

11 The recovery of benefit and assistance payments following compensation awards

- 11.1** The recovery of benefits and assistance (RBA) scheme is administered by the Department of Social Protection (the Department). The scheme provides for the recovery of certain social welfare payments from compensation awards made to a claimant as a consequence of a personal injuries claim.
- 11.2** The objective of this report is to examine
- the operation of the RBA scheme
 - the Department's process to identify and monitor compensation claims where there may be a recovery of benefits and assistance
 - the recovery of benefits and assistance after compensation has been awarded
 - the recovery of benefits and assistance where a loss of earnings or profits is not specified in a court order or Personal Injuries Assessment Board (PIAB) assessment.¹
- 11.3** This review examined relevant documentation, interviewed relevant Department personnel, and examined a randomly selected sample of cases.

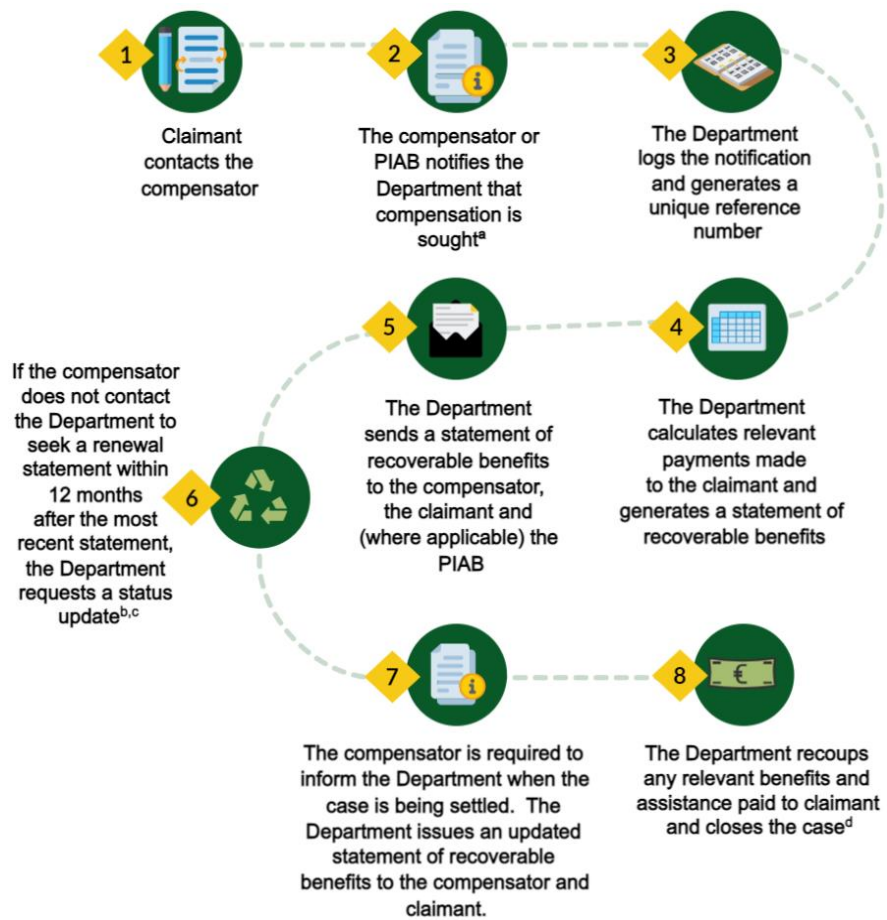
Operation of the scheme

- 11.4** The RBA scheme is provided for in sections 13 and 14 of the Social Welfare and Pensions Act 2013. The scheme came into effect on 1 August 2014 and applies to compensation awards made on or after that date.
- 11.5** The Act provides for the Department to recover welfare payments made to claimants resulting from the injury on which the compensation claim is based under the following schemes: illness benefit, partial capacity benefit, injury benefit, incapacity supplement, invalidity pension, disability allowance and the supplementary welfare allowance. No recovery from compensation is sought where the injuries sustained result in death or where compensation is awarded under specified exempt schemes — see Annex 11A.
- 11.6** The compensator is liable to pay the recoverable amount to the Minister for Social Protection and must pay any recoverable amounts to the Minister before making a compensation payment to the injured person (claimant).²
- 11.7** The RBA scheme has a five year time limit on the recoupment of benefits and assistance, commencing from the day the claimant becomes eligible for the relevant benefit/assistance and concluding at either five years or the date of payment of compensation, whichever is earlier. A person in receipt of one of the specified payments as a result of injuries for which compensation is being sought may continue to receive relevant benefits or assistance for a number of years before a compensation claim is settled.

