Ministry of Justice

Consultation on getting it right for victims and witnesses

A response by the Association of Personal Injury Lawyers

22 April 2012

The Association of Personal Injury Lawyers (APIL) was formed by claimant 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 claimants. APIL currently has over 5,000 members in the UK and abroad who represent hundreds of thousands of injured people a year.

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.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:
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Executive Summary

APIL welcomes the opportunity to respond to the Ministry of Justice's (MoJ's) consultation regarding the Criminal Injuries Compensation Scheme (CICS). APIL would firstly like to express its disappointment at lack of willingness to consult on the cap on damages, which has remained stagnant at £500,000 since 1 April 1996. The general cost of living, health care and rehabilitative services have all increased in the past 16 years and we would have expected there to have been an inflationary increase in the cap before now. Using the Inflation Calculator provided by Westlaw[1] £500,000 awarded in April 1996 is now uprated to £786, 041.94.

In addition to this, we note the following regarding the MoJ's proposals for the CICS:

- Awards for injuries in bands 1 to 5 must not be removed from the tariff scheme. Awards in these 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.
- Awards in bands 1 to 12 represent a considerable amount of financial help for people on low and middle incomes, and awards in the lower bands would not necessarily qualify for a loss of earnings payment, which a victim is only entitled to when they have been absent from work for a period of at least 28 weeks. These victims in the lower bands, although not necessarily absent from work for a period of 28 weeks, may still require a substantial amount of leave from work to recover from their injuries, which could have resulted from a traumatic event. Victims in the bands 1 to 12 will still have the same financial requirements from themselves as those in bands 13 and above. They may still have a mortgage to pay, and a family to keep, and any financial recoupment will aid them with this.

[1] http://www.lawtel.com/PI/InflationCalculator

- APIL does not agree that claims officers should have discretion to withhold compensation from bereaved families when the deceased had very serious convictions. The focus of any award such as this should be on the bereaved family, and not on any past criminal convictions of the deceased.
- The definition of *"crime of violence"* needs to be wider than the one proposed. Neglect, stalking and suicide offences (generally rather than only referring to suicide offences on the railways) as well as deliberate and premeditated animal attacks should be included within the definition of a "crime of violence" for the purposes of the Scheme.
- All victims injured in the UK through the criminal acts of another, no matter how long they have been the country (residing or visiting) should be entitled to apply unless they are in the country illegally by their own choice.
- Victims that are entitled to claim compensation from the Scheme are often the most vulnerable people in society, due to their age or their injuries, therefore if the Scheme aims to help or protect these people then it must not discriminate against victims when they finally muster the courage to come forward and report the incident.
- Option A to exclude from the Scheme all those with unspent criminal convictions as proposed ignores all reality of why a victim may have a criminal conviction in the first place. For example, a victim who suffers a head injury or who suffers from mental health issues as a result of their injury may go on to offend through no fault of their own, but as a consequence of their injury. These victims should still be justified in their application to the CICA for compensation for their injuries.

Consultation Questions

As our remit only extends to personal injury cases, we have only answered those questions which relate to this field.

PART ONE

Q. 1. Are there groups of victims that should be prioritised that are not covered by the definitions of victims of serious crimes, those who are persistently targeted and the most vulnerable? If so, can you provide evidence of why they should be prioritised and what support needs they would have?

The statement of intent at paragraph 9[2] gives priority to victims of serious crime who are persistently targeted or injured over a period of time and who are particularly vulnerable. This would clearly include children injured in utero.

Injuries sustained by children in utero can include mild to severe brain damage; consequently providing life-long problems for the victim. We therefore recommend that the group of most vulnerable victims must include children and in particular, children injured in utero.

In his Foreword, the Lord Chancellor and Secretary of State for Justice states,

> *"I want to see a system targeted at those who are most seriously harmed by crime, whether through physical injury or emotional trauma. I want victims to be able to rely on CICS for the long-term…"*[3]

It should be noted that the seriousness of the crime does not always closely mirror the seriousness of the consequences for the individual victim. Each victim, and therefore each case, is individual as well as the impact it will have on that person.

For example, a reckless mother may allow her infant to have access to her methadone which has been left unsupervised on a low shelf. The infant may suffer respiratory failure and brain damage as a consequence of that ingestion, leading to life-long dependency on others. An elderly man may also be the victim of persistent

[2] *Getting it right for victims and witnesses, Consultation Paper CP3/2012,* Ministry of Justice, January 2012, Page 11 paragraph 9.
[3] *Getting it right for victims and witnesses, Consultation Paper CP3/2012,* Ministry of Justice, January 2012, Page 3 paragraph 7.

antisocial abuse. He may have stones thrown at his home, people shouting names at him and rubbish or faeces scattered over his garden and front door step. Abuse like this could cause the elderly man to suffer from depression, feeling victimised in his home, perhaps he may even develop agoraphobia and end up denying himself access to essential services outside of his home and grocery shopping.

Compensation should be focussed on blameless victims of crime, but any prioritisation between victims ought to be weighted towards those most seriously affected by the crime in terms of injury and consequential losses, and not necessarily a financial sense.

Q. 3. Are the eight categories of need identified correct? Are there any other categories of need that support services should address?

Special medical equipment and the assessment of victims' needs are extremely important in their recovery and it is essential that these are conducted early on. We therefore recommend that there should be an additional category to cover any equipment needs.

We recommend that in addition to those listed on page 19 of the consultation[4] services should also be provided through hospitals, GPs and primary care services.

Q. 4. Is a mixture of locally-led and national commissioning the best way to commission support services for victims of crime?

Q. 5. Should police and crime commissioners be responsible for commissioning victim support services at a local level? Who else could commission support services?

Q. 6. Who do you think should commission those services at a national level?

Q. 7. Which services do you think should be commissioned at a national level?

Q. 8. Should there be a set of minimum entitlements for victims of serious crimes, those who are persistently targeted and the most vulnerable?

[4] *Getting it right for victims and witnesses, Consultation Paper CP3/2012,* Ministry of Justice, January 2012, Page 19 paragraph 35.

