

NORTHERN IRELAND AFFAIRS COMMITTEE

THE COMPENSATION AGENCY

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

SEPTEMBER 2003

The Association of Personal Injury Lawyers (APIL) was formed in 1990 by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has over 4,800 members in the UK and abroad. Membership comprises barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. APIL does not generate business on behalf of its members.

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

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CRIMINAL INJURIES COMPENSATION AGENCY (NI)

1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 by plaintiff lawyers with a view to representing the interests of personal injury victims. APIL has currently over 4800 members in the UK and abroad, of which 118 are based in Northern Ireland. Membership comprises solicitors, barristers, legal executives, and academics whose interest in personal injury work is predominately on behalf of injured claimants. The aims of the association are:
 - To ensure accident victims receive fair, just and prompt compensation;
 - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
 - To provide a communication network exchanging views formally and informally.

Introduction

2. The Northern Ireland Affairs Committee is currently conducting an enquiry into the Compensation Agency (CA). The Compensation Agency administers the new tariff-based criminal injuries compensation scheme, which was introduced in May 2002. The committee is seeking views on the following:
 - The efficiency and effectiveness of the administration and expenditure of the agency, including its performance against key indicators and targets; and
 - The role of the Compensation Agency in
 - Supporting the victims of violent crime by providing compensation for the serious injuries and financial loss;
 - Sustaining the confidence of the community by providing compensation for physical damage and consequential loss arising from criminal damage to property; and
 - Providing compensation to those who suffer loss from action taken under the Terrorism Act 2000.
3. In November 2001 APIL responded to the Northern Ireland Office's consultation document on the Criminal Injuries Compensation (NI) Order 2001. APIL was strongly opposed to the new measures being introduced with the new compensation scheme. In particular, we expressed concerns about the following:
 - A fixed tariff scheme for injuries compensation
 - Removal of paid legal assistance
 - Multiple injuries
4. Indeed, with reference to these items, APIL has been able to gain feedback about their operation within the structure of the Compensation Agency.

The Fixed Tariff Scheme - General

5. APIL strongly objects to the use of a fixed tariff scheme. As stated in our November 2001 response to Criminal Injuries Compensation (NI) order 2001, '*a fixed tariff scheme would be unfair and inflexible*'. Injuries are listed against specific and inflexible figures and no distinction is made between individuals – each victim of crime with the same injury is treated in the same way as another. This inevitably leads to anomalies and unfairness. For example, a broken hand is worth more to a pianist than an 80 year old woman.
6. APIL is concerned that the award for multiple injuries appears very low, leaving plaintiffs seriously under compensated. The current tariff scheme, operated by the Compensation Agency, is that where there is more than one injury, and the injuries are separate from one another, 100 per cent of the tariff is awarded for the most serious injury, 30 per cent of the tariff is awarded for the second most serious injury, 15 per cent of the tariff is awarded for the third most serious injury and 10 per cent of the tariff for all remaining injuries. In the previous scheme each injury was compensated on its own merits; if a person had his arm and leg broken during a crime, it was possible for him to get 100 per cent compensation for both injuries. APIL feels the level of tariff awards does not match the previous schemes and does not match the needs of the victims of crime.
7. As detailed in our November 2001 response, APIL propose the following tariff structure for multiple injuries:
 - 100 per cent of the tariff amount for the highest-rated, or most serious, description of injury; plus
 - 50 per cent of the tariff amount for the second highest, or serious, description of injury; plus where there are three or more injuries,
 - 25 per cent of the tariff amount for the third highest-rated, or most serious, description of injury and all remaining injuries.

APIL is also alarmed that the only way in which tariff amounts can be altered to accommodate personal circumstances is via either a review of the original decision or an appeal to the Criminal Injuries Compensation Appeals Panel for Northern Ireland (CICAPNI); both of which would further delay much needed compensation monies.

8. As already mentioned the new criminal injuries compensation scheme lacks discretion in relation to awards. For example, similar scars on two different people can have a very different affect to their appearance depending on other aspects of their physical appearance. While the tariff system does distinguish between different types of scars, it does not provide sufficient discretion to ensure that the degree to which a scar presents disfigurement takes into account a number of factors including the age of the victim, where the scar sits in respect of the victim's hairline, how

easily disguised the scar may be or whether the scar blends in with crease lines in the head.

