Ministry of Justice

Criminal Injuries Compensation Scheme Review

– additional consultation

A response by the Association of Personal Injury Lawyers

September 2023

Introduction

APIL welcomes the opportunity to respond to the Ministry of Justice's further consultation on the Criminal Injuries Compensation Scheme. We welcome consultation on the time limits and scope of the scheme, but are disappointed that, despite the initial consultation being published in 2020, there is no firm deadline for a response. It remains clear that the scheme must be revised – a recent survey by Survivors Against Terror echoes previous concerns and indicates that wide spread issues remain[1] - and we would urge the Government to respond.

APIL calls for violence in the definition of a qualifying crime to be removed, and the focus instead to be on whether a crime has caused harm. However, if the Government is not minded to broaden the scope of the scheme in this way, we support IICSA's recommendation to amend the scope to include other forms of child sexual abuse, including online facilitated abuse. We believe this can be achieved through allowing applications from victims of sexual offences that have caused harm, as opposed to a requirement that a sexual assault took place.

We also support IICSA's recommendation to increase the time limit for applications for victims of child sexual abuse to 7 years – either from the date of reporting, or from when the victim turns 18 if the crime was reported while the victim was a child. We believe the general time limit must be increased to three years, and that the discretion of claims handlers to waive the time limit in exceptional cases should remain in all cases. There should be a greater focus on increasing publicity and awareness for the scheme, and education for all in the criminal justice system about the scheme, to ensure that victims receive correct and timely information to enable them to pursue a claim should they wish to.

Scope

Question 1: What are your views about the scope of the Scheme remaining unchanged?

The scope of the Scheme should not remain unchanged. The definition of "crime of violence" is problematic, unfairly excluding victims of crime from the ability to bring a claim under the scheme.

This unfairness is particularly acute in cases relating to sexual offences. Often in these cases, the attacker is known to the individual and there is no presence of "violence" per se.

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[1] The survey, undertaken by Survivors Against Terror, found that 68 per cent of respondents felt that the process was unfair and unreasonable, and 62 per cent did not feel treated with respect and empathy by the CICA. Requests for evidence were felt to be unmanageable and unreasonable, and timeframes were also unreasonable.

In cases of child sexual offences, grooming, manipulation and control lead to consent in fact, without necessarily involving violence. These offences clearly cause harm, however.

The recent Court of Appeal case *RN v First Tier Tribunal*[2] highlights the problems with the current scheme and the need for change. In this case, a 12-year-old boy who attended a youth club was targeted by a group leader in their twenties. The group leader messaged the 12-year-old boy on social media, pretending to be a 14-year-old girl. The messages contained sexual content, and constituted a sexual offence under the Sexual Offences Act 2003. There was no physical assault, and it was determined by the CICA that the victim was not a crime of violence within the terms of the scheme and as such there was no award of compensation. The appellant pursued appeals to the First-Tier Tribunal and then the Upper Tribunal, on the basis that he had been a victim of a crime of violence, that he had felt threatened and that there had been an immediate fear of violence that the offender would sexually assault him. The First-Tier Tribunal held that while he was a victim of sexual offences, there was not a fear of immediate violence, and grooming does not constitute sexual assault as defined by the 2003 Act. The appeal to the Upper Tribunal was also rejected because while there was evidence of an underlying threat, the appellant was not sure what that threat was as a result of his age, and so there was no crime of violence.

The appellant pursued an appeal to the Court of Appeal on three grounds, that the Upper Tribunal erred in law in determining that the appellant is not a victim of a crime of violence in the form of a sexual assault under paragraph 2(1)(d) of Annex B to the 2012 Scheme; in determining that the appellant was not the victim of a crime of violence in the form of any other act or omission of a violent nature causing physical injury to a person under paragraph 2(1)(b) of Annex B to the 2012 Scheme; in determining that the appellant was not the victim of the crime of violence in the form of a threat under paragraph 2(1)(c) of Annex B to the 2012 Scheme. The appeal was successful on the third ground, with Lady Justice Davies holding that there is no cogent reason to find that Parliament intended the Scheme to take a narrower approach to the requirement of a "fear of immediate violence" than that contained in the common law. There was no reason that the appellant had to know the exact form of the threatened violence – he only need fear that violence may be used against him. and arguably – at least for the time being - the definition of a crime of violence may be construed more widely following this case. However, issues remain, as in some grooming and coercion cases will not involve a threat. The Court of Appeal held that the definition of sexual assault as set out in section 3 of the Sexual Offences Act 2003 is the minimum requirement for a sexual assault in paragraph 2(1)(d) – which includes a requirement for intentional touching, and that there must also be an absence of consent in fact, as well as law, for there to be a crime of violence. The Government must address these issues and bring clarity and certainty to this area by amending the scope of the scheme itself. As Lady Justice Davies highlights at paragraph 80 of the judgment "…the 2012 Scheme may have a narrower scope than previous versions of the Scheme in relation to sexual offences. It means that a victim of a relatively less serious sexual offence (e.g. leg touching) may be compensated whereas a victim of a more serious sexual offence (e.g. non-touching grooming) is not compensated. This may be counterintuitive as a matter of interpersonal justice, but it appears to be the way in which the Scheme currently operates with its focus on "violent" crimes rather than on the consequences upon victims.