¹ The Personal Injuries Assessment Board (PIAB) is a self-funded public body established to support the resolution of personal injuries claims without the need for unnecessary litigation.

² The compensator is the person or entity that is liable to compensate the claimant and is typically an insurance company.

Figure 11.1 RBA claim process



Source: Department of Social Protection

- Notes:
- a The PIAB only requests a statement where the claimant seeks compensation related to a loss of earnings or profits.
 - b This process commenced in March 2021. The Department did not periodically engage with compensators prior to March 2021.
 - c Each statement is valid for three months for open claims or 12 months for closed claims. Where another statement has been issued in the interim, the Department does not seek an update until twelve months from the latest statement.
 - d Where some or all relevant benefits and assistance are not recouped, the compensator is required to supply supporting evidence.

11.8 Figure 11.1 outlines the RBA claim process. A compensation award may be determined

- through negotiation, where a compensator agrees to making a compensation payment to a claimant, in which case the compensator must pay the Department the full liable amount of relevant social welfare payments that have been paid as a consequence of that personal injury
- by court order or PIAB assessment, in which case the recoverable amount is limited to the value of the loss of earnings or profits specified in the award (there is no recovery from other elements of compensation, such as that for pain and suffering).

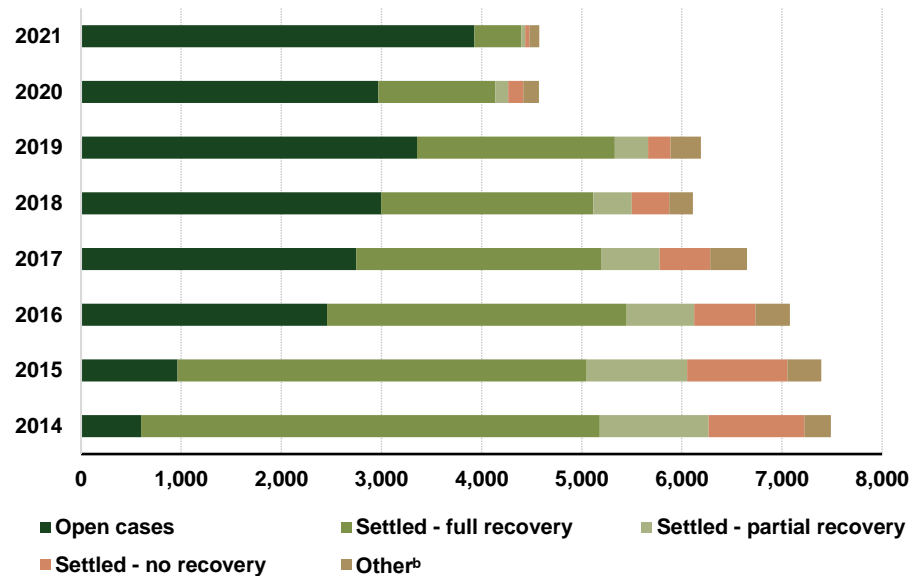
- 11.9** The legislation sets out the process for dealing with certain issues that arise in the recovery process.
- In the case of multiple compensators, each of the compensators is liable for the whole of the recovery and must agree collectively how much each of them will pay i.e. they are 'jointly and severally liable'.
 - An appeal of the recoverable amount cannot be made until the recoverable amount has been paid to the Department.

Identification and monitoring of compensation claims

- 11.10** The Department is informed through the submission of a standard form — from either the compensator or the PIAB — that a compensation claim has been lodged.¹
- 11.11** Once the Department has been informed of a compensation claim, the relevant deciding officer reviews all recoverable claims, calculates the recoverable amounts, records it on the system and issues the statement. Thereafter, the Department's IT system automatically updates the record as additional scheme payments are made.
- 11.12** Where a claimant has not been in receipt of a relevant payment, the Department issues a 'nil statement' to the compensator, stating that no relevant payments were made to the claimant in the relevant period. The Department issued over 22,000 nil statements for each year from 2014 to 2019.²
- 11.13** Figure 11.2 shows the status of all cases commenced since 2014 where relevant benefits or assistance was paid. For example, of the cases that commenced in 2014, around 8% (599 claims) remain open. Of the 7,489 cases
- 76% (5,667 claims) resulted in compensation being paid to the claimant where the Department recovered some or all of the benefits and assistance paid (shown as 'Settled — partial recovery' and 'Settled — full recovery' in Figure 11.2)
 - 13% (958 claims) resulted in compensation being paid to the claimant but the Department had no basis upon which to recover any of the benefits and assistance paid because the court order or PIAB assessment did not include, or was silent in respect of, a loss of earning or profits (shown as 'Settled — no recovery')
 - 3% (265 claims) resulted in no compensation being paid to the claimant (shown as 'Other').