The Fixed Tariff Scheme – Minor Injuries

9. APIL particularly feels that the current tariff system is unfair to victims with minor injuries. In order to qualify for compensation the plaintiff must have suffered at least three separate physical injuries, and at least one of these injuries must have significant residual effects six weeks after the incident. The fact that the victim must also visit a medical practitioner on two separate occasions during the aforementioned six week period is wholly unreasonable and may discriminate against a number of different categories of persons. The use of these qualifications means that the number of injured people who will be able to gain access to the scheme will be significantly restricted. APIL feels this restriction is inequitable as the precise specification of an injury should not disqualify someone from compensation. For example, if someone had received two black-eyes during a crime, and the effects of these lasted five weeks, in which time the person was unable to work, it would be inequitable to deny him compensation using the above qualifying factors.

Legal Representation

10. APIL is concerned that the Compensation Agency does not allow for the recovery of any legal costs by legal representatives aiding in either the completion of the claim forms or indeed in any aspect of the claim. Whilst the Legal Aid Department may pay limited fees in respect of initial advice, clients often ask and require continuing assistance. The complex issues involved can be extremely confusing to many people, and this will be made more difficult if they have recently been traumatised as a result of a crime.
11. The lack of funded legal assistance means that if solicitors are used in the application process and onwards, any assistance would have to be paid for by the plaintiff. This will often involve the payment of legal fees by the plaintiff to the solicitors out of any awarded compensation. This is the current situation in England and Wales.
12. The extra funding provided to Victim Support of Northern Ireland (VSNI) for the purposes of assisting in the completion of criminal injuries applications under the Compensation Agency is broadly welcomed by APIL. However we have deep concerns about VSNI's capacity to provide advice and assistance to victims in complex cases. Indeed, in its submission to the *Ad Hoc* Committee on the Draft Criminal Injuries Compensation (NI) Order 2001 (published 08/07/02), VSNI recognised that this was a major failing of the proposed CICA scheme.
13. In consultation with APIL members it appears that few victims are using the VSNI to help process their claims. APIL feels that the VSNI does not

have the capacity to adequately cope with additional work load produced by the scheme. For example, in 2001 the Compensation Agency received between 14,000 – 15,000 applications for criminal injury compensation, whilst the VSNI has only eight branches across Northern Ireland each with three core branch staff members. In contrast, however, there are some 500 solicitors' firms all with experience of dealing with criminal injury claims. This seems to inevitably lead to more plaintiffs consulting their local solicitors.

14. The lack of legal aid assistance also substantially hinders child applicants' ability to gain compensation. Due to the fact that the plaintiff is a child, the solicitor is unable to bill the child directly. Thus the parents are liable for legal expenses incurred. It is inherently unfair that parents should have to pay for access to a system when their child has been injured as the result of a crime. We understand that this conflict is leading some solicitors into taking a disproportionate amount of pro-bono work in respect of criminal injuries. This could lead to solicitors being unable to help criminal injury victims pursue their claim and effectively gain access to justice because of business pressures. This also means that other areas of pro-bono work are tending to suffer as a result.

Advertising of the Criminal Injuries Compensation Scheme

15. APIL strongly supports the need for a more visible and prominent campaign in advertising the use of the Criminal Injuries Compensation scheme. Whilst there was a 'flurry' of advertising around the initial roll-out of the scheme, there appears to have been little press coverage since. This lack of visibility means that people are unlikely to know that their injuries are compensatable and that this is the appropriate method in which to claim. This restricts access to justice for people suffering injuries due to crime.
16. The lack of awareness that surrounds the scheme means that many claimants seeking advice still contact a legal representative first. Whilst some are advised to contact their local Victim Support, the fact that only eight sites are currently operating in the Northern Ireland jurisdiction (of which two are based in Belfast) means that this may involve travelling into their nearest population centre. This is naturally traumatic as the plaintiff they may still be suffering from injuries, and the option to travel may make things worse.

