

**Anglia Ruskin University**

**The criminal injuries compensation scheme for rape: An  
exploration of public attitudes**



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

**December 2018**

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a history of over 25 years of working to help injured people gain access to justice they need and deserve. We have over 3,500 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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**In your opinion, what factors might influence a victim of sexual offences when deciding whether or not to make an application for compensation?**

Survivors of sexual offences often struggle with feelings of shame, and they may struggle to come to terms with what has happened to them, or speak out about it. Some victims may be suffering from severe psychological problems as a result of the abuse, which may affect their decision and ability to make an application for compensation. Others may be influenced by the media portrayal of those who claim compensation, and may decide not to make a claim for fear of being accused of being “greedy”, or accused of making things up for money. Others may be reluctant to “make a fuss”. The civil courts recognise that victims of sexual offences may not necessarily come forward straight away, and the Criminal Injuries Compensation Authority must similarly recognise that these offences have a specific silencing effect on survivors. Survivors of these offences must often go through a long process before deciding that they are able to speak about what has happened to them.

The Criminal Injuries Compensation Scheme is not well publicised. Victims of sexual offences may not even be aware that they can make a claim through the scheme. They may also be deterred from doing so if they are not signposted to independent legal advice and are daunted by the prospect of submitting their application by themselves. Additionally, survivors do not necessarily equate what has happened to them with personal injury, so even if they are vaguely aware of the scheme, they may not appreciate that it applies to these types of offence.

APIL members report that potential applicants are often either not signposted to the scheme by the police, or even actively discouraged by investigating officers and the CPS from making a claim through the CICS whilst the criminal process is on-going. If the criminal case takes longer than two years to conclude, which is not unusual, the applicant will then be out of time to bring a claim under the scheme. In some cases, even after the criminal case has concluded, the survivor is not signposted to the scheme, in case there is an appeal by the defendant.

There is no legal reason why the applicant must wait until criminal proceedings have concluded before they are allowed to apply under the CICS, because the CICS uses a civil standard of proof and not the criminal standard. There may be other reasons why an applicant may be advised not to apply to the CICA until after the criminal case has closed. The victim may be questioned on their application to the CICS in cross examination, to discredit them and give the impression that the victim is only interested in making money. This is clearly wrong, but will have an impact on the potential applicant’s decision as to whether they bring a claim under the CICS or not.

**The Criminal Injuries Compensation Scheme, or CICS, is available to all victims of violent crime who have made a report to the police. It works on a tariff system, for example someone who is raped once may be entitled to up to £11,000 and this rises to up to £44,000 where there is evidence of a serious bodily injury and permanent debilitating mental illness.**

**What are your initial feelings about having a Government-run system of compensation for rape? (*tick all that apply*)**

Ambivalent

- Angry
- Confused
- Content
- Embarrassed
- Excited
- Grateful
- Happy
- Sad
- Shameful
- Uncertain
- Pleased

Other, please specify:

### **What are the main considerations in your initial feelings about the CICS?**

The Criminal Injuries Compensation Authority (CICA) is under-resourced. However, for all of the resource issues, the CICA is the right organisation to deliver financial assistance to victims of crime through the CICS. The CICS plays an important role in providing an option for redress, recognition that the abuse has been suffered, even where the criminal court has fallen short.

There are a number of areas within the scheme that are greatly in need of reform.

One issue is that there is not one claims handler dedicated to each particular case. Tasks relating to each claim are assigned to various members of staff, which means that there is no overall responsibility or accountability for progressing the case, and ensuring that the claim is dealt with in an efficient way. Members report that the time to conclude is often between 23 - 65 months. It is important that these claims are dealt with in an efficient way, because the resolution of a claim, and the recognition of the wrong doing, at the right point, can prevent the survivor of the abuse from suffering long term effects. An efficient resolution by the CICA will mean that the person can access the necessary support, and obtain funding to ensure that they can continue with their life. This may reduce the likelihood that they will experience the longer lasting ill effects of sexual abuse. Delays in the resolution of claims are unacceptable. Those who come forward should be able to access help, and have their claim handled as efficiently as possible.

