

**Department of Justice for Northern Ireland
Review of Criminal Damage and Criminal Injuries
Compensation Schemes**



**A response by the Association of Personal Injury Lawyers
March 2015**

The Association of Personal Injury Lawyers (APIL) was formed by plaintiff lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured plaintiffs. APIL currently has around 3,800 members in the UK and abroad who represent hundreds of thousands of injured people a year many of whom use the court system.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- to promote full and just compensation for all types of personal injury;
- to promote and develop expertise in the practice of personal injury law;
- to promote wider redress for personal injury in the legal system;
- to campaign for improvements in personal injury law;
- to promote safety and alert the public to hazards wherever they arise; and
- to provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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Introduction

APIL welcomes the opportunity to respond to the Department of Justice for Northern Ireland's consultation on reform of the Criminal Damage and Criminal Injuries Compensation Schemes. APIL is extremely disappointed in the proposed removal of awards for injuries in bands 1-5 and the reduction in awards in bands 6-12. The Criminal Injuries Compensation Scheme provides vital compensation to help victims of violent crime to get their lives back on track – and we are concerned that the removal and reduction of awards will have a devastating effect on victims.

- Regardless of the type or severity of injury suffered, violent criminal acts have a traumatic effect on the victim. The awards available under the scheme go some way towards helping the injured person overcome that trauma. The award ensures that the victim feels believed and listened to; reassuring them that society acknowledges the wrong doing. The award can help the victim obtain closure and move forward with their life.
- We are extremely disappointed, in particular, with the proposal to remove awards for injuries in bands 1-5. Awards in the lower bands provide compensation for permanent injuries, such as scarring, and these must not be taken away from vulnerable victims whose lives have been altered or shattered through no fault of their own.
- The awards in bands 6-12 should not be reduced. Reduction of awards in this category will specifically affect those with moderate brain injuries.
- Victims should not be made to pay to obtain medical evidence, and the cost of obtaining medical reports should not be deducted from the compensation award. Such expenses could put potential applicants off even applying for an award, and the awards received are designed to compensate for pain and suffering – not to cover the cost of medical evidence.
- We disagree with the way in which compensation for multiple injuries is calculated. The application of this formula undercompensates the victim in many cases, and should be re-visited.
- Further reform is required in relation to psychiatric referrals. At present, this is very much a "lottery" – dependent on the individual GP's willingness to refer the injured person.

We have only answered the questions regarding the criminal injuries scheme, as the criminal damage scheme falls outside our remit.

Q17) Do you agree that the band levels should be altered, as outlined in paragraph 4.37, to ensure that limited financial resources are targeted towards those most adversely affected by a violent crime?

Removal of tariff bands 1-5

We do not believe that tariff bands 1-5 should be removed. Awards in these bands provide compensation for permanent injuries, such as scarring. These injuries may upset and disrupt a person's life for a significant amount of time, and the victim deserves to be compensated for the distress suffered.

It is important that the tariff bands remain as they are, as even the smallest awards go some way towards helping the victim. The effect of being a victim of crime does not necessarily equate to the seriousness of the injury – everyone is affected differently, and even a crime which results in a minor injury can lead to the victim feeling traumatised. Someone who has experienced the ordeal of being mugged, perhaps suffering a sprained wrist as a result, is likely to be deeply affected by the event and may struggle to understand why they already fall into the lowest compensation band. For the scheme to no longer even recognise that the injury is worth compensating at all could have a devastating effect on the injured victim and their ability to move past what has happened to them.

The Criminal Injuries Compensation Scheme is an important mechanism which can help people obtain closure after the traumatic experience of being a victim of crime. Even a small payment can benefit the victim, as they will feel that someone has listened to them, and the community has acknowledged that they have suffered as a result of someone else's wrongdoing. The award can have a particularly powerful effect where for some reason there has not been a criminal prosecution. The victim will be awarded compensation as affirmation that the wrong was committed against them, and as a result will feel that they have been believed, despite there not being a prosecution.

Removing bands one to five will exclude a large proportion of those who currently claim under the scheme. As set out in the consultation document, in 2012/2013, compensation for 1709 injuries – accounting for 57 per cent of the total number of injuries compensated – was awarded under bands 1-5. If the proposal was to go ahead, therefore, over half of those compensated last year would then be denied the right to claim compensation under the scheme. We understand that there are limited financial resources to fund the scheme, but believe that the resources available should be distributed to provide awards across all levels of severity, instead of solely focussing on the more seriously injured victims.