Q. 9. Is there further support that we need to put in place for victims of terrorism, and bereaved family members affected by such incidents, to help them cope and recover?

The proposals in the consultation paper lack detail on what can be an exceptionally complex issue and make no reference to engaging actively with local authorities to commission support services for victims of crime. This has the potential to result in a postcode lottery of services and the service providers available to victims. There needs to be a joined-up approach in relation to necessary medical support services such as psychologists, hospital trusts and primary care trusts.

Police territory areas do not necessarily mirror local authorities or primary care trust territories which will no doubt make this a very complex operation for offering an approach as proposed.

To ensure consistency in the approach of local services, there should be a national minimum set of standards for victims of crime. These could include early referral for counselling or physiotherapy in order to encourage and enable the victim to start to put their life back together. Service level agreements should be reached through consultation with NHS Hospital Trusts, Primary Care Trusts (or their successor bodies) the BMA and Royal Colleges.

Victims should also expect:

- assistance with re-housing if an issue has arisen here;
- proper information regarding the prosecution process and what to expect during the trial and at sentencing and the possibility of a collapse of prosecution and the release of the offender;
- witness protection if this is appropriate;
- access to translation and interpretation services where necessary to ensure that information is communicated properly; and
- information of any benefit entitlement and assistance on how to claim this.

Victims of terrorism and bereaved families should receive the support as described above but in a way that it is tailored to their more specific needs. Bereaved families should also expect to receive information on the inquest process and coroner service, such as the recently published Guide to coroners and inquests and Charter for Coroner Services[5].

Q. 10. How could the Victims' Code be changed to provide a more effective and flexible approach to helping victims?

Applicants are often in fear of retribution, particularly in child abuse claims where a fear of reprisal may have been instilled in the victim from a young age or over a period of time. Therefore, we agree with paragraph 64[6] where the Ministry states that victims should be supported in their efforts to bring offenders to justice. This could include help and support about the court process, before and on arrival at the court. Victims should not fear reprisal when seeking to bring offenders to justice.

Q. 13. How could services and support for witnesses, throughout the criminal justice system, work together better?

At paragraph 89[7], the framework for support services does not include medical professionals. In order to provide a joined-up approach together with the police and voluntary sector to support the needs of victims and witnesses then medical professionals should be included here.

Q. 21. Should the surcharge on conditional discharges be set at a flat rate of £15 for those over the age of 18?

In principle this seems a sensible approach, however, there are likely to be enforcement difficulties similar to the current problems with enforcing fines in a proposal such as this. The Ministry proposes that it might possibly recover in excess

[5] http://www.justice.gov.uk/coroners-burial-cremation/coroners
[6] *Getting it right for victims and witnesses, Consultation Paper CP3/2012,* Ministry of Justice, January 2012, Page 26 paragraph 64.
[7] *Getting it right for victims and witnesses, Consultation Paper CP3/2012,* Ministry of Justice, January 2012, Page 33 paragraph 89.

of £50 million[8]. If this is possible then APIL recommends that the Scheme can continue to operate as it currently does with all bands and tariffs intact.

PART TWO

Q. 33. How should we define what a "crime of violence" means for the purposes of the Scheme? What are your views on the circumstances we intend to include and exclude from the definition?

When defining "crime of violence" there can often be difficulties with the concept of what a reasonable person sees as violence. Many claims on behalf of children can be as a result of neglect, which may also take the form of cruelty. However, although it is a crime to neglect, can it be categorised as a crime of ***violence***? Although the State cannot be expected to compensate children who are victims of poor parenting, there must be a clear difference where there is evidence of outright cruelty such as neglect or reckless behaviour that is likely to have an impact on a child, whether physically or psychologically.

The crime of stalking has also been considered violent in criminal courts but does not fit within the definition here of a "crime of violence". Therefore, any definition the Scheme uses when describing a "crime of violence" would need to be wider than the one proposed within the consultation paper and should include the concept of recklessness in its criminal context.

In relation to children injured in utero who suffer injuries as a result of alcohol abuse (foetal alcohol syndrome) we recommend that they are treated no differently to children injured in utero by drug abuse. Although drug abuse is a criminal offence, whereas drinking alcohol, even to the excess is not, the child in utero is still subject to the reckless behaviour of another. That reckless behaviour can also result in the same injuries as those for a child in utero subjected to drug abuse. Either child, as described above, could go on to be born with brain damage, suffer inter-uterine growth deficiency, facial abnormalities, development delay or have behavioural

[8] *Getting it right for victims and witnesses, Consultation Paper CP3/2012,* Ministry of Justice, January 2012, Page 43 paragraph 134.

problems which will prevent the child from establishing right from wrong. All of these in turn could prevent the child from accessing education or leading an independent life.

Furthermore, the House of Lords in *A-G's reference (No 3 of 1994)* [1997] 3 All E.R. 936 found that an assailant who knifed a pregnant woman was guilty of the manslaughter of the child in utero that was subsequently born, but then died as a consequence of the injuries sustained in utero. Their Lordships held

> *"It was not disputed that injury to a foetus before birth which results in harm to the child when it is born can give rise to criminal responsibility for that injury."*

Therefore, it would be unfair and unjust to remove or deny an entitlement to compensation from any of these children who fall into the category of most vulnerable are who are also injured through no fault of their own. These are the victims who the government are expressly seeking to protect.

The need for a wider definition can also be seen at paragraph 186 where it includes suicide offences committed on the railways but not on the public highway. A person that deliberately walks or runs into traffic on a road or motorway, or propels their body in the form of a weapon knows that their action will endanger others. For example, see the case of Gareth Owen Jones (By His Mother & Litigation Friend Maureen Caldwell) v First Tier Tribunal (Social Entitlement Chamber) & Criminal Injuries Compensation Authority [2011] EWCA Civ 400. Should the person attempting suicide survive, they would be liable for prosecution; therefore, in the event that their suicide attempt is successful the crime should be treated in the same way. The fact that they have died does not lessen the criminality of the act, nor does it lessen the impact on the victim.