¹ PIAB only requests a statement where the claimant seeks compensation related to a loss of earnings or profits.

² Up to February 2022, the Department issued over 15,000 nil statements for 2020 and for 2021 — this number may increase as further claims for compensation are lodged. There may be more than one nil statement for a single claim, for example where a statement issues when compensation is first sought and a further statement issues when the case is close to being settled.

Figure 11.2 Status of recovery cases commenced 2014 to 2021, as at February 2022^a

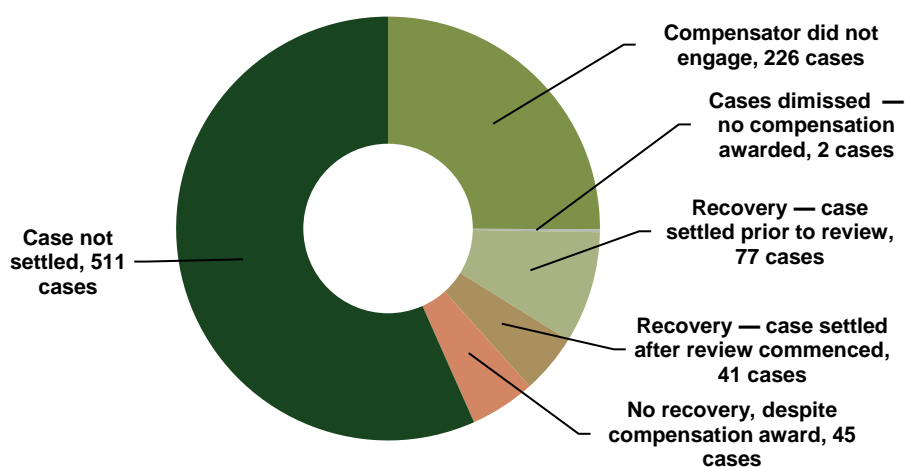
Source: Department of Social Protection. Analysis by the Office of the Comptroller and Auditor General.

Notes: a Excludes all 'nil statement' cases.

b 'Other' includes cases which are closed as no compensation was awarded to the claimant, the claimant is deceased, or the case was withdrawn by the claimant. No benefits or assistance are recoverable in these cases.

- 11.14** Since March 2021, the Department seeks periodic updates from the relevant compensator on the status of each case that commenced since 2020. An update is sought twelve months after the date the latest statement was issued. Prior to this, the Department did not routinely seek status updates for open cases.
- 11.15** In July 2020, the Department began a review of open cases by calendar year, starting with those that commenced in 2014. Figure 11.3 shows the outcome or current status (as at March 2022) of the 2014 cases reviewed as part of that exercise. This indicates
- In 25% of the cases, the potential compensator had not engaged with the review, despite up to three written requests for an update. The Department has sought legal advice in relation to pursuing these cases.
 - Around 9% of the cases were found to have been settled prior to the Department's review, but it had not been made aware of the settlement and had not received payment from the compensators. At the time of this examination, the Department had not analysed the key risks of compensators not making the required payments on a timely basis.
- 11.16** At end-April 2022, the Department began reviewing all open cases that commenced in 2015, and, when the 2015 review is completed, plans to commence a review of cases that commenced in 2016. As at April 2022, the Department had not set a target completion date for reviews of open cases that commenced in the period 2015 to 2019.

