follow this guidance in carrying out their role.
7. The Restitution Fund (Scotland) Order 2021 delegated the Scottish Police Benevolent Fund (SPBF) as the operator of the Fund, following the SPBF's agreement to take on the role. As of 30 June 2021 the SPBF withdrew as the operator of the Restitution Fund, through a formal notification to the Cabinet Secretary for Justice and Veterans.

8. The existing Order will be revoked through an affirmative resolution procedure when Parliament resumes, and once alternative arrangements for the operation of the Fund revised guidance will subsequently be issued.
9. Under the 2021 Order, no payments can be made from the Restitution Fund for the first six months they are in force, until 10 August 2021 at the earliest. Payments will not be made until arrangements for a new operator of the Fund are in place. The SCTS will continue to be able to impose a restitution order, and money will continue to accumulate in the Fund during the interim period.

Who can the Restitution Fund be used to help?

10. The Fund can be used to support victims of police assault, as mentioned in section 90(1) of the 2012 Act. This includes a police constable, member of police staff, member of other relevant police force acting in Scotland, member of joint investigation team, or other people who were assisting those above.

What can the Restitution Fund be used for?

11. The Restitution Fund can be used to provide support services to victims of police assault, meaning any type of service or treatment which is intended to benefit the physical or mental health or wellbeing of the victim. The Restitution Fund cannot be used to provide a direct payment to victims.

Application process

12. Applications to access the Fund must be made in writing, which can be through electronic means, to the Operator. The Operator will then assess whether the application is successful, giving consideration to conditions they have set.
13. Payments from the Fund can only be made to organisations who provide or secure the provision of support services for victims. These support services can be any type of service or treatment which benefits the physical or mental health or wellbeing of the victim e.g. provision of medical treatment. Payments must also be used for a specified purpose, rather than a general contribution to a provider of services. Payments from the Fund cannot be made directly to victims.
14. In making an assessment on whether to agree an application to the Fund, the Operator will consider if there is adequate money available in the Fund to make payment.
15. The operator may request a successful applicant repays all or part of the money they have received where they do not comply with a condition of payment the operator has set.

Administration Costs

16. In recognition that administering the Restitution Fund may have an impact on the operator's resources, the operator may use money from the Fund to cover

additional administrative expenditure they incur. Ministers may set a maximum amount for these administration costs.

Record-Keeping

17. In administering the Fund, the operator must keep records of:

- every payment made into the Fund,
- every payment made out of the Fund,
- the recipients of payments made out of the Fund,
- the outlays incurred in administering the Fund, and
- the balance of the Fund.

18. The operator may dispose of these records after six years.

Reporting

19. The operator must prepare an annual report on the administration of the Fund and send to Scottish Ministers by 31 July each year, with the first report being prepared by 31 July 2022. The report must then be published electronically, no earlier than 2 weeks after it has been sent to Scottish Ministers.

20. The report must contain the information on the record-keeping outlined at paragraph 18 for the period of twelve months prior to 31 March each year. For the first year, this will be the date when the first payment was made into the Fund up until 31 March 2022.

Equality and Diversity

21. In the establishment, maintenance and administration of the Fund, the operator must have regard to:

- the need to promote equality and diversity,
- the need to prevent discrimination, harassment and victimisation on grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

**POLICE Division, Safer Communities Directorate
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