Furthermore, victims of deliberate or premeditated animal attacks and where the owner has been reckless, in particular from dogs, are often left without remedy as the owner lacks insurance or is impecunious. Until it is compulsory for pet owners to insure their animals there must be a remedy for victims of these crimes, who are often left with permanent scarring. APIL therefore proposes that further consideration

should be given to the circumstances the Ministry intends to include and exclude from within the definition of a “crime of violence”.

Q. 34. What other circumstances do you believe should, or should not, be a “crime of violence” for the purposes of the Scheme?

We recommend that neglect, stalking and suicide offences (generally rather than only referring to suicide offences on the railways) as well as deliberate and premeditated animal attacks should be included within the definition of a “crime of violence” for the purposes of the Scheme.

There are also often inherent problems in proving that some sexual acts are crimes of violence. We therefore also recommend that all criminal sexual offences should be included within the scope of a “crime of violence”.

Q. 35. To be eligible for compensation, should applicants have to demonstrate a connection to the UK through residence in the UK for a period of time of at least six months at the time of the incident?

APIL does not believe that applicants should have to demonstrate a connection to the UK through residence in the UK for a period of time of at least six months at the time of the incident. All victims injured in the UK through the criminal acts of another, no matter how long they have been the country (residing or visiting) should be entitled to apply. This issue has already been tested in the European Court of Justice. The French Law (Code 706-15) only permitted compensation for criminal injury for French citizens, or permanent residents in France. A test case successfully challenged this, alleging that by discriminating between French nationals and foreigners France was in breach of the Treaty of Rome, which prohibits such discrimination, *Ian William Cowan v Trésor public Case 186/87*. The Advocate General stated the following,

"A difference in treatment of Community citizens, on the basis of nationality, under a compensation scheme for victims of crime can constitute a discriminatory obstacle, contrary to Community law"[9].

For example, consider the case of Anuj Bidve. Anuj was an engineering post doctorate student studying at Lancaster University. He travelled to the UK from India in September 2011 to begin his studies. On 26 December 2011, Anuj was shot dead in Salford, Manchester, while out walking with friends. Under this proposal, Anuj's family would be unable to show a connection to the UK through residence in the UK for a period of at least six months at the time of the incident and so would be ineligible to apply to the Scheme.

Consider also the case of Ashraf Rossli. Originally from Kuala Lumpur, Ashraf was a 20 year old accountancy student and had been in the UK for one month when he was attacked at Barking during the London riots in 2011. He was on his way to a friend's house when his bicycle was stolen and his jaw was broken in two places when he was punched. Ashraf was then helped up by two separate attackers who, after helping him to his feet, robbed him of other personal possessions from his rucksack. The attack was filmed on a mobile phone and CCTV and circulated on social media sites such as YouTube.

Refusal of applications like this cannot be justified by any need to cut costs or make savings.

There are also perception implications when introducing any proposal such as this. Any tourist, for example, would be refused eligibility. It is purely discriminatory for the Scheme not to apply to a person as soon as they arrive in the UK. The EU Council Directive 2004/80/EC, which relates to the compensation of crime victims, provides that,

"all member states shall ensure their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in

[9] http://eur-law.eu/EN/Opinion-Mr-Advocate-General-Lenz-delivered-6-December,163908,d

their respective territories which guarantees fair and appropriate compensation to victims[10]".

The Directive does not suggest that a member state can, or should, introduce criteria to determine who can be categorised as a victim for the purposes of these compensation schemes.

Q. 36. What are your views on our alternative proposal to exclude from eligibility for compensation only those who were not legally present in the UK at the time of the incident?

Provided that those who are trafficked to the UK without their consent are excluded from this proposal then APIL agrees that people illegally in the UK at the time of the incident should not be eligible to claim compensation under the Scheme.

It is important that trafficked victims are excluded from this proposal as their illegal presence in the UK was not one of choice. We firstly recommend, however, that the definition of trafficking is considered carefully or revised. There are often children transported into the country purely because their parents have travelled to the UK illegally and it is suggested that, once again because of their vulnerability they should not be excluded, even in circumstances where their adult parents might be.

Q. 37. What are your views on our proposal not to make any award:

- **Where the crime was not reported to the police as soon as reasonably practicable?**
- **Where the applicant has failed to cooperate so far as practicable in bringing the assailant to justice?**

APIL members note major problems with these proposals, especially in relation to victims who have suffered a head injury, including mild and moderate head injuries. The claimant in such circumstances often believes that the hospital will report the

[10] EU Council Directive 2004/80/EC Chapter II National Schemes on Compensation, Article 12 paragraph 2.

incident. Many vulnerable members of society, such as those who have suffered head injuries, might be unable to report the incident immediately to the police themselves, and find themselves excluded from the scheme as a result.

Additionally, where the injuries result from domestic violence or, for example other circumstances where the assailant is known to the applicant, there is often a genuine fear of recrimination and a general fear of the whole process in bringing the assailant to justice.

Similarly, victims with an existing or consequential mental health issue should be allowed discretion here. There are also particular problems with victims who are abused as children. This is dealt with further at Q. 38.

APIL fears that should these proposals be introduced to the Scheme, many innocent injured victims would inadvertently surrender the opportunity to claim compensation from the Scheme.

Victims that are entitled to claim compensation from the Scheme are often the most vulnerable people in society, due to their age or their injuries, therefore if the Scheme aims to help or protect these people then it must not discriminate victims when they finally muster the courage to come forward and report the incident. It is also important to remember that the CICA and the Scheme is not extremely well known throughout laymen, especially among the vulnerable in society, and so these proposals may be seen as impeding access to justice for those victims. See the NAO Report, *Compensating Victims of Violent Crime*, which indicated that more than one in ten applicants did not learn of the scheme's existence until six months or more after the accident (SE/2000/45 14 April 2000, page 22).

The ability to not make any award in the above circumstances has always been a feature of the CICS; however, a certain level of discretion to make a reduced award has been in effect. The removal of that discretion is likely to have a disproportionate effect on the most vulnerable and worse injured victims. The proposed wording suggests a test of reasonable practicability, which infers that some qualitative

evaluation of the circumstance will have to be made in each case, if so then why remove the discretion?