Figure 11.3 Review of open cases that commenced in 2014, as at March 2022



Source: Department of Social Protection

Recovery of welfare payments after compensation awards

- 11.17** Payment of the amount due to the Department is the responsibility of the compensator. Figure 11.4 sets out the amount recoverable by the Department for different illustrative case scenarios.¹

Figure 11.4 Recovery by the Department after compensation claims settled by PIAB assessment or court order — illustrative examples

| Category | | | | |
|---|--------------------------|---|---|---|
| | Case 1 — no compensation | Case 2 — no loss of earnings ^a | Case 3 — benefits more than loss of earnings ^a | Case 4 — benefits less than loss of earnings ^a |
| | € | € | € | € |
| Benefits or assistance received by claimant (amount potentially recoverable) | 20,000 | 20,000 | 20,000 | 20,000 |
| Total compensation awarded | — | 100,000 | 100,000 | 100,000 |
| Comprising | | | | |
| — loss of earnings | — | — | 10,000 | 30,000 |
| — pain and suffering | — | 100,000 | 90,000 | 70,000 |
| Amount recovered by the Department | — | — | 10,000 | 20,000 |

¹ Where a compensator agrees through negotiation (not involving a PIAB assessment or court order) to make a compensation payment to a claimant, the compensator must pay the Department the full liable amount of relevant social welfare payments that have been paid as a consequence of that personal injury.

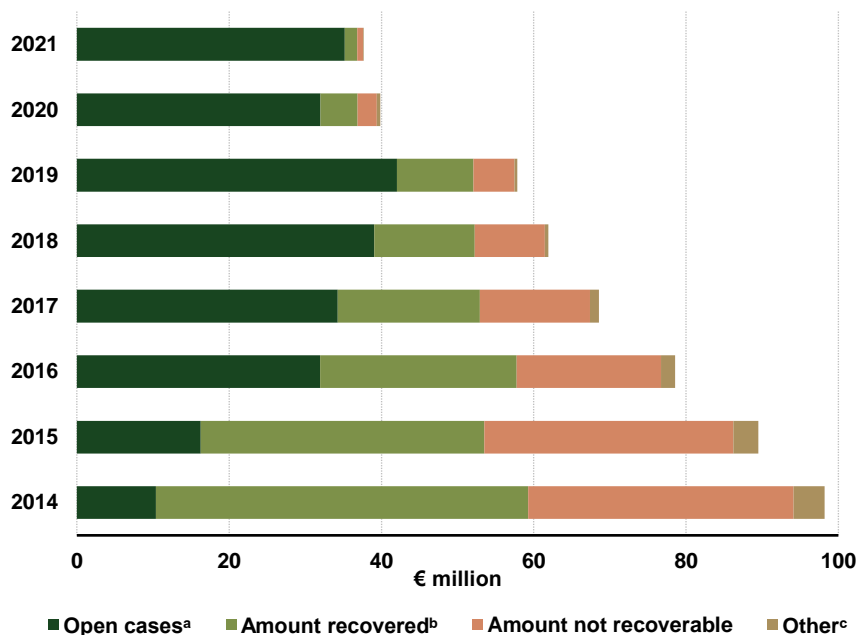
Source: Office of the Comptroller and Auditor General

Note: a 'Loss of earnings' refers to a loss of earnings as stated in the PIAB assessment or court order. Benefits refers to all benefits and assistance received by the claimant.

11.18 The value of benefits and assistance potentially recoverable under the scheme depends on how long a claim remains open before settlement (see Figure 11.5). For example, for cases commencing in 2014, the total potentially recoverable amount at March 2022 was €94 million¹ — of this total, the Department had recovered €49 million (‘amount recovered’ in Figure 11.5) by February 2022 and a further €10 million relates to cases which are not yet resolved (‘open cases’) and may be recovered. The €35 million amount not recoverable in relation to 2014 is the amount the Department has no basis upon which to recoup because the PIAB assessment or court order did not state an amount related to loss of earnings, or the amount stated was less than the benefits and assistance received by the claimant.

11.19 The Department publishes the value of recovered benefits and assistance payments under the RBA scheme annually.² The examination found that the Department does not publicly report on the value of open cases or the value of payments to claimants which it had no basis to recover.