At present, the victim is nowhere near the heart of the process. The time limits for application, and the approach to eligibility ignores the realities of sexual abuse and its impact on survivors. The two year time limit is far too onerous for these cases. The prosecution



Sexual assault			
	- minor - non-penetrative sexual physical act(s) over clothing	B1	1,000
	- serious - non-penetrative sexual physical act(s) under clothing	B3	2,000
	- severe - non-penile penetrative or oral-genital act(s)	B4	3,300
	- pattern of repetitive frequent severe abuse (whether by one or more attackers) over a period		
	- up to 3 years	B7	6,600
	- 3 years or more	B8	8,200
	- resulting in serious internal bodily injuries	B12	22,000
	- resulting in permanently disabling mental illness confirmed by psychiatric prognosis		
	- moderate mental illness	B12	22,000
	- severe mental illness	B13	27,000
Non-consensual penile penetration of one or more of vagina, anus or mouth			
	- by one attacker	B9	11,000
	- by two or more attackers	B10	13,500
	- resulting in serious internal bodily injuries	B12	22,000
	- resulting in permanently disabling mental illness confirmed by psychiatric prognosis		
	- moderate mental illness	B12	22,000
	- severe mental illness	B13	27,000
	- resulting in serious internal bodily injury with permanent disabling mental illness confirmed by psychiatric prognosis		

**Last year, the Criminal Injuries Compensation Authority paid around £154 million to victims of violent crime. Where do you think the financial resources for the CICS should come from? (Tick all that apply)**

- Individual Perpetrator
- Criminal fines and the Victim's Surcharge
- Central Government
- NHS
- Ministry of Justice
- Home Office

Charitable Sector & Private Donations

National Lottery

There should be no CICS

Unsure

Other, please specify: The CICA should be funded through central government. We disagree with the provision in the 2012 scheme which requires a deduction from the final award of a sum equivalent to any criminal compensation order made by the court. The victim is then responsible for recovering the amount of that deduction directly back from the perpetrator. This is extremely distasteful and it will be highly traumatic for the victim to have to maintain a connection with the perpetrator. It is also practically impossible in most cases. The scheme is meant to be one of last resort, enabling the victim to have the certainty of a state made award, even if it is less than compensation through the civil courts. The provisions for deduction of court-imposed compensation totally undermine that purpose. If the responsibility of recouping back criminal compensation orders from perpetrators was removed from the victim, we suggest that the CICA should be free to recoup back, where possible, the costs of paying out the award to the victim from the perpetrator. In civil cases, the "polluter pays" principle is well established, and we see no reason why, if the perpetrator has the funds to pay back the cost of the award to the CICA, the CICA should not be permitted to recoup this. As above, this would only be desirable if the victim was not responsible for claiming back the compensation order from the perpetrator. The CICA and the victim should not be put in direct competition for the perpetrator's most likely, limited funds.

**The Criminal Injuries Compensation Scheme states that it only seeks to compensate "blameless" victims.**

**To what extent do you agree or disagree with this principle?**

Completely Disagree

Slightly Disagree

Neutral

Slightly Agree

Completely Agree

Unsure How I Feel

Please indicate the reason for your answer

We completely disagree with the CICA's approach of a blanket refusal to make any award to those who have certain criminal convictions. Reforms to the Criminal Injuries Compensation Scheme introduced in 2012 have made it more difficult for survivors of sexual abuse to obtain reparation. Whereas in previous schemes there was discretion to provide a full or reduced award to those who have a criminal conviction, it is now in some cases impossible for those people to apply for an award under the scheme, ignoring the realities of why the person may have committed the offence. The reason that an offence has been committed may very well be the abuse itself. The person's vulnerability may also make them a target for sexual abuse, but also make them more likely to become involved in criminal activity. A

blanket refusal to make awards to those with unspent convictions for certain offences ignores the realities of sexual abuse.

As with the time limits, the scheme does not take into account the specific nature of these offences and the impact they have on survivors.

**What do you think the CICS means when they say "blameless victim"?**

The current rules on eligibility mean that "blameless" is construed as having never committed a criminal offence. The current rules do not allow the reasons for the commission of an offence to be taken into account, and there are instances where minor offences that took place many years ago have been used as a justification for the CICA not paying out. The current rules are too rigid.

**Compensation is not available to anyone who was victimised before October 1979 and was living with the perpetrator at the time of the offence. This means that some victims of familial childhood sexual abuse are not eligible for compensation.**

**To what extent do you agree or disagree with the principle of this rule?**

<input checked="" type="checkbox"/>	Completely Disagree
<input type="checkbox"/>	Slightly Disagree
<input type="checkbox"/>	Neutral
<input type="checkbox"/>	Slightly Agree
<input type="checkbox"/>	Completely Agree
<input type="checkbox"/>	Unsure How I Feel

**The following is a list of eligibility rules that mean a victim may have their claim rejected or their compensation reduced. Please indicate the extent to which you agree or disagree with the principle of each rule.**

Victim did not report to the police immediately.