The CICA should not link knowledge of the Scheme to co-operation in bringing the assailant to justice, as proposed. This implies that victims are motivated only by the prospect of cash compensation rather than their civic duty to report and cooperate.

Q. 38. What considerations should be taken into account in determining what is reasonably practicable for the applicant with respect to reporting the incident and co-operating with the criminal justice system?

We recommend that the nature of the injury and the circumstances in which they were sustained are of paramount importance here. Claims officers should also take into account the mental anguish that the victim may have suffered with and the existence of genuine fear. There can also often be a fear in applicants of retribution particularly in child abuse claims where a fear of reprisal may have been instilled in the victim from a young age or over a period of time.

For example, victims of domestic violence or abuse will inherently suffer a fear of their attacker and obviously reprisal for reporting the crime. Often in these circumstances there is an existing relationship between the victim and their attacker. The attacker may then threaten that relationship, or use it against the victim in order to avoid arrest and continue their abuse.

Muggings often take place in an area familiar to the victim, usually on their way home from work or an evening out. The area is also likely to be familiar to the mugger. In a recently published article by the BBC[11], they stated that research showed the average sentence for a convicted mugger is 12 months; however, 41% of those convicted are not jailed. Statistics like this increase the fear of reprisal for those victims that consider bringing an attacker to justice. They create a genuine level of fear that could be increased by the fact it is likely the attacker and the victim

[11] A copy of the article is included at Annex A.

live within the same area/suburb/town and the knowledge the perpetrator has not been jailed.

Historically, the CICA has not recognised fear of reprisals or recriminations as a valid reason for failing to co-operate or report an incident to the police. However, this fear can manifest and build over a long period of abuse as explained above. This is especially true in victims who are close to their attacker or abuser. These victims must not then be punished for a fear that has been imbedded within them from the very crime they have failed, thus far, to acknowledge. Crimes of domestic violence and abuse are often conducted over a period of time and the emotional scarring is often more permanent than the physical. Genuine fear does exist and should be expected in victims of crime.

Our members report cases where the victim has struggled to make a report at a small local police station or where they have been discouraged from making a formal report or have found it difficult to ensure ongoing involvement by officers once reported. They should not be penalised in those circumstances.

Q. 39. Do you agree that there should be an exception to the rule that the incident should be reported as soon as reasonably practicable in certain cases? What should those cases be?

For the reasons laid out above, we recommend that there is no rule that the incident should be reported as soon as reasonable practicable and, therefore, no exception is needed.

Q. 40. What are your views on our proposal to make an award where previously it would have been deemed to be against the applicant's interests (e.g. in cases of sexual or physical injury to a very young child)?

We agree with this proposal. There is no reason why a claims officer should withhold an award where he or she believes it may be in the best interests of the child.

Q. 41. What are your views on the options for limiting eligibility to the scheme for those with unspent convictions:

- **Option A, our preferred option, to exclude from the Scheme all those with unspent criminal convictions? Or**
- **Option B, to exclude those with unspent criminal convictions for offences that could lead to an award under the Scheme (i.e. violent and sexual crimes), with a discretion to withhold or reduce an award in the case of other unspent convictions?**

APIL is strongly opposed to Option A. This option, as proposed ignores all reality of why a victim may have a criminal conviction in the first place. For example, a victim who suffers a head injury or who suffers from mental health issues as a result of their injury may go on to offend through no fault of their own, but as a consequence of their injury. These victims should still be justified in their application to the CICA for compensation for their injuries.

We prefer Option B. Refusing compensation under the Scheme on the “blame” logic is fundamentally flawed. Many victims may have turned to a life of crime as a coping mechanism for the injuries they sustained and are intending to claim compensation for.

For example, a victim of sexual abuse may turn to drugs to cope with the anguish of the violence that has been inflicted upon them. In order to then fund any drug habit that might ensue they may also become involved in petty theft. There is a danger that victims of abuse may go on to become abusers themselves. There are fundamental problems with penalising these victims who may never have turned to criminal activities themselves had they not been victims of crime in the first place.

We also take the view that the ‘blameless’ aspect, used for deeming who should be compensated, should relate to the conduct of the person in the relevant incident, rather than something which happened in their past.

Q. 42. Under Option A, what circumstances do you think are exceptional such that it might be appropriate for claims officers to exercise their discretion to depart from the general rule on unspent convictions?

If Option A, which APIL is strongly opposed to, were to be implemented we would recommend that motoring offences, except for the most serious such as death by dangerous driving, and other petty offences should be excluded. We submit that public opinion would be strongly opposed to the inclusion of such offences.

We also suggest that claims officers must be able to exercise some discretion in relation to victims who have turned to crime as a coping mechanism or as a result of their injuries as described above.

Q. 43. Are there any further impacts that you consider that we should take into account in framing our policy on unspent convictions, and any discretion to depart from the general rule?

The term “exceptional” almost makes it appear to be an extremely exclusive group or category. Claims officers must simply be able to use their discretion where they see it as necessary rather than only in exceptional circumstances.

Q. 44. What are your views on our proposal to ignore the convictions of the deceased in bereavement claims?

- **Should claims officers have discretion to depart from this rule and withhold payments when the deceased had very serious convictions?**
- **If so, what convictions should we consider as very serious for this purpose?**

APIL does not agree that claims officers should have discretion to depart from this rule and withhold payments when the deceased had very serious convictions.

The problem with this proposal lies in the definition of “very serious conviction”.

Consider the case of Louise Woodward. Louise was convicted of manslaughter in the USA where she had been working as an au pair at the age of 19. Upon her release, she returned to the UK where she trained as a lawyer. Louise now teaches and is a reformed citizen. Because of her reformed character, Louise’s family should not be deprived of compensation if she should now be the victim of a random crime of violence.

