

Ministry of Justice

**Criminal Injuries Compensation Authority Triennial Review 2012
Call for Evidence**



A response by the Association of Personal Injury Lawyers

February 2013

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain access to justice they need and deserve. We have around 4,400 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which 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;
- 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 take part in the call for evidence as part of the CICA's triennial review. Part of the Government's role in the review is to assess whether the body is operating in line with Government policy including openness, transparency and accountability. Although it is not the primary purpose of this consultation, we would like to voice our concerns about the CICA's commitment to some of these principles, in addition to offering answers to the questions set out in the consultation document. Anecdotal evidence from our members suggests that there are accountability problems, and instances where vulnerable people are given the wrong advice - perhaps told that they do not have a valid claim, when in fact they do. We firmly believe, however, that the CICA should remain as a body in its own right, and overall it is the right organisation to deliver financial assistance to victims of crime through the Criminal Injuries Compensation Scheme. We strongly suggest that the concerns surrounding openness and accountability are best addressed by collaboration with the CICA and not any other alternative body.

Q.1. Should the CICA continue to administer the Criminal Injuries Compensation Scheme?

APIL believes that the CICA should continue to administer the Criminal Injuries Compensation Scheme. The scheme is in place as part of the UK's obligations under EU Council Directive 2004/80/EC, which requires Member States to provide for a compensation scheme for victims of violent intentional crime.

The scheme is regarded by APIL as a justifiable use of taxpayers' money for a variety of reasons. It provides compensation for vulnerable victims whose lives have been altered or shattered through no fault of their own. It provides assistance to those whose injuries require them to take time off work. Financial support also allows victims to access necessary rehabilitation or special equipment that they would perhaps struggle to obtain otherwise. The scheme also provides for successful applicants to receive other support through its Special Expenses provisions. The CICA has acquired the necessary technical expertise to process applications. Its core business is to administer the scheme. If the CICA did not administer the scheme another body would have to do so, with the consequent cost of setting up an entire, new infrastructure.

Q.2. Should the CICA be permitted to undertake other functions? (E.g. casework for other government departments or organisations; administering schemes for paying out damages; etc)

It is evident at the present time that the CICA's resources are stretched. Requiring the Authority to undertake further functions would interfere with its primary role of compensating victims of violence. Taking on further roles would mean that the current backlog of cases would increase and pressure to improve performance without adequate budget or additional resources would make matters even worse.

The pressure of numbers can already have a detrimental effect on the functions that the CICA carries out. There have, for example, been instances of applicants having been told that they are not entitled to a claim when actually they should be. This can occur because the CICA is under pressure due to the the volume of cases, and decisions need to be made quickly, resulting in some incorrect decisions being made. This is very detrimental to vulnerable applicants. It is extremely important that the CICA delivers compensation to those who need it as quickly and efficiently as possible. It might be that with adequate resourcing the CICA could administer complementary schemes such as Armed Forces Compensation *but only with additional adequate resources*. We are therefore generally opposed to the CICA carrying out functions for any other public bodies, and efforts should instead be focused on the CICA's core functions.

Q.3. Should the CICA move out of Central Government?

The CICA enjoys an almost unique status in administering the Scheme. Given that the Scheme has a statutory basis and that challenges are made through HMCTs it is difficult to envisage a non governmental structure that will retain the fundamental rights available to applicants within the necessary legal framework. Establishing a viable alternative would be expensive and present legislative and practical difficulties. It would not be appropriate for the private sector to administer the scheme in view of the fact that public confidence in it and its impartiality is largely as a result of the fact that it is governmentally controlled. Voluntary organisations with experience in delivering victim services might face a number of conflicts in trying to administer the scheme. Local government already faces enormous economic pressures and the delivery of services to victims through local government has recently undergone drastic change so that it is far too early to measure the effectiveness of those changes before imposing additional challenges.

Q.4. Should the CICA be moved in-house?

It is difficult for APIL to comment on this without the knowledge of what benefits might accrue to the administration of the scheme by, for example the Ministry of Justice. Although, on the face of it, the function is delivered at arms length from Ministers, in reality, since it is publicly funded and subject to budgetary controls it cannot be truly "at arms length" .

Q.5. Should the CICA be merged with another body?

The only comparable area of central government delivering similar functions which result in the award of money to applicants, and is susceptible to challenge through the Tribunal Service is in relation to the benefits system. The DWP is already stretched in its own resources and at a time when it has been tasked to deliver fundamental change it would not be appropriate to merge functions.

Q.6. Should the CICA be established as a new Executive Agency?

The only possible benefit of establishing a new Executive Agency would be to enable a “fresh start” approach to the administration of the Scheme. However, the cost and disruption would be extensive and APIL would prefer to seek improvements and efficiencies by working in collaboration with the CICA rather than an entirely new body.

Q.7. Should the function continue to be delivered by a Non-Departmental Public Body?

We have already voiced our concerns surrounding local government, the voluntary or private sector taking over the function of the CICA, in answer to questions 3 and 4.

One of APIL’s primary concerns is that the functions of the CICA should continue to be delivered by those people who are trained in the workings of the scheme. This is to ensure that those who turn to the scheme for help are supported and given helpful, and correct, advice.

A further caveat is that whoever is responsible for delivering the function should remain accountable. . The advantage, in this respect, of the function being run by a Non-Departmental Public Body, as an emanation of the state, is that there is a structure in place to challenge decisions. If a private or non public body were to take over, challenge might become more difficult. The CICA delivers a technical function which requires expertise. Its decisions must be impartial. The current structure provides the necessary protections to victims. APIL repeats that there are difficulties with the current performance of the CICA and these need to be addressed on an ongoing basis, to strive for improvement and efficiency.

Q.8. Are there any other possible delivery options?

APIL does not recommend or suggest any alternative models.

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