<input type="checkbox"/>	Completely Agree
<input type="checkbox"/>	Slightly Agree
<input type="checkbox"/>	Neutral
<input type="checkbox"/>	Slightly Disagree
<input checked="" type="checkbox"/>	Completely Disagree
<input type="checkbox"/>	Unsure How I Feel

Victim did not support the prosecution of the perpetrator.

<input type="checkbox"/>	Completely Agree
<input checked="" type="checkbox"/>	Slightly Agree
<input type="checkbox"/>	Neutral
<input type="checkbox"/>	Slightly Disagree



Completely Disagree

Unsure How I Feel

Victim has unspent criminal convictions.

Completely Agree

Slightly Agree

Neutral

Slightly Disagree

Completely Disagree

Unsure How I Feel

Victim was under the age of 16 and appeared to consent to the sexual activity.

Completely Agree

Slightly Agree

Neutral

Slightly Disagree

Completely Disagree

Unsure How I Feel

Victim applied for compensation after the 2 year time limit.

Completely Agree

Slightly Agree

Neutral

Slightly Disagree

Completely Disagree

Unsure How I Feel

Victim demonstrated 'bad character' through intoxication

Completely Agree

Slightly Agree

Neutral

Slightly Disagree

Completely Disagree

Unsure How I Feel

**In relation to criminal convictions, there has been debate over what type of offences should lead to the rejection or reduction of claims. Please indicate the offences that you think should result in rejection or reduction of future compensation claims for sexual offence victims (*tick all that apply*)**

No rejection or reduction based on past convictions

All criminal offences

Violent offences

Property offences

Offences related to sex work

Benefit & Fraud offences

Non-payment of a television licence

Driving offences

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**You will now be shown 3 short examples of compensation claims. Please state whether you think the claim should be rejected, reduced, or given in full for each case.**

This part of the survey can also be displayed as a table of questions, view as a table of questions instead?

### **Example 1**

X was abused as a child by a family member and eventually had his child. She suffered significant mental health problems as a result, and developed an alcohol dependency when the identity of her child's father later emerged. X received an extended community order for drink-driving, so that the court could offer her greater support, meaning that she had an unspent conviction when she applied for compensation. The judge, police officers, and probation all supported her application.

In this example, the claim should be:

Paid in Full

Slightly Reduced

Greatly Reduced

Claim Rejected

Unsure

Please indicate the reason for your answer :

Since the introduction of the 2012 scheme, there is no longer a discretion to make a full or reduced award to an applicant who has an unspent conviction for an offence resulting in certain sentences. This is even the case if the earlier abuse contributed to the later criminal behaviour. This rule is also particularly discriminatory to the most vulnerable in society, such as those who have been brought up in care. The Prison Reform Trust reported that those in care between the ages of 10 and 17 are ten times more likely to come into contact with the criminal justice system.

### Example 2

Sammy Woodhouse was 14 when she was groomed by the Rotherham sexual exploitation ring. Her abusers were convicted and sentenced to a total of 35 years in prison. The compensation authority felt that Sammy had consented 'in fact' even if she could not formally consent because she was under the age of 16.

In this example, the claim should be:

<input checked="" type="checkbox"/>	Paid in Full
<input type="checkbox"/>	Slightly Reduced
<input type="checkbox"/>	Greatly Reduced
<input type="checkbox"/>	Claim Rejected
<input type="checkbox"/>	Unsure

Please indicate the reason for your answer :

There seems to be a lack of training at the CICA amongst claims handlers and it appears that for complex and important issues such as whether there was consent, the handlers simply do not know what they are looking for.

The presumption should be that a child under 16 does not have the capacity to consent to sexual activity. Previous CICA guidance to staff on consent "in fact" stated where a child is 12 or under when the incident happened, it will be presumed that the child did not consent. This is far too young. As a matter of policy, public liability insurers in this area are moving towards not raising consent as a defence, and the CICA should follow suit. We note that the guidance now states that the age under which a child is presumed not to have consented is 15.

If the CICA wishes to challenge the presumption in a particular case, the next step should mirror that in civil law claims, and there must be a proper assessment of whether there was consent. Case law surrounding the civil courts' approach to consent suggests that there are two questions to consider:

- 1) Did C have the legal capacity to consent
- 2) Was the apparent consent effective?