The BBC published an article online on 4 April 2012 profiling real people they had filmed for a documentary on muggers and their victims[12]. The article first introduces Jermaine, a young man who started a life of crime at the age of 11. He conducted robbery, sometimes at knife point, with serious threat and intent until he found God and turned his life around. Jermaine now works as a youth worker for the probation service. Again, people like Jermaine, who have clearly turned their life around, should not be penalised in this way by these proposals.

The focus of any award such as this should be on the bereaved family, and not on any past criminal convictions of the deceased.

Q. 45. What are your views on our proposed reforms to the tariff:

- **Removing awards for injuries in bands 1 to 5 from the tariff except in relation to sexual offences and patterns of physical abuse?**
- **Reducing awards in bands 6 to 12 of the tariff except in relation to sexual offences, patterns of physical abuse, fatal cases and for loss of a foetus?**
- **Protecting all awards in bands 13 and above?**

We recommend that these proposals to the tariff are not introduced for the following reasons:

[12] A copy of this article is included at Annex A.

- In bands 1 to 5, victims may have had time off work and even under the current scheme would not qualify for loss of earnings payments until a period of 28 weeks at work is missed. Victims who have missed, for example, a period of 8 weeks work, may have little or no savings to cover their every day outgoings such as rent/mortgage and utility bills. In such circumstances, the lower bands awards help meet these unforeseen shortfalls as well as compensating for the injury. Some victims are able to use the tariff award to fund access to much needed rehabilitation services such as CBT, counseling and physiotherapy which they are not entitled to under the Scheme if they have not been absent from work for more than 28 weeks.
- The lower bands represent a considerable amount of financial help for those on middle to low incomes, who may not qualify for a loss of earnings claim and so an award of any amount would greatly affect them.
- The recent article from the BBC[13] states that more than one in ten mugging victims get anxiety or panic attacks as a result of the attack and that 92 per cent of mugging victims are emotionally affected by the crime. Some less serious crimes can allow the victim to escape with little actual physical harm but the effect of the incident on the victim can often be long lasting and seriously traumatise them to the extent that they will change their lifestyle as a consequence but still never fully recover.
- The help and support of charity and voluntary groups that the Ministry proposes to provide cannot help victims with the financial losses that they may suffer as a result of their injuries.
- Some injuries in the lower bands include permanent disfigurements.
- Reductions in awards for bands 6 to 12 will really affect those with moderate brain injuries. We know that those with subtle brain injuries are often mis-diagnosed and may find that the effects of the injury seriously affect their lives – and go uncompensated. The making of a financial

[13] A copy of this article is included at Annex A,

award can act as recompense to victims and give them a sense of closure, particularly where there have been difficulties obtaining a conviction in the criminal prosecution for whatever reason.

- Being a victim of crime inevitably can cause a victim psychological trauma that is perhaps different to any other form of trauma. Often a victim's privacy and integrity is exposed and deliberately violated. Many victims truly benefit from financial recognition by the State that they have been wronged, even where the compensation is small, from the perception that someone has listened to them and acknowledged that they have been wronged.
- It is not clear to see where the money to be saved by the removal and reduction of the lower bands is being diverted. The cap on the upper bands is not being raised. The benefits of this proposal are illusory and the awards in these bands should therefore not be reduced.
- The proposals are predicated on the assumption that savings made in relation to less serious injuries will benefit people who have been more severely injured. However, the maximum award allowable under the Scheme is £500,000, and this has remained unchanged for 16 years, with no increase even to allow for inflation. Applicants with injuries of the utmost severity, who are likely to have lifetime needs, will suffer severe difficulties if no more adequate provision is made for them. Using the Inflation Calculator provided by Westlaw[14] £500,000 awarded in April 1996 is now uprated to £786, 041.94.

Q. 46. Do you agree that we should protect tariff awards for sexual offences, patterns of physical abuse, bereavement and loss of a foetus and re-categorise the award for patterns of physical abuse to clarify that it can be claimed by victims of domestic violence?

[14] http://www.lawtel.com/PI/InflationCalculator

Yes APIL agrees that tariff awards for sexual violence, patterns of physical abuse, bereavement and loss of a foetus should be protected.

Q. 47. What are your views on the options for changes to loss of earnings payments:

- **Option A, to cap annual net loss of earnings at £12,600 and continue to reduce payments to reflect an applicant's other sources of income?**
- **Option B.1, to pay all applicants a flat rate equivalent to Statutory Sick Pay and not reduce payments to reflect an applicant's other sources of income?**
- **Option B.2, as Option B.1 but we would not make payments in any year where the employer funded income in excess of £12,600?**

APIL recommends that there are no changes made to loss of earnings payments. The cost of living is at an all-time high and typical families that might claim under the Scheme are already struggling, and so to drop to the minimum wage will result in costing victims and their families their homes. A proposal such as this is also likely to have major effects on young people starting out in new careers or struggling to get on the ladder and those on low incomes.

In order to qualify for any loss of earnings payments a victim must be prevented from working for a period of at least 28 weeks. Therefore, by definition, the victim must be seriously injured in order to be prevented from working for such a length of time. Capping or removing the loss of earnings payment will, therefore, only affect the most seriously injured victims, who the government expressly seeks to protect. Given that it is stated that this will affect a relatively small number of applicants it would seem unfair to penalise them and expose them to serious financial hardship which is likely to force them into alternative state funding by way of benefits.

These proposals seriously underestimate the impact of losing earnings or the ability to progress within a job or career that may be stoppered by being a victim of crime. Consideration must also be given to the victim that is unable to continue or pursue their chosen career due their injuries. These victims will need to re-train or re-skill themselves and such a low cap will prevent these victims from being able to do so.

As a marker, the current UK national average annual earnings, as calculated by salary experts PayScale.com on 12 April 2012[15], is £30,860 for men and £24,082 for women. The proposed cap on annual earnings at £12,600 represents a figure substantially less than both of the national average UK salary.

Q. 48. What are your views on our proposal that applicants must demonstrate that they have no capacity to earn, or very limited earning capacity, to qualify for a loss of earnings payment? What should be taken into account when deciding whether an applicant has very limited earning capacity?

This information is not always possible to acquire. As explained above, the victim may be a young person in the initial stages of their career and struggling to get on the career ladder.

