

THE HOME OFFICE

COMPENSATION AND SUPPORT FOR VICTIMS OF CRIME

**A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS
(APIL05/04)**

MARCH 2004

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 5,300 members in the UK and abroad. Membership comprises solicitors, 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.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and prompt compensation for all types of personal injury;
- To improve access to our legal system by all means including education, the exchange of information and enhancement of law reform;
- To alert the public to dangers in society such as harmful products and dangerous drugs;
- To provide a communication network exchanging views formally and informally;
- To promote health and safety.

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

Ian Walker	Past-President, APIL
Neil Sugarman	Member, APIL
Dorothy Briffa	UNISON

Any enquiries in respect of this response should be addressed, in the first instance, to:

Miles Burger
Policy Research Officer
APIL
11 Castle Quay
Nottingham
NG7 1FW

Tel: 0115 958 0585
Fax: 0115 958 0885

E-mail: miles.burger@apil.com

COMPENSATION AND SUPPORT FOR VICTIMS OF CRIME

Introduction

1. APIL welcomes the opportunity to put forward its comments regarding the Home Office's consultation on proposals to amend the Criminal Injuries Compensation Scheme (CICS) and provide a wider range of support for victims of crime. We believe it is society's duty to recompense people who are injured due to crime, by virtue of the fact that society failed to protect them adequately in the first place. The CICS is the mechanism by which this recompense takes place. In summary, APIL is therefore deeply concerned about various aspects of the proposed changes to the CICS. The consultation document does not appear to detail how the Government is budgeting for the amendments suggested and whether the wider funding of cases will be affected. It should be noted that without an idea of the overall budget, and the precise details of where the funds are coming from, it is difficult to effectively evaluate the proposals put forward. In particular, we are surprised by the suggestion that the collection of compensation monies from offenders (via the increased use of compensation orders) will be dealt with by the CICA through the courts. APIL believes that the CICA's resources would be better directed elsewhere.
2. In addition, we believe that claimants' rights will be adversely affected by the removal of provision for people who suffer accidental injury whilst taking an exceptional risk and train drivers who suffer psychiatric illness due to witnessing suicides.

General issues

3. APIL feels that there are several issues which need to be addressed with the current system prior to further discussions concerning the proposals to amend it. A common complaint with the current scheme is the length of time that cases involving the CICA take to resolve.

Included in this are reviews and appeals, some of which have taken years to be finally resolved. The reason for these delays appears to be that the CICA is under-resourced and is currently operating with antiquated systems.

4. APIL feels it would be prudent for these issues to be tackled before attempting to amend the current CICS. Not dealing with these concerns prior to the proposed amendments being introduced means, there is a possibility that they will be compounded and further delays will ensue. It should be noted, however, that on a recent visit to the CICA in Glasgow by APIL, we were encouraged to learn that there has been an influx of new staff, and that the back-log of claims is slowly being dealt with. Any support for the current CICS amendments is conditional on the continued influx of such resources and funding.

5. The consultation paper states that it is the CICA's intention to *“make offenders liable to reimburse CICA for any money which is paid out in compensation to victims. CICA could then pursue offenders through the civil courts for that money”*. While APIL fully supports the concept of “polluter pays” – the person causing the accident should be made to pay for the accident's consequences – we are concerned about the financial implications. While there may be a certain amount of compensation recovered from the offenders, the cost of litigation would seem to offset this. Indeed it is debatable whether the cost of running civil litigation will actually save any money at all.

6. APIL would prefer to see the money and resources put to better use within the CICA. In particular, as mentioned above, there is a continuing need for funds to be put into hiring new staff to deal with processing applications and new technology to replace the current antiquated systems. We are surprised that the Home Office is endorsing such a scheme as it appears contrary to recent moves by the Government, particularly by the Department for Constitutional Affairs (DCA), to reduce the amount of business with which courts

need to deal. For example, pre-action protocols are directly intended to prevent litigation progressing to court.

Consultation Questions

Wider use of Compensation Orders

Are there other ways in which the use of compensation orders could be increased?

7. APIL fully supports the increased use of compensation orders to retrieve monies for victims. Current compensation orders, however, are poorly monitored and enforced. For example, the Motor Insurers Bureau (MIB) currently pursues uninsured and untraced drivers in order to recover awards made on their behalf to victims. We understand that the recovery rate is very low. In order for the CICS to efficiently increase the use of compensation orders, enforcement needs to be improved.
8. In addition, it would be unfair to make a victim wait for much needed compensation based on the fulfilment of an order by the offender. For example, the offender may only be able to pay a small amount every month. We are happy to support the continued, and more widespread, use of compensation orders if an effective system to do so could be suggested. Some of the difficulties we foresee relate to who should administer the collection of the compensation fines and the necessary budgeting for the additional resources that will be required.

Are there specific improvements that can be made to aspects of the guidance provided by the CPS and the police to sentencers on the appropriate amount of compensation to be ordered?