Figure 11.5 Potentially recoverable amounts and case status, by year of commencement, as at February 2022

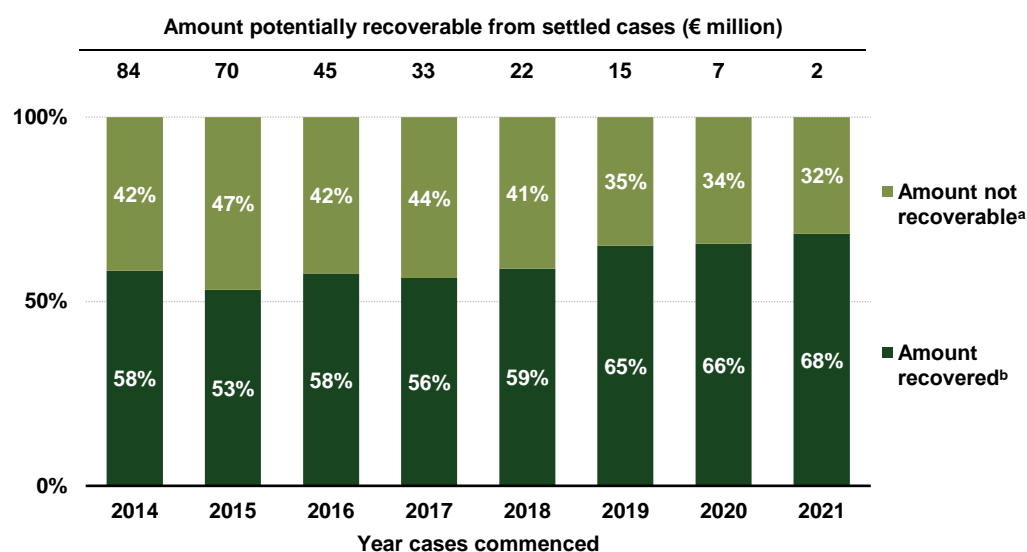


1 The total amount potentially recoverable (€94 million) excludes cases where no compensation was awarded to the claimant (see ‘other’ in Figure 11.5) — €4 million in benefits and assistance had been paid to these claimants.

2 The Department’s *Annual Statistics Report on Social Welfare Services* reports the value of recoveries in the Social Insurance Fund and the annual appropriation account publishes the value of recoveries for the Social Protection Vote.

Source: Department of Social Protection. Analysis by the Office of the Comptroller and Auditor General.

- Notes:
- a The value of open cases commencing in more recent years (for example, 2020 and 2021) will increase over time as some claimants continue to receive specified benefits and assistance while awaiting settlement.
 - b ‘Amount recovered’ is the actual amount the Department received in cases with full or partial recovery.
 - c ‘Other’ includes cases which are closed as no compensation was awarded to the claimant, the claimant is deceased, or the case was withdrawn by the claimant. No benefits and assistance are recoverable in these cases.

Figure 11.6 Benefits and assistance recovery rate for settled cases as at March 2022, by year claim commenced

Source: Department of Social Protection. Analysis by the Office of the Comptroller and Auditor General.

- Notes:
- a 'Amount not recoverable' is the amount which the Department had no basis upon which to recover in cases with partial or no recovery.
 - b 'Amount recovered' is the actual amount the Department received in cases with full or partial recovery.

11.20 For all cases settled with compensation awarded up to March 2022, the Department recovered 58% of the potentially recoverable amount (see Figure 11.6). This amounted to receipts of €160 million.

Reasons a loss of earnings or profits is not specified by a court order or PIAB assessment

1 There is no standard template on which the court order is to be recorded — a review of a sample of cases noted a variety of approaches. PIAB assessments are recorded on a standard template which specifies the amount payable to the Minister.

11.21 A compensation award recorded on a court order or PIAB assessment may itemise the award into amounts related to loss of earnings or profits, pain and suffering, and other damages.¹ However, in some cases, a compensation award only specifies a total award amount and does not indicate an amount attributable to loss of earnings or profit. Where this occurs, under current legislation, the Department has no basis upon which to recover the benefits or assistance it paid.²

2 Section 343R of the Social Welfare and Pensions Act 2013 limits the recovery of benefits or assistance from a court order or PIAB assessment to the amount of the award attributed to loss of earnings or profits.

11.22 PIAB stated that, in a limited number of cases, it may not award compensation for the loss of earnings or profits, for example due to the claimed loss not being supported by documentation or not supported by previous earnings. The Courts Service stated the reasons why a court order would not specifically articulate awards for a loss of earnings as

3 A role of the court registrar is to document the decision of the judge in the court order — where no reference is made to a loss of earnings in that judgement, no reference will be included in the court order.