Any restriction on awards for earning capacity in this way is also likely to encourage victims to retreat back further, possibly to State benefits. For example, someone with a moderate brain injury may be seriously incapacitated in their ability to work due to problems with their memory or concentration. For victims with a reasonably long working lifetime ahead of them, and for young victims, the removal of awards for loss of earnings could be devastating.

Q. 49. Should we retain all categories of special expenses other than for private medical care?

[15] http://career-advice.monster.co.uk/salary-benefits/pay-salary-advice/uk-average-salary-graphs/article.aspx

Yes, the Scheme should retain all categories of special expenses; however, there should also remain the option of private medical health care. It is important to understand that public health care is not always the best, or most appropriate, option for the victim in some circumstances. In addition, some treatments, such as Cognitive Behavioural Therapy, (CBT) for example, are available on the NHS but are very limited, yet they often prove to be a cost effective form of psychotherapeutic treatment. Physiotherapy can also be available in limited quantities from the NHS yet, for example six sessions will be provided where 12 sessions would have been more effective. Therefore, the option of private medical health care must remain.

We are, however, concerned that victims currently struggle with procedural difficulties in relation to the Scheme provisions for care and support, which can make that aspect of the award for Special Expenses illusory. The Scheme requires the applicant to demonstrate that no other publicly funded options are available to them. This can result in the applicant being at the centre of an impasse between the CICA and local authorities as to which body will pay for care and support. This causes delay to the applicant and additional expense in administering the Scheme. We would like to see it made easier for applicants to establish their entitlement to an award for care and support in deserving cases.

Q. 50. Should we retain the bereavement award at its current level, and the existing categories of qualifying applicant for the bereavement award and other fatal payments?

The level of bereavement awards has not increased for many years, for this reason APIL recommends that the current level of bereavement awards is increased. But, at the very least, the Scheme should retain the current level of bereavement award, and the existing categories of qualifying applicant for the bereavement award and other fatal payments.

Q. 51. What are your views on our proposals on parental services:

- **To continue making payments for loss of parental services at the current level (£2,000 per annum up to the age of 18)?**
- **To continue to consider other reasonable payments to meet other specific losses the child may suffer?**

APIL agrees that the Scheme should continue to make payments for loss of parental services at the current level and it should also continue to consider other reasonable payments to meet other specific losses the child may suffer.

Q. 52. Should we retain dependency payments and pay them in line with loss of earnings proposals?

Yes APIL believes that the Scheme should retain dependency payments. However, these payments should not be paid in line with the loss of earnings as proposed in the consultation paper. The impact on dependents of the loss of the breadwinner in addition to their already existing grief is devastating. It is not cohesive to restrict their income even further at a time when they are most vulnerable.

Q. 53. Should we continue to make payments for reasonable funeral costs?

Yes the Scheme should continue to make payments for reasonable funeral costs. One suggestion could be for there to be a fixed award for funeral expenses to be paid in all applicable cases. This payment can, therefore, be paid very quickly to the bereaved family and allow them to progress at their time of grief without unnecessary delay.

Q. 54. What are your views on our proposals to require applicants to supply the information set out above?

In 2009, the CICA introduced a scheme whereby applicants had to obtain their own discharge notes from Accident and Emergency departments, to forward to

the CICA. This initiative failed: applicants found it very difficult to deal with such bureaucratic organisations and the scheme was abandoned by the CICA.

We take the view that this proposal has exactly the same inherent problems – applicants – all of whom have recently been innocently involved in a frightening assault or other crime – will simply find it too much to have to approach; instruct; and possibly chase up a GP or consultant for a report on their injuries and deal with their employer to obtain proof of earnings. Many applicants will be children or vulnerable adults – it is simply unacceptable to expect them to have to conduct their own claim in this way, and they will be unable to do so, in our opinion.

Applicants will have to write to the medical practitioner concerned – even a covering letter will be daunting to many - and the net result will be that the typical applicant will be dissuaded from pursuing a claim. Similarly, those who have to deal with a human resources department or a reluctant employer may find it daunting to deal with the administrative and bureaucratic processes at a time when they are recovering from the effects of their injuries.

We are also concerned that if the applicant then fails to follow up and remind the medical practitioner that their report is due or the employer that the earnings information is overdue, then the CICA will strike out the claim for non-co-operation. Not many private individuals, especially those who have recently been involved in a traumatic experience, will think to maintain a diary system in order to send reminders. Any system would require a ‘follow up’ procedure in place to remind applicants to chase up their outstanding reports and evidence, and we see no cost saving in that, compared to the current system where the CICA chases up this information direct.

The CICA currently bears the cost of obtaining these medical reports – will the CICA be reimbursing the applicant for the fee paid? Would there be an agreed standard fee, or will applicants be at the mercy of the current market rates for reports?

If not, then most applicants will be dissuaded from continuing with their application. It is unacceptable for anyone on benefits or a low income to have to fund the claim in this way. We know from Freedom of Information requests we have made of the CICA that medical professionals consulted by the CICA on the impact of its proposals for the applicant to deal direct with them was not welcomed. Comments from respondees included that the proposals would *"cause compromise of doctor-patient relationship and create unnecessary additional workload in terms of consultations*", and that they would *create "more work for and scope for disadvantage to vulnerable groups and those with poor reading and writing [skills], IT literacy or poor command of [the] English Language"* (Aneurin Bevan Health Board - Corporate Services).

The BMA was more forthright, stating *"The BMA could not support such a proposal for a number of reasons. Firstly by placing the responsibility for obtaining and paying for the report onto the patient, who has been a victim of a criminal act, you would effectively place the responsibility on the patient to prove the claim based on a report provided at the patient's request; this means the doctor is expected to assist the patient to 'prove' their claim rather than being there to provide purely factual information, if there was a difference in view between the patient and doctor on the interpretation of the issues this would seriously jeopardise the doctor/patient relationship. In doing this Secondly, in asking the patient to request the report directly, it will undoubtedly waist [sic] GP's valuable time. If the patient were to make an appointment for solely this purpose, and experience shows that many do despite being urged not to, it could delay other sick patients who have a much more urgent need to see the GP.*

It is also important to add that patients are often unsure how to phrase such a request which can obfuscate what is and isn't required of the report. If it is not clear what information is required by the GP, he or she would have to then ask the patient to contact the requester of the report to send the GP further instructions. This would clearly delay proceedings further and consume more

NHS appointments. We therefore believe the request for a report should come directly from the requesting organisation and not from the patient.