If it is decided that the claimant does have capacity to consent, then the CICA must consider whether the apparent consent was an effective consent, or whether the claimant's free will was overborne by other factors so that the consent was vitiated. This decision will involve an examination of the matters highlighted at paragraph 3 of the guidance on consent in fact,

including the age of the applicant, evidence of vulnerability and whether the assailant was in a position of trust.

We stress, however, that the consideration as to whether the consent was effective should not be one for the CICA case officer to take by themselves. In civil claims, where consent is a live issue, medical evidence will be obtained from a psychiatrist or psychologist to determine whether true consent given was effective. If the CICA attempts to make these decisions without medical evidence, it will be incredibly difficult for them to come to a decision which is not based on their own prejudices. One of the issues arising out of this area is simply the lack of consistency in the way that the CICA reaches a decision on consent in fact. It is clear that currently, decisions are made based on prejudices, and the way in which these cases are handled by the CICA must change.

### Example 3

X was asked by police officers not to apply for compensation until after the trial of her rapist. Due to delays in the trial, she could not apply until 2 years and 3 weeks after she had reported to the police. The police officer wrote to the compensation authority to confirm that they had asked X not to apply immediately and that they supported the application.

In this example, the claim should be:

<input checked="" type="checkbox"/>	Paid in Full
<input type="checkbox"/>	Slightly Reduced
<input type="checkbox"/>	Completely Reduced
<input type="checkbox"/>	Claim Rejected
<input type="checkbox"/>	Unsure

Please indicate the reason for your answer :

This situation is surprisingly common. Victims do what the police tell them to, as they see the police as trusted individuals. There must be education amongst officers, so that they can realise the implications of advising victims that they cannot apply until after the trial. Even in circumstances where police officers write to the compensation authority, there are strict time limits in place, and the victim will need to appeal. The victim may get the right outcome eventually, and be awarded compensation, but this initial delay, and then the delays as a result of the appeal, mean that the process is long drawn out. It is totally inequitable for the trial to be prioritised over the individual.

Anecdotally, those dealing with these claims report that even at the conclusion of the case, the CPS and police do not signpost the scheme to the victim, as they are concerned about prejudicing any appeal by the defendant of their conviction.

**Research has shown that sexual victimisation can lead to trauma and shame that can makes it difficult to tell others about what has happened. It can also increase the risk of criminal offending, prevent victims from being able to work in full employment, and may lead to substance misuse as a form of self-medication. Do you think that any of these should impact on the CICS eligibility rules and timeframes?**

<input type="checkbox"/>	Difficulty telling others
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- Increased risk of criminal offending
- Not being able to work
- Substance misuse
- None of the above
- Unsure

What impact should these factors have on CICS eligibility?

#### *Difficulty telling others*

Time limits can be a huge barrier for survivors of non-recent abuse. The statutory scheme has a two year time limit from the date of the incident giving rise to the application (compared with the three year time limit in civil personal injury claims). Paragraph 88 of the 2012 scheme provides that where the applicant was a child under the age of 18 on the date of the incident giving rise to the criminal injury, the application must be received by the authority within the period ending on their 20<sup>th</sup> birthday if the incident was reported to the police before the applicant's 18<sup>th</sup> birthday. In the case of an incident reported to the police on or after the applicant's 18<sup>th</sup> birthday, the application must be received within two years of the date of the first report to the police in respect of the incident. A claims officer may extend the time period where he is satisfied that "due to exceptional circumstances, the applicant could not have applied earlier, and the evidence presented in support of the application means that it can be determined without further extensive enquiries by a claims officer". Due to the vagueness of the scheme, there have been a number of Upper Tribunal decisions following applications for judicial review of First-tier Tribunal decisions on appeals against CICA's claims officers' decisions. The 2012 scheme makes it more difficult than ever before for sexually abused victims to overcome the time limit obstacle.

#### *Increased risk of offending, substance misuse*

As above, the discretion to make a full or reduced award to an applicant with an unspent conviction should be reinstated. Applications are currently refused, regardless of whether the reason the applicant has committed the offence is as a result of the sexual abuse itself, or vulnerability which made them a target for sexual abuse in the first instance. For the same reasons, it is important that there is not a blanket refusal for those who have an increased risk of offending, or have been involved with substance misuse.