The problematic focus on violence also restricts the ability of those who suffer harm or injuries as a result of other criminal acts, from bringing a claim within the scheme. Although "violence" has historically been a component part of the Scheme, it does not mean that it

[2] [2023] EWCA Civ 882

should not be removed. Crime can cause harm and injury to individuals without the presence of pure violence in the traditional sense.

Since 2012, animal attacks have not fallen within the definition of a crime of violence, unless the owner intentionally uses or causes their animal to attack an individual. The harm and/or injuries which may be sustained through these attacks can be devastating, and the number of attacks has increased in recent years. Cases involving attacks on young children and elderly people have been reported, some of which resulted in fatalities. According to a recent article in the British Medical Journal[3], on average there are three deaths related to dog attacks each year – in 2022, there were 10 deaths, 4 involving children. There has also been an 88 per cent increase in attendances to hospital related to dog attacks in the past 15 years. These incidents would not qualify for an award.

In order to ensure that these victims of crime have access to the scheme, the 'violent' element of the definition should be removed, with the focus instead being on a crime which has caused harm. The current definition disproportionately impacts upon individuals who should be entitled to access the scheme for crimes committed against them, but who cannot do so because of the narrow definition.

However, if the Government is not minded to make this broader change to the scope of the scheme, there should be, as recommended by the Independent Inquiry into Child Sexual Abuse, an amendment to the scheme to include other forms of child sexual abuse. We do not believe that either of the government's suggested proposals would fully implement IICSA's recommendation. The issues around sexual abuse and the scheme stem from the narrow definition of sexual assault used. The threshold for whether a crime qualifies for the scheme should be that a sexual offence that caused harm took place. There should not need to be sexual assault as defined in section 3 of the Sexual Offences Act 2003.

Question 2: What are your views about amending the definition of a crime of violence to include other forms of child sexual abuse?

As above, we believe that the "violent" element of the definition should be removed, and the focus should be on whether harm occurred. If the Government is not minded to implement this broader proposal, the scheme should be amended to include other forms of non-contact child sexual abuse, as recommended by the Independent Inquiry into Child Sexual Abuse. As highlighted in the case of *RN*, the current definition creates a situation where the victim of a lesser offence such as leg touching can claim compensation through the scheme, but someone who was a victim of grooming as a child cannot. However, we would caution against amending the scheme by simply including a list of other forms of child sexual abuse that would qualify for inclusion. A list of qualifying offences would become out of date very quickly, owing to the fast-changing nature of this type of crime, and developments in technology. We recommend instead, that it should be sufficient for a sexual offence that caused harm to have taken place, and there should not be a requirement that a sexual assault took place.

If there was to be a list of other forms of abuse that would qualify within the scheme, this must be contained in an annex to the scheme and should be reviewed annually to ensure that it is still fit for purpose.

Question 3: Which non-contact child sexual offences should be brought in scope of the Scheme?

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[3] *BMJ* 2023;381:p879

As above, we do not believe that a list of offences is the most effective way to ensure that victims of abuse can seek redress. If a list is to be developed, it must be kept under review annually. Instead, we suggest that the wording of the scheme should be amended, to remove “violent” and with a focus instead on crime causing harm. Any sexual offence that has caused harm should qualify under the scheme.

Question 4: What are your views on bringing serious non-contact offences within the scope of the Scheme?

We believe that “violent” should be removed from the definition of scheme, and that eligibility should focus on whether harm was caused. This would ensure that serious non-contact offences such as grooming, coercive control and modern slavery would fall within the remit of the scheme.

Question 5: Which non-contact offences should be brought in scope of the Scheme?

Again, we would caution against the development of a list of eligible offences, as this would quickly become out of date.

<u>Time limits</u>

Question 6: What are your views on the approach to the Scheme’s time limits remaining unchanged?

The scheme’s time limits should not remain unchanged. The two-year time limit prevents severely injured people from accessing compensation from the scheme for their injuries. While claims handlers are able to use discretion to allow a claim after the two-year time limit in “exceptional circumstances”, this is not sufficient and makes the scheme inconsistent and unpredictable. It is unfair to rely on potentially unfavourable discretions, especially in circumstances in which unrepresented applicants may not fully understand the issues.

A key issue with the short time frames for applications to the scheme is that many people are simply unaware of the scheme – as acknowledged by the Ministry of Justice’s 2020 consultation. Victim’s services and the police do not consistently highlight the right to bring a claim under the scheme with victims, as highlighted in Baroness Newlove’s report “Compensation Without Re-Traumatisation”. Baroness Newlove found that one in three victims did not recall being informed about the scheme by victims’ services or the police. While the redrafted Victims Code makes it clearer that the police should let victims know they can make a claim through the scheme, there needs to be a larger awareness campaign, and a clearer understanding of the scheme by those involved in the criminal justice system. Often, there is no signposting to the scheme by police at all. In our members’ experience, the police, when approached, have consistently said that they do not have the time or expertise to provide the right sort of information or signpost. There is no scope to build in training because of existing pressures. If the police do reference the scheme, this tends to be through requesting that the victims of crime await the outcome of criminal proceedings prior to applying for compensation through the scheme. This is because of likely defence cross examination which will undermine the prosecution’s case, based on claims that the prosecution has only been brought for compensation purposes. While well-meaning, this advice then takes the victims outside of the two-year time limit to apply, particularly given the delays in the criminal justice system. These delays have been exacerbated by the Covid-19 pandemic and subsequent court closures.