We cannot see how these changes would be welcomed by either organisation."

And added that these proposals *"would severely damage the doctor patient relationship and would ultimately deter vulnerable people from gaining compensation. In doing this the CICA would be discriminating against such groups.*

Vulnerable people often suffer from the inverse care law and so are less able to know the system to get a helpful report. They are more debt averse and also have less disposable income to pay for the report so may well be put off from applying. We feel such a proposal would be highly regressive."

It is generally our view that obtaining records from GPs who are local to the applicant is not as problematic as gathering evidence and records from hospitals or other health bodies. The hospital may also not necessarily be as local to the applicant as their GP surgery and visiting the hospital purely for administrative purposes for injured or vulnerable victims may be extremely difficult. What the injury is or how the injury was received can seriously affect a victim's behaviour. What originally could have been a simple car ride or bus journey to the hospital can easily become a traumatic trip out that requires much contemplation and organisation in order to ensure a safe journey there and back. For example, a victim of rape or a mugging would have to plan each step of the journey with meticulous detail to ensure they are either accompanied, or not outside when it is dark, or that they are able to disembark from a bus stop near to a taxi rank so they do not have to walk far or alone.

Consider also victims with brain injuries, many of whom may have cognitive impairments which, even in cases where the victim is expected to make a good recovery, can take two to three years before they can deal with the sort of process that is proposed here.

Q. 55. Please let us have your views on our proposal that applicants should pay a small cost (up to a maximum of £50) to obtain the initial medical evidence to make out their claim?

Although £50 may appear to be a **small cost** it is important to remember that some of these applicants may have been out of work for some period of time, and as a result of that they will already be out of pocket. Applicants must not be expected to pay any cost to obtain evidence to make their claim to the CICA. The CICA should compensate victims injured through the criminal activities of others and should not discourage those applications in any way. It is feared that the imposition of such an expense may even put off potential applicants from making an application. In no other procedure in which an application is made under a scheme seeking the grant of state provision, and where no costs are awarded for making the application, is the applicant expected to pay to provide primary evidence.

Q. 56. Where CICA continues to cover the initial medical costs, should this be deducted from the final award (up to a maximum of £50)?

No. APIL does not agree that there should be deductions from the final award made to claimants to cover this cost. Awards from the CICA were designed to compensate claimants for their pain, suffering and loss of amenity and not to cover the cost of obtaining medical records

Q. 57. Should costs associated with medical expenses be deducted when:

- **An applicant misses medical appointments that CICA is paying for?**
- **The applicant commissions additional medical evidence that is not required to determine the claim?**

For the reasons we have discussed above in response to Q54, Q55 and Q56 we do not agree that costs associated with medical expenses should be deducted in either scenario proposed.

In response to Q54 we have provided a glimpse of what life might be like for a victim of a crime such as rape or a mugging. A victim of a recent crime outside of their home is likely to feel safest in their home and feel at their most vulnerable when leaving the home. This includes leaving the home for medical appointments. Gathering the courage to leave their home can be traumatic and so it should be expected that medical appointments could be missed.

It is also important to consider those victims with mild to moderate brain injuries who may, as a result of their injuries, suffer problems with their memory and unavoidably miss medical appointments.

Q. 58. What are your views on our proposal to reduce the time available for applicants either to accept the claims officer's decision, or seek a review, from 90 to 56 days, with a further 56 day extension for exceptional reasons?

For represented applicants, this would probably be acceptable, but for those who are unrepresented the shorter timescale may prove problematic.

Additionally, some applicants make Freedom of Information requests of the CICA so that they can ascertain why the particular decision has been made. This eats into the time available for deciding whether to accept the claims officer's decisions. Applications and processes can also take a longer period of time when dealing with vulnerable people. Therefore, the time available to accept the claims officer's decision should not be reduced.

Q. 59. What are your views on our proposals to extend the circumstances where repayment of all or part of the award may be requested?

APIL agrees that there should be the opportunity for the victim to access all or part of their award on request. Victims are currently able to do this; however, it is very rare for the victims request to be granted and for all or part of the award to be paid on request. Therefore APIL advises that the Ministry of Justice should

provide further clarity on this in addition to the information provided at paragraph 268 of the consultation paper[16].

Q. 60. What are your views on our proposal to remove the option to request a reopening of a case on medical grounds?

The proposal to remove the option to reopen a case on medical grounds is fundamentally flawed. The Ministry of Justice must consider the issues that can arise when processing claims on behalf of young children. In some cases it can be very difficult, or impossible, to foresee any injuries that could become evident at a later date as a result of the injury.

The re-opening of a case is consistent with a tax-payer funded scheme that where there is a recognized risk of a serious future complication, compensation is only paid for this risk when it eventuates; thereby saving the tax-payer in the long term. For example a victim may have a gunshot wound in their leg and the bullet has remained lodged in the leg. There is a long term risk of infection, which may not occur for a few years. The infection may result in a below-the-knee amputation and these proposals would not allow this type of case to be re-opened, but the victims' needs, as a result of the injury, will alter substantially.

A young man could be viciously attacked and sustain a head injury. He could spend six months in neuro rehabilitation and appear to make a very good recovery but he has a five per cent risk of epilepsy due to his head injury. He is able to resume his employment, though he may be a bit slower and get tired more easily. He has been compensated on the basis of a head injury with no loss of earnings because he returned to work after six months. Five years later this man develops epilepsy, which cannot easily be controlled and is a result of the original assault. As a result of his condition he may lose his position of employment and his driving license. He will also require lifelong medication and

[16] *Getting it right for victims and witnesses, Consultation Paper CP3/2012,* Ministry of Justice, January 2012, Page 76 paragraph 268.

will probably not be able to work again. If he is unable to re-open his claim, he will have been seriously undercompensated for his subsequent injuries.