Reduction in awards for bands 6-12

Injuries falling within bands 6-12 are serious and can have severe impacts on the victim's life. In particular, reductions in awards for bands 6-12 will affect those with moderate brain injuries. Those with subtle brain injuries are often misdiagnosed and may find that the effects of the injury seriously disrupt their lives. If the proposals go ahead, victims of crime who suffer brain damage which, for example, presents as concussion, impairment of balance, and headaches, with symptoms lasting 28 weeks will receive an award of only £1,500, instead of the current award of £3,300. This amount is not reflective of the impact that the injury has had on the person. As above, the making of a financial award is important in compensating the victim and giving them a sense of closure – particularly where there have been difficulties in obtaining a criminal prosecution for whatever reason.

Q18) Do you agree that band levels attaching to injuries relating to sexual offences and physical abuse should be protected from change?

We agree that band levels attaching to injuries relating to sexual offences and physical abuse should be protected from change. As above, however, we strongly suggest that all band levels remain the same and should be protected from change. Being a victim of crime has a devastating effect on people, and even small awards can often go some way to ensure that the victim obtains closure and can move on with their life.

Q19) Do you agree that the bereavement award should be protected from change?

We agree.

Q20) Do you agree with the proposal to exclude private medical treatment and private nursing care from the special expenses categories?

We are doubtful that excluding private medical treatment and private nursing care will result in significant savings. In 2012/2013, for example, £36, 837.87 was paid out in private medical expenses – amounting to 0.5 per cent of the total compensation paid out. Additionally, whilst we do not dispute that the Health Service provides a good standard of care to those in need, private medical care may be the most appropriate option for the victim in some circumstances. For example, the victim may require treatment which is available, but limited, in the public health care system, such as Cognitive Behavioural Therapy or physiotherapy. In order to access these treatments for an effective period of time, it may be necessary to use a private healthcare provider. We believe that private medical treatment should continue to be provided within the scheme.

Q21) Do you agree with the proposal that applicants who receive compensation should make a contribution of £50 towards the cost of obtaining the initial medical evidence required to support their claim from their award?

If it has been established that the person has been injured as a victim of crime, they should not have to pay anything towards the cost of obtaining medical evidence. Such an expense may put off potential applicants from making an application. The Compensation Services should compensate victims injured through the criminal activities of others and should not discourage those applications in any way. There are no other schemes where the applicant is seeking the grant of state provision, and where no costs are awarded for making the application, where the applicant is expected to pay to provide primary evidence.

Q22) Do you agree with the proposal that Compensation Services would continue to source the medical report and would then deduct £50 from any award of compensation?

We do not believe that a successful victim of crime should be made to pay to use the system. Awards from the compensation scheme are designed to compensate the victim of a crime for their pain and suffering. They are not calculated to cover the cost of obtaining medical reports.

Q23) Do you agree with the proposal to retain and tighten the application of the existing provisions whereby unspent criminal convictions are taken into account when making an assessment of character?

We do not agree with tightening the application of existing provisions, but we do agree with retaining them. We believe that currently, there is a balance and the system allows the rehabilitation of offenders.

Q24) Do you agree with the proposal not to place a cap on the total amount of compensation payable and to retain the existing provisions to compensate for multiple injuries on a scale of 100% of the band level for the most serious injury, 30%

for the band level of the second injury and 15% for the third and 10% for each subsequent injury?

Proposal not to place a cap on the total amount of compensation payable

We are pleased with the proposal not to place a cap on the total amount of compensation payable. It is rare for awards to reach above £500,000, but for those victims with injuries of such severity that an award does exceed this level, it would be unjust to restrict the amount of the award despite the victim's needs being far greater. For example, if a victim is subject to an attack which leaves them with tetraplegia, brain damage and a disfigurement, these injuries are likely to exceed £500,000. If a cap was imposed, the victim would be left under-compensated. We agree with the Department of Justice's consultation that the application of a cap could have a detrimental impact on those victims most in need and those who have suffered serious injuries which are likely to be long-term and life changing.

Proposal to retain the existing provisions to compensate for multiple injuries

We do, however, object to the existing provisions in place to compensate for multiple injuries. Members in Northern Ireland have expressed the difficulty in managing the expectations of victims of violent crime who seek compensation but who cannot understand why their injuries are divided up for assessment, and why they are not compensated in full for each injury. After all, the injuries are not "overlapping" – the loss of sight in one eye is not related to a broken ankle, and there is no justification for reducing the amount of money that the victim should receive in this circumstance.