Question 7: What further action could be taken to raise awareness of the Scheme and its time limits?

As above, clarification in the Victim's Code that the police should inform the victim of their ability to apply to the scheme is welcomed, but does not go far enough. There needs to be a wider awareness campaign across the criminal justice system as a whole.

The time limit for the scheme in general should be increased to three years from the date of incident or reporting in general. This would allow individuals to seek compensation regardless of whether the perpetrator has been convicted of the crime and also takes into account the delay in cases reaching trial for those involving prosecutions. There should be a seven-year time limit (as recommended by the Independent Inquiry into Child Sexual Abuse) for cases involving historical child sexual abuse – for the reasons set out in our answer to question 8 below. The three-year time limit should be reviewed after a suitable period of time following a publicity, education and profile-raising campaign.

The clear need to increase awareness of the scheme is indicated through the low number of claims that were brought during the two-year window where the "same roof rule" cases could be revisited, between 2019 and 2021. According to the Victims' Commissioner, around 1,200 applications were made between June 2019 and June 2021[4]. Further, a comparison of the number of violent crimes that occur and the number of applications to the Criminal Injuries Compensation Authority also reveals a stark difference between the two. In 2021-2022, 1.1 million violence offences occurred[5]. In the same year, there were 34, 925 new applications under the Criminal Injuries Compensation Scheme[6]. This indicates that many victims of crime are simply not informed of their right to bring a claim under the scheme. This lack of awareness must be addressed.

Question 8: What are your views on amending the Scheme's time limit to seven years for child sexual abuse applicants who were children under the age of 18 on the date of the incident giving rise to the injury, with the CICA retaining discretion to extend the time limit in exceptional circumstances?

We strongly believe that the Government should implement the Independent Inquiry into Child Sexual Abuse's recommendation to amend the Scheme's time limit to seven years for child sexual abuse applicants who were children under the age of 18 on the date of the incident giving rise to the injury. As the Government is aware, survivors and victims of abuse often find it difficult to come forward and report what has happened to them as a child. They may not even realise that what they have been through was a crime until much later, due to being groomed or coerced into certain behaviours.

However, the proposal in the consultation does not fully reflect IICSA's recommendation. IICSA's recommendation was that the time limit should be increased for child sexual abuse applications so that applicants have seven years to apply, either from the date the offence was reported to the police, or from the age of 18 where the offence was reported whilst the victim was a child. There is no mention in the government proposals of applicants having seven years from the date the offence was reported, if it was not reported when the child was under 18. It is important that time does not start to run until reporting has taken place, so as to not unfairly restrict those who may not have reported the incident as a child, may be

[4] https://victimscommissioner.org.uk/news/same-roof-rule-deadline/

[5] https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingseptember2022#violence

[6] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1092722/CICA_Annual_Report_and_Accounts_2021-22_Final_Web_accessible.pdf

experiencing feelings of shame, or uncertainty as to whether there was actually a crime, and who may not come forward and report the incident until much later.

Question 9: What are your views on amending the Scheme's time limit to seven years for all applications, with the CICA retaining discretion to extend the time limit in exceptional circumstances?

We believe that an extension to three years for cases other than those involving child sexual abuse, is appropriate, and would strike the correct balance between enabling victims to bring a claim under the scheme, without making the scheme unaffordable to run or requiring a reduction in the level of awards or level of service for applicants.

Question 10: If the time limit for applications to the Scheme were extended to seven years, either for applications in relation to child sexual abuse or for all applications, is it necessary for the CICA to retain discretion to further extend the time limit in exceptional circumstances?

It would be necessary for the CICA to retain discretion to further extend the time limit in exceptional cases. A discretionary power is important for victims of historical abuse who may still fall outside of the 7 year timeframe, and for others who may fall outside of a 3 year time frame. IICSA's recommendation was that the claims officer's discretion to extend the time limit should remain. The discretionary power is important. There may be a complex criminal case, which involves parties with vulnerabilities, or multiple victims or survivors who continue to come forward, which means that trials often take more than three years. As we set out above, victims are often told by the police to hold back on making a claim to the scheme until the criminal trial has concluded. Those involved in complex trials will miss their opportunity to bring a claim under the scheme, therefore, if there is no discretion available to claims handlers.

Question 11: What are your views on amending the time limit to three years for all applicants who were children under the age of 18 on the date of the incident giving rise to the injury?

As set out above, we believe the time limit should be extended to three years for all applicants, regardless of their age, and there should be a further extension to seven years for those who were victims of historical abuse.

Question 12: What are your views on amending the time limit to three years for all applicants to the Scheme?

See answer to question 11 above.