This proposal also penalises those victims who genuinely try to lead a normal life following a traumatic event, but whose injuries lead them to develop a lifelong vulnerability at a later stage.

Q. 61. What are your views on our proposal for deferral of Scheme decisions?

APIL does have concerns with this proposal. APIL would only ever recommend the option of deferral to be available at the request of the injured victim and not the claims officer. The two year period proposed appears to be completely arbitrary. In the event that a request for a deferral by the applicant was to be accepted, it should be on the basis that it would be compulsory for the Authority to make a reasonable interim award. Applications should never need to be deferred pending the outcome of a criminal trial. The test in the Scheme is the balance of probabilities and the application should be assessed on that basis at the earliest opportunity. It should be noted that no interest is payable on the award when it is made and delay in eligible cases penalises the applicant.

Q. 62. What are your views on our proposal to enable claims officers to withdraw a review decision under appeal and issue a decision in the applicant's favour?

APIL believes that this is a sensible proposal and fully supports it.

Q. 63. What are your views on our proposal to implement powers to recover money from offenders, where criminal injuries compensation has been paid to their victims, if a cost effective process for recovery can be developed? How could this process work?

We support this proposal to recover money from offenders where criminal injuries compensation has been paid to their victims, if a cost effective process of recovery could be developed. We are not placed as an organisation to suggest a possible method of recovery.

- Ends -

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ANNEX A

BBC NEWS

Mugging: Victims and attackers give their accounts

A mugging takes place every two minutes in the UK on average, so how do the muggers and the victims feel during and after the attacks?

"It's about really putting that fear into them," admitted Jermaine, who first got involved in street crime at the age of 11.

"The way you approach them, the way you're dressed, you have your hood on - you might have a knife on you, you might not, but it's about getting that fear into them and once they're scared they'll give you whatever you want."

Jermaine, who is from Essex, used to carry out street robberies until he found God and turned his life around.

He is now a qualified youth worker, working with gangs and the probation service. Looking back, he tried to explain why he did it.

"I was really frustrated and angry... I just used to walk around with a ferocious temper and you see someone on their own and you're just influenced in a demonic way where your hunger is driving you and you want money - it's a want - a lust."

And he admitted he didn't give a thought to the person he was mugging.

"When you attack them or assault them it's only afterwards you actually think 'Is that person still alive? Is that person alright?'

"At the time you're just thinking I want the money, I want the phone. It's kind of like you're an animal really, because you're not thinking about the other person's emotions."

Broken bones

One in three mugging victims are physically injured. Ben, a 21-year-old medical student, has been violently mugged on two occasions, 18 months apart.

If you are aged between 16 and 24, you are six times more likely to be mugged and students are five times more likely to be robbed than employed people.

Ben was mugged for the first time with his friend Dave in July 2010, as they walked home from a night out to celebrate the end of year exams in east London.


Ben found the pain of the injury was nothing in comparison to the mental pain after he was mugged

They had chatted to a group of men on the way home, but one of the group ran off with Dave's phone and when they tried to get it back things turned violent.

Dave was head-butted and Ben was hit around the head with a brick and knocked out. Four per cent of mugging victims are knocked out or concussed, while three per cent sustain broken bones.

"I came round for a moment," said Ben, "and saw Dave. He was sobbing and saying 'Ben you'll be alright'.

"I remember asking Dave why was it wet and he told me it was blood and a wave of panic came over me then. I'd never felt so vulnerable in my life, lying there in a pool of blood."

Ben had four fractures around his eye and now can't open his left eye fully.

"The pain of the injury was nothing in comparison to the mental pain afterwards," Ben revealed. He had nightmares and was very anxious about going anywhere at night.

More than one-in-10 mugging victims get anxiety or panic attacks afterwards and 92% of mugging victims are emotionally affected by the crime.

“You're constantly thinking about where the next attack is coming from ”

Aidan, a 21-year-old final year philosophy student, even resorted to wearing a stab vest after he was mugged and attacked on his way home from lectures at Leeds University.

It left him feeling "completely trapped" and too scared to walk to university or even go to the shop at the end of his road 20 metres away.

He described it as "absolute hell".

"I didn't want to leave my room... Your mind comes up with scenarios of how someone's going to attack you. You're constantly thinking about where the next attack is going to come from."

He started to get angry about nothing and it affected his relationships with people. He carries an attack alarm and for a while wore a stab vest on the way to and from university.

"I look back now and think well maybe it was a bit excessive - but I did feel and I still feel that it is going to happen again and I don't know how to shake that."

When Ben was violently mugged again 18 months after the first attack he could not believe it.

"I don't go round antagonising people, the whole point of what I do - my life - is to study medicine with the aim of helping people. It does leave me thinking why me."

Change in personality

When 18-year-old Richard was violently mugged, he suffered a brain injury which has changed his personality.

"It's like Richard went out the door that night and a different Richard has come back," said his mother Debbie.

"We still love him but he's different," she said, saying he had become less inhibited and more impulsive.

 *Richard had part of his skull removed and was in hospital for two months after he was attacked*

A third of all mugging victims are secondary school students. Richard was mugged while walking into town in Halifax, West Yorkshire, last year to celebrate A-level results with friends.

He was approached and asked for his phone, but when he refused he was attacked by more than one person.

He needed emergency surgery and survived but was placed in an induced coma for 10 days to control brain pressure and prevent further brain damage.

He had to relearn how to talk, walk and care for himself. It has put on hold his dreams of being a web designer. Six months on he is still unable to work full time, ride his scooter or drink with friends.

The gang who attacked him also carried out another robbery that night and were traced via a car they got away in.

The average sentence for a convicted mugger is 12 months, although 41% of those convicted are not jailed. The gang who attacked Richard were jailed for a total of 29 years.

"I do feel justice has been done," said Richard.

"When they were in court they were looking at me and whispering to their family. I would have liked them to say they were sorry."