- no application was made for compensation for loss of earnings or the award was solely for losses other than loss of earnings
- no submission was made in court by counsel to separate out loss of earnings from other compensation
- the presiding judge did not articulate in pronouncing their decision any specific amount in respect of loss of earnings.³

Conclusions and recommendations

- 11.23** The recovery of benefits and assistance (RBA) scheme enables the Department to recover certain scheme payments following an award of compensation to the claimant where loss of earnings or profits is specified.
- 11.24** Since March 2021, the Department engages with each compensator every 12 months seeking a status update for open cases, commencing with cases initiated in 2020. Prior to this, the Department did not routinely seek status updates for open cases.
- 11.25** In July 2020, the Department initiated a review process for open cases, beginning with the longest outstanding (i.e. from 2014). The review of 2014 cases is substantially complete. As a result of the review, the Department found it had not been notified of some cases settled before the review commenced and that some compensators have not engaged with the review.
- 11.26** At April 2022, no target had been set for the completion of reviews for each year from 2015 to 2019.

Recommendation 11.1

The Department should set target dates to complete its review of all open cases for each year and actively monitor progress towards achieving these targets.

Accounting Officer's response

Agreed.

In August 2022, the Department set the following targets and will actively monitor progress towards achieving these targets.

| Review year | Start date | Target complete date |
|-------------|------------------|------------------------|
| 2014 | July 2020 | Substantially complete |
| 2015 | July 2020 | Substantially complete |
| 2016 | Sept 2022 | Jan 2023 |
| 2017 | Jan 2023 | May 2023 |
| 2018 | June 2023 | Oct 2023 |
| 2019 | Nov 2023 | Mar 2024 |
| 2020 | Ongoing | Ongoing |
| 2021 | Ongoing | Ongoing |
| 2022 | To start in 2023 | Will be ongoing |

Recommendation 11.2

The Department should pursue the resolution of open cases where the compensator has not engaged with the Department's review.

Accounting Officer's response

Agreed.

The Department continues to engage with these compensators and is currently reviewing options available in relation to compensators who consistently do not engage with the Department, including seeking legal advice.

Recommendation 11.3

The Department should analyse the outcome of the year-by-year review process and amend its controls as necessary to address risks identified by each review.

Accounting Officer's response

Agreed.

In July 2020, the Department commenced a historical review of RBA claims from 2014 and 2015. As part of the learning from that review process, in March 2021 new procedures were introduced to review current claims from 2020 onwards on an ongoing basis to ensure that timely action is taken in respect of the recovery of benefits and assistance. The Department intends to analyse the outcome of the year-by-year reviews as these are completed.

11.27 The Department recovered €160 million of recoverable benefits and assistance from all cases settled with compensation awarded up to March 2022. This represented 58% of the potentially recoverable benefits and assistance amount. A significant factor in the settled cases where recovery of benefits and assistance has not occurred was the absence of a statement of compensation in respect of loss of earnings or profit in the recorded court order or PIAB assessment.

11.28 The Department does not publicly report on the value of open cases or the value of payments to claimants which the Department had no basis to recover.

Recommendation 11.4

For each settled RBA compensation case, the Department should record the reasons for any non-recovery of welfare payments, monitor trends in such cases, and report publicly on the amount of non-recoverable payments.

Accounting Officer's response

Agreed

For each settled RBA compensation case, the Department records the reasons for any non-recovery of welfare payments and monitors trends in such cases. For cases that are closed with a court order or PIAB assessment, the Department records any reasons noted on the order or assessment. The Department reports on the performance of RBA in its annual statistics report. The Department is also considering options for other data publication, including publishing to relevant bodies.

Annex 11A Exempted compensation sources

The RBA scheme applies to all compensation payments made in respect of personal injuries on or after 1 August 2014. No recovery is sought where compensation is awarded from the following exempted sources.

1. Compensation payments made in respect of injuries causing death.
2. Compensation payments made to an injured person
 - by the Hepatitis C and HIV Compensation Tribunal
 - by a court of competent jurisdiction to compensate certain persons who have contracted Hepatitis C or HIV within the State from the use of Human Immunoglobulin Anti-D, whole blood or other blood products
 - by the Residential Institutions Redress Board
 - by the Residential Institutions Statutory Fund Board
 - under the provisions of the Health (Repayment Scheme) Act 2006
 - by the Criminal Injuries Compensation Tribunal
 - in relation to a disability caused by thalidomide
 - in accordance with the Garda Síochána (Compensation) Acts 1941 to 2003
 - by a prescribed tribunal, redress board or scheme of compensation.
3. Compensation payments made pursuant to a court order or an order of the PIAB or a settlement which was made before 1 August 2014.