#### **Should the CICS have eligibility rules for victims of sexual violence?**

- Yes
- No
- Unsure how I feel

#### **Is there anything else that you would like to say about criminal injuries compensation for sexual offence victims?**

The Criminal Injuries Compensation Scheme is not well publicised, at present. Also, applicants should be signposted to proper independent advice. There can be complex issues around eligibility, around which tariff band the applicant falls into and whether psychological damage has been done that is more serious than the tariff band for the sexual offence itself.

For certain sexual abuse offences, if psychological damage can be proven, this will be taken into account as part of the tariff amount. The CICA is not likely to volunteer to investigate psychological damage, so the applicant is likely to get an offer based purely on the sexual offence which will be less, and in some cases substantially less. Independent legal advice is necessary to ensure that the applicant gets an award which goes some way towards reflecting the severity of the injury that they have suffered.

Awards for psychological damage are also made more difficult as compensation for private medical expenses was removed as part of the 2012 scheme. In order for the award to include an amount for psychological damage, there must be a diagnosis by a clinical psychologist. Access to proper support for psychological damage is very difficult to come by on a stretched NHS, so the person is unlikely to have the diagnosis to prove their case, unless they seek private help. Removal of private medical expenses from the scheme will mean that the person does not have access to the treatment that they need, or have the necessary evidence to support their claim.

There are also often delays in making eligibility decisions. Often, there is no reason why the CICA cannot at least form an initial view on the applicant's eligibility for the scheme early on, as the relevant test is the balance of probabilities. As the process works now, a person submits their application, and must then wait for a final outcome – without even being told if they are even eligible for an award.

#### Further comments on eligibility requirements

##### *Victim did not report to the police immediately*

There must be consideration given to the impact that the offence has on the victim. As above, many victims of sexually violent crime find it difficult to come forward and talk about what has happened to them. The nature of the crime may mean that the victim did not report it to the police immediately, and this must be recognised in order to ensure that the scheme appropriately caters for survivors of sexual abuse.

##### *Victim did not support the prosecution of the perpetrator*

We slightly agree that if the victim did not support the prosecution of the perpetrator, this should be taken into account in relation to any claims made under the Criminal Injuries Compensation Scheme. There must be an incentive for the victim to see through the prosecution. It must be appreciated that people need time and encouragement to speak out about what has happened to them. As above, the time limits for coming forward to make a claim must reflect this. However, if a decision has been taken to speak out but then the victim does not cooperate to support the prosecution of the perpetrator, this is different, and it is probably right that the award should reflect that the victim should have supported the prosecution.

In deciding whether claims can be brought outside of the limitation in civil claims, as provided for in s33 of the Limitation Act, there must be consideration as to whether the defendant can have a fair trial. The civil courts will look at whether there have been investigations by the police and the appropriate bodies, to make an independent finding of fact on what happened. The claimant would be prejudiced in civil proceedings if they had not supported the prosecution of the perpetrator. Without a criminal investigation, there would not be an independent finding of fact, and there could not be a fair trial of the defendant in the civil claims because there had not been an assessment of the issues.

##### *Victim has unspent criminal convictions*

There should not be a blanket refusal to pay criminal injuries compensation if the person has a criminal conviction. As above, the victim may have committed an offence as a result of

them being the victim of a sexually violent crime, or because they are particularly vulnerable – which may have also meant that they were a target for the sexual offence.

*Victim was under the age of 16 and appeared to consent to the sexual activity*

The presumption should be that a victim under the age of 16 does not have the capacity to consent to the sexual activity. If the CICA wishes to challenge the presumption in a particular case, the next step should mirror that in civil law claims, and there must be a proper assessment of whether there was consent.

*Victim applied for compensation after the 2 year time limit*

There should not be a refusal to make awards to victims of sexual abuse after the 2 year time limit. As above, the nature of the crime and the effect that this has on victims must be taken into account.

*Further comments on the types of offences that should lead to the rejection or reduction of claims.*

There should be discretion, which allows for the consideration of each offence, and whether it was committed as a result of the abuse, or the vulnerability which led to the abuse taking place. There should not be a blanket refusal.

*Tariff scheme*

The tariff scheme bears no resemblance to the award that would be made in court for these sorts of offences. The sums are not “compensation”. The government itself suggests that awards are more of a token or recognition than compensation. The cap of £500,000 has also not been increased since the tariff system was introduced in 1996. An inflationary increase is well overdue.