9. In terms of how much compensation should be awarded, APIL suggests that judges/magistrates should be recommended to consult

the Judicial Studies Board (JSB) guidelines. This would help maintain proportionality between the criminal and civil compensation schemes, and the amounts they each award. In order to preserve judicial discretion, and the consideration of each case on its own merits, consultation of the JSB guidelines should be a recommendation, rather than mandatory.

Should the amounts of compensation that offenders are ordered to pay be increased for those who have sufficient means, and how can this be achieved?

10. APIL supports the concept of basing compensation orders on the means of the offender. This support, however, is based on the provision that the Government can devise an effective means of actually assessing and implementing such a scheme. While means-based fines have been successful in mainland Europe, particularly Finland, it should be noted that a similar scheme was in operation during the last Conservative government, and failed to work effectively during its short lifetime. If a means based compensation system were to be introduced, APIL would want to see due consideration given to its conception and establishment.

Surcharge on criminal convictions and criminal fixed penalty notices

(General comments).

11. APIL does not feel that there is enough information within the consultation document to make an informed decision on the suggestions and proposals concerning the surcharge on criminal convictions and criminal fixed penalty notices. For example, there is no information within the paper about how the surcharge levels are to be calculated.

12. In addition, while APIL supports any initiative which puts additional funds into the current CICS, we suspect that these additional funds may replace aspects of the current funding regime; any extra monies should be used to increase current funding, not replace it.

A right for CICA to recover money from the offender

Should the Government or its designated agent be given a power to recover monies (and costs) it has paid from the CICS to victims?

13. APIL supports the recovery of CICS monies paid to victims from the offender. Support for this proposal, however, is conditional on a proportionate increase in the staffing and funding of the CICA to deal with such matters.

Are there circumstances where it would not be appropriate for this power to be exercised?

14. APIL would strongly oppose the use of this recovery power if it would have a negative impact on the victim. An example of this would be a family case where the recovery of CICS monies would have a financial implication for the victim due to the nature of the relationship between victim and offender (i.e. partner, spouse).

15. APIL is also very conscious of the potential retaliation risk to victims that allowing the CICA a power to recover money from the offender presents. The concern is that the offender may potentially see the victim as attempting to recover the money, so may try to exact retribution on the victim. While we feel that the recovery power should still be exercised, APIL would like to see appropriate safeguards put in place in order to effectively protect the victim.

Are the mechanisms proposed to exercise this power the optimum ones, or are there better ways in which to achieve the same aims?

16. As echoed in APIL's previous comments regarding the use of compensation orders, attempts to enforce fines, particularly on custodial offenders, will create a considerable additional administrative burden for CICA. This additional burden may make the scheme costly and, in turn, impractical. In order to avoid these problems any system that is set-up to recover money from the offender needs to be well-funded and efficient.

Criminal Injuries that occur in the course of duty

Could employers make efficient and cost effective arrangements to compensate workers criminally injured on duty – can they add to existing schemes for example?

17. While APIL is fully supportive of the need for corporations to properly insure themselves for personal injuries to workers, extending such insurance to criminally injured employees may place an undue burden on employers. Admittedly we can think of many examples where a scheme for criminal injuries could be well founded and workable. The difficulty, however, is that a business could be unfairly penalised by the need for insurance to cover the random acts of people over whom the employer can not be expected to have control. Of course, if someone is injured by a criminal act at work and there is an element of negligence on the part of the employer, the employer already pays as part of Employers' Liability Compulsory Insurance (ELCI).

18. APIL would be interested to see what the costs of a compulsory insurance system for criminally injured workers would be; whether an addition to current employers' liability insurance or a separate policy. For instance, if the cost was an extra £50 per year per employee in insurance the scheme may be affordable for businesses, yet if the

scheme was an extra £1000 per year per employee then it would result in huge business difficulties. Until this type of information is available, APIL cannot make an informed decision about the proposal.

19. There are also potential policy difficulties with the proposed scheme. For example, if an NHS nurse were attacked, the compensation paid would come out of the NHS budget. The scheme would be shifting the compensation cost burden from the CICA to other Government departments. This increased cost burden, however, is unlikely to be accompanied by an appropriate increase in funding. In order to offset the additional costs of Government departments supporting criminal injury insurance schemes for their workers there would inevitably have to be cuts in public funding.

What might be the best way of achieving this:

- i) obliging employers to make arrangements themselves through work based schemes or on a case by case basis?*
- ii) compensating employees through the CICS and claiming back from employers?*
- iii) other alternatives?*

20. While APIL cannot either support or reject the proposed scheme until more information is provided, if such a scheme were to be introduced then the necessity of consistency would require that option *ii)* be chosen. Option *ii)* would involve the compensation of employees by the CICS, and then recovery from the employers.

Would it be best to confine any changes to firms employing upwards of 250 people?