Completion of Forms

17. APIL feels that the claims forms are too long and can be unclear. In addition the guidance notes which accompany the claim forms are comprehensive in their detailing of the scheme but offer little help in how to actually fill the forms in. These factors combined with the fact many plaintiffs are daunted and intimidated by the forms means that they often seek independent legal advice in order to complete the application form. APIL is additionally concerned that the claim forms require detailed

information that the claimant is unlikely to have, or have easy access to. For example, the police command and control number are only known by the police and these are rarely provided to the victim. A possible solution would be for the police officer who records the complaint to provide the victim with a card bearing the name of the relevant police officer and the crime reference number. Also a hospital number would be completely unknown by anybody attending as a patient. The lack of this information makes the completion of the relevant claims forms more difficult.

18. In addition, APIL suggests that the police should supply all victims of crime with a claim form on the recording of their complaint at the police station. This would enable the victim to instigate a claim for compensation as soon as possible. The current situation, however, is that claim forms are only available from the VSNI and via the internet. If a person doesn't have access to the internet – which many don't - they would need to travel to the nearest VSNI office to get the appropriate forms. As already mentioned, due to the distance and lack of easy access, this may well be very traumatic for the person.

Medical evidence

19. APIL is concerned that the Compensation Agency, in order to define the tariff level, may request that the plaintiff attends a Compensation Agency nominated doctor. This lack of independence is unfair and inequitable to plaintiffs. In order for independence to be preserved the use of independent medical opinion ought to be sought about the extent of the injuries, and the appropriate compensation tariff level. In relation to the operation of the current system, however, judging by the responses from our members, it appears that the Compensation Agency contacts the plaintiff's GP (or treating Accident and Emergency department) directly requesting a copy of his medical notes. These medical notes are supplied to the Compensation Agency at a nominal fee (under £25) via an agreement with the British Medical Association (BMA). The low fee and the lack of a specific medical examination relating to the criminal injury being claimed for may indicate a potential lack of thoroughness.
20. Whilst the independence of the plaintiff's GP means that this medical information is more appropriate than that of a CA nominated doctor, the lack of specialist medical knowledge may mean that their opinion lacks a full understanding of the long term implications of any criminally inflicted injury.
21. APIL also feels that the reluctance of the Compensation Agency to release the acquired medical notes of the plaintiff to his nominated legal representatives will lead to a growing number of appeals being lodged. A solicitor would normally use the medical notes of a plaintiff to ascertain the validity of his claim and the quantum of damages that the plaintiff is due. The lack of this information hinders the solicitors' ability to advise his client appropriately, and will lead to appeals based on the perception of under-compensation.

Compensation Agency delays

22. APIL feels the long delays in getting claims resolved by the Compensation Agency are unacceptable. Of the eleven different Northern Ireland legal firms contacted 82 per cent stated that there were long delays in getting claims determined by the CA and of these eleven firms 45 per cent have yet to even have a claim determined at all. Indeed even the simplest of claims has been extensively delayed. These delays naturally affect the claimants, who often need the security that compensation provides in order either continue with their lives or start rebuilding their lives.
23. In addition to long delays APIL is anxious that neither claimants nor their solicitors are being kept up to date on the progress of the claim. Indeed in some examples it took four to six weeks for an acknowledgment of the application forms to be received. After the receipt of the application pack, there appears to be little or no further contact; neither the claimant nor solicitor are updated about the progress of the application. The delays in the determination of claims may be more bearable if the claimant were kept informed about the ongoing status of their application.

Conclusion

24. APIL feels that the Compensation Agency, and the Criminal Injuries Compensation scheme that it runs, do not appear to have made claiming compensation any easier. Indeed Sir Kenneth Bloomfield's original comments that "many of those victims to whom [he] spoke found the procedures complex, baffling, frustrating and on occasion humiliating"¹, could be equally applied to the current system.
26. APIL feels that whilst the new system was attempting to produce a fairer, more equitable and more affordable system, the tariff system and loss of legal funding means that this is not happening. Indeed there is little evidence, as Amanda Patterson (head of Compensation Policy Unit) stated concerning the loss of funded legal advice, "that the public money that funded legal advice under the existing compensation scheme is now being used to widen access to cover more victims."

¹ 'We will remember them' (published April 1998), paragraph 59