Further, with the current provisions to compensate multiple injuries, there is no consideration of the overall effect that the violent crime has had on the victim. There will be some cases where separate injuries will contribute to an overall physical condition that warrants a higher award than if the injuries were assessed separately. The scheme as it stands does not allow any greater flexibility to allow assessors to do this. For example, if a victim lost one leg below the knee and the other leg was paralysed, the victim would be compensated for two separate injuries whereas the overall effect of the injuries would be that the victim will have lost the use of both legs – which would come with a higher award if assessed as one injury.

If the current method of assessing multiple injuries is to be retained, then APIL would argue that a provision must be included to allow the Compensation Agency to depart from applying the multiple injuries formula in cases where it is clear the resulting award will be insufficient and to enable it to make a discretionary award that takes into consideration the overall physical effect of the injuries.

Q25) Do you agree with the proposal not to introduce a residency/nationality requirement to the new scheme?

We agree.

Q26) Do you agree with the proposal to retain the existing method for calculating loss of earnings?

We do not agree with the proposal to retain the existing method of calculating loss of earnings, particularly if the above proposals to remove or reduce tariff awards are to go ahead. Members in Northern Ireland already report that it is very difficult to explain to victims

that they will not receive loss of earnings payments until after a 28 week period. Members report that most people who seek to claim compensation under the criminal injuries scheme go to see a solicitor because they are off work for perhaps 4 weeks due to their injury, and are unable to survive on statutory sick pay. Most victims just want their loss of earnings back, and are not interested in receiving any more compensation. Due to the arbitrary requirement of 28 weeks, these people are unable to be fully remunerated for their loss, and there is no proper justification as to why this is the case.

Currently, those who are most likely to be off work for a few weeks but not long enough to qualify for the loss of earnings payment fall within the tariff bands 1-12. The awards received by victims within these bands will go some way to helping cope with the financial strain of having to take an extended period of time off work. They may have a mortgage or rent to pay and a family to keep and any financial recoupment will help towards this. To keep the loss of earnings threshold at 28 weeks whilst at the same time removing awards for tariff bands 1-5 and reducing awards in tariff bands 6-12 is extremely unjust.

Q27) Do you agree with the proposal to continue to pay for “reasonable” funeral expenses up to a maximum of £5,000 per claim?

We agree that reasonable funeral expenses should continue to be paid.

Q28) Do you agree that we should retain the 90 day period for applicants to consider a decision and to notify either acceptance of an award or lodge a Review Request or an Appeal?

We agree that the 90 day period should be retained.

Q29) Are there any other provisions, considerations or other features of the 2009 scheme which you consider should be changed? If so, can you provide details of the changes and why you consider them to be so necessary?

Victims of violent crime who suffer from psychological problems associated with the attack will only be considered for an award where their condition has been diagnosed by a psychiatrist. For this to happen, the victim will first need to see a GP willing to make the referral to a psychiatrist or clinical psychologist. Not all GPs are equally willing to make such referrals and many victims will only be referred to a counsellor. The situation is a “lottery” based on which GP the victim sees – two people with the same symptoms and condition may have entirely different outcomes if one GP refers, and the other one does not. One will be compensated for their injury, and the other one will not. This issue must be addressed.

We also believe that the previous system in relation to medical reports should be reinstated, whereby the victim has the right to obtain an independent medical report in the same way that an insurance company has that right. The present scheme relies on the GP filling in a “tick-box” style questionnaire from the Compensation Agency, which is designed to illicit positive replies.

Q30) Do you agree that a proportion of any savings that may be realised from the changes to the criminal injuries scheme should be reinvested to support other services for victims?

Should the proposals go ahead despite our concerns, we believe that any savings made should be reinvested into support for other services for victims, to help them to get their lives back on track. We strongly believe, however, that the proposed changes to the bands should not go ahead. In members' experience, an award of compensation – an acknowledgement that there has been wrong done to the victim, and money provided to help get their life back on track, is effective in helping to establish closure after the trauma of the criminal act. Further, the help and support of charities, voluntary organisations or other forms of victim support cannot help victims with the financial losses that they may suffer as a result of their injuries. It is, therefore, extremely important that savings should not be made by removing tariff bands 1-5 and reducing the awards in tariff bands 6-12.

- Ends -

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