21. APIL does not feel it has enough information to comment extensively on this point at this time. APIL does believe, however, that it would be particularly unfair if a person was injured while working for a small business that had less than 250 employees. All injured workers,

regardless of the size of the employer, should receive full and just compensation.

Are there certain private sector industries which would be disproportionately affected and to what extent are they already covered against the risk of criminal injury?

22. APIL has no knowledge of industry sectors more likely to suffer criminal attacks, so we decline to comment at this time.

Are there other steps that employers can take to reduce the risk of criminal injury whilst on duty?

23. APIL has for many years supported the need for all employers to be compelled to use effective risk assessment in the workplace. Included in this risk assessment should be a proper consideration of the chances of a criminal attack on employees. In order to further promote risk assessment amongst businesses, both large and small, APIL believes that a company's health and safety record should be directly connected to the insurance premiums that it pays.

Railway trespass and accidental injury

Is it appropriate that a scheme intended to compensate victims of violent crime should continue to pay compensation for injuries that do not result directly from violent crime?

24. APIL supports any measure which encourages citizens to act in an effective and responsible manner. We believe that heroism and gallantry by 'ordinary' people should be supported via money paid for injuries inflicted because of this act of bravery. It is hoped that this will encourage people to prevent crime. We are concerned that the consultation may indicate an attempt to split the type of victim into sub-categories (e.g. police officer, fireman, emergency services, etc). APIL

feels that there should not be any differentiation between the classes of victim covered by this category in the CICS. A citizen, regardless of profession, should be encouraged to act against criminal acts, and that these actions should be compensated for in the event of an injury. APIL accepts that the 'exceptional circumstances' clause should be retained.

25. APIL believes the provision for train drivers who have witnessed suicides and suffer detrimental psychological consequences within the scheme should be retained. We would not encourage the removal of an existing right for compensation for injured claimants unless there was a satisfactory alternative scheme established.

Contribution from industry to supporting victims

Are there other ways in which the insurance industry might contribute to prevention of crime and support to victims?

26. The insurance industry can contribute to the prevention of crime, particularly against employees, by encouraging and promoting effective risk assessment by employers. As mentioned previously, effective risk assessment can aid businesses in predicting and preventing their employees being attacked. In order to ensure that risk assessment is at the forefront of a company's priorities, APIL proposes that EL premiums should be based on risk assessments and the health and safety performance of a company. With the insurance industry allowing for premiums to be adjusted via safety performance, companies will have a financial incentive to effectively risk assess their business and the vulnerability of their employees to criminal assault and attack.

Are there other ways in which the alcohol industry might contribute to these goals?

27. APIL feels that the most effective way that the alcohol industry can contribute to reducing crime, in particular alcohol fuelled crime, is by

endorsing appropriate education concerning the problems that alcohol can cause. In addition, we would encourage the alcohol industry, as a matter of corporate policy, to sponsor ongoing victim support initiatives and alcohol abuse-recovery programs.

28. A further possible suggestion is that a small supplement, or levy, could be attached to alcohol. This levy would take the form of a fixed amount (e.g. 1p on a pint of beer) or a percentage of the tax or duty paid on alcohol. These additional monies could be used to fund extra benefits and increase compensation for seriously injured innocent victims of crimes of violence.

Are there other sectors of industry that can be involved in the prevention of crime and support to victims?

29. APIL feels that consideration of this issue is beyond the association's remit.

Funding arrangements

(General comments).

30. APIL feels that the consideration of the scope of what specialist support services are needed for victims is outside the association's remit.

31. We would, however, like to comment that the funds made available should be used effectively by victim support organisations. APIL believes that the funds should be put to the best use possible in order to help victims of crime.

Conclusion

32. In conclusion, it appears that some of the proposals may be unworkable and impractical, while others may be extremely costly to manage. As such APIL makes the following comments regarding the Home Office's consultation:

- APIL encourages the wider use of compensation orders, but feels that they should be better enforced and be based on the means of the offender. In respect of compensation, courts should be recommended to consult the JSB guidelines as to quantum.
- APIL supports the right of the CICA to recover money from the offender as long as it does not have a negative impact on the victim either financially or personally.
- In terms of employers insuring their staff for criminal injuries which occur while working, APIL can think of many instances where this type of insurance would be justifiable. There are, however, numerous other instances where the need for this insurance would be an undeserved burden on employers. Employers can already make a difference to safety for their workers by conducting and actioning effective risk assessments in the workplace.
- APIL supports the retention of the CICS provisions relating to the compensation of people who take 'exceptional risks' in their job and train drivers who witness suicides.
- The insurance industry can help to prevent crime and support victims by encouraging efficient risk assessment amongst its policy holders. One way to achieve this is to base premiums on risk assessment.
- Finally, APIL would like more details about the services to be provided to victims, as the information in the consultation document is very sketchy. The services available to injured victims are important, as these will potentially be part of any compensation package.