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**VICTIMS' CODE OF PRACTICE: A CONSULTATION ON THE FINAL
DRAFTS OF THE CODE AND THE 'GUIDE FOR VICTIMS'**

**A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS
(APIL07/05)**

MAY 2005

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 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.

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 Health and Safety Policy Working Group in preparing this response:

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Introduction

1. APIL welcomes the opportunity to put forward its comments on the Home Office's consultation on the final drafts of the Victim's Code of Practice and the 'Guide for Victims'. Please note, however, that while the consultation details the "*precise standards of care and support that victims can expect to receive from Criminal Justice agencies*"¹, APIL represents the civil justice interests of personal injury victims and will therefore concentrate its response on the Criminal Injuries Compensation Authority (CICA) and the Criminal Injuries Compensation Appeal Panel (CICAP).

Promotion of the criminal injuries compensation scheme

2. APIL believes that in order for the victims' code of practice to be truly effective, the services which it covers need to be given a higher level of visibility. In particular, the criminal injuries compensation scheme – run by the CICA and CICAP – needs to be more actively promoted so that more people become aware of it. The draft code of practice assumes a level of knowledge about the criminal injuries compensation scheme which does not reflect APIL members' experiences. While unions – such as the Royal College of Nursing (RCN) – actively promote the existence and requirements of the scheme, APIL members report that members of the general public are largely oblivious to its existence.
3. APIL considers the code of practice a perfect opportunity for the Government to actively promote the criminal injuries compensation scheme and the other services available to victims. We are therefore disappointed to note that there are no suggestions within any of the supporting consultation documentation about raising awareness of such

schemes and services. Not only is there a need to raise the profile of the criminal injuries compensation scheme, but there is also a need to combat the various misconceptions which currently exist about it, many of which prevent victims taking full advantage of it. For example, many victims – all potential applicants to the scheme – believe that the person who committed the offence against them must be convicted in order for a criminal injuries compensation payment to be granted. In fact this is not the case. APIL feels that the code of practice is a wasted opportunity to both promote and inform victims about how the criminal injuries compensation scheme can help them.

4. APIL is further concerned about the fact that the promotion of both the criminal injuries compensation scheme, as well as the victims' code of practice, will be dealt with almost solely by the Victim Support agency. While APIL is supportive of the work Victim Support does, we feel as an independent charity with only 300 local Victim Support community-based services in England and Wales, it is unlikely to have the necessary resources to effectively promote and monitor either the code of practice or the schemes within the code. In order to effectively promote the services available to victims, APIL suggests that the Government should commit further resources, whether in relation to Victim Support or in general, to promoting the code of practice and in particular the CICA and CICAP scheme. For example, copies of the code as well as details of the criminal injuries compensation scheme could be distributed via police stations, GP surgeries, and local Citizen's Advice Bureaux (CABs).

Those entitled to receive services under the Code

5. APIL considers that the availability of services under the code should not be dependent on whether the police officer believes the allegation but then decides "*to take no further action*" or where "*the conduct complained of does not amount to an offence*"². This is particularly

¹ Consultation preamble – See http://www.homeoffice.gov.uk/docs4/cons_vic_code.html for a copy.

² Victims Code of Behaviour: Consultation – page 9

important in terms of the code's application to the CICA and CICAP. We are concerned that victims - who are meant to benefit from the code - will be discouraged from applying to the CICA if they believe no claim will succeed unless their allegation of a crime is taken further by a police officer or the CPS. In fact, APIL members report that they have run CICA claims where the authorities have decided not to take it further, yet the claim has succeeded because the CICA were persuaded that there had in fact been a crime. APIL suggests that it should be made much more explicit within the code that this provision does not necessarily preclude a victim from applying to the CICA.

Obligations of service providers

6. APIL feels that the obligations and responsibilities detailed in the code are too vague and the time limits suggested are too generous. In particular we are concerned that the code proposes that "*[i]f CICA is unable to send a decision letter to an applicant for compensation under the Scheme within 12 months of receipt of the application, it must inform the applicant of the status of their claim after 12 months of receipt of the application*". We believe that 12 months – a full year – is much too long a time for an injured person to wait, just to learn the status of his claim. This time-limit will give the CICA a '*carte blanche*' discretion to potentially do nothing for 12 months, and then simply inform the victim that they are still processing his application. Even though the CICA sets itself more stringent deadlines than the code - a decision within 12 months³ - APIL suggests that the deadlines for a status update and a first decision need to be radically revised and tightened.

7. APIL proposes that the 'trigger' dates for actions by the CICA concerning applications needs to be shorter, so that a first decision is with an applicant in six months while a status decision is with an applicant in three months. While we accept that a large part of any CICA decision is

³ Criminal Injuries Compensation Agency (CICA) Annual report 2002/03 – page 9 – "*Objectives: To reach decisions at claims assessment stage in 90% of cases within 12 months of receiving the application.*"

based on eligibility, and this needs to be established via both police and hospital records, the moving of the deadlines forward will allow motivated victims to chase the treating hospital to get them to reply to the CICA requests. This highlights the real benefit of having a status update within three months, in that it allows the victim to be involved with the compensation process and to take a pro-active approach.

8. APIL considers that there needs to be further clarity, within the code, about what exactly is meant by the requirement that the CICA *“must respond to all correspondence regarding applications for compensation under the Scheme which requires a reply, no later than 20 working days after the day the correspondence was received by CICA”*⁴. In particular what is considered a ‘reply’ in the context of this requirement: a simple acknowledgement or a substantive response? For example, as a claimant solicitor, if you are submitting further evidence for an application, it is vital that you receive a substantive reply as soon as possible responding to this new evidence. In order to clarify this situation, APIL proposes that the CICA should be committed to acknowledging a piece of correspondence within 14 working days, and providing a substantive response within 28 working days.

9. In terms of appealing a CICA decision, APIL suggests that the time frame needs to be made more flexible in order to allow claimant representatives to fully assess and consider the CICA decision and prepare material for CICAP. The current stipulation within the code, in terms of an appeal being lodged, is that the *“CICA must provide the applicant and the Criminal Injuries Compensation Appeals Panel with copies of all papers required for the appeal, as soon as is reasonably practicable”*⁵. APIL suggests that in order for the victims to have enough time to prepare, the following provision – *‘but no less than 21 days before the hearing’* - should be included after ‘reasonably practicable’. In addition APIL proposes that a rider should be placed in the following sentence so that it

⁴ Victims’ Code of Practice: Consultation – page 26 – paragraph 15.6

⁵ Ibid – page 27 – paragraph 15.10

reads “[t]he applicant should be given at least 15 working days to deal with any new issues raised in the papers, provided that it is reasonably practicable, and he is also entitled to apply for more time if necessary” (underlining indicates additional text). This provision is necessary to give the victim, or the victim’s representative, enough time fully to tackle any potential new evidence. For example, included within the papers may be details of a new witness. If this witness needs to be interviewed, it is unlikely that 15 working days would be sufficient time to do this satisfactorily. Therefore, by allowing for a certain amount of discretion to apply for more time, the victim will be able to present the best possible case to the CICAP.

Complaints

10. As previously mentioned, APIL feels that the code fails fully to tackle what is meant by ‘reply’. Another example of this, in terms of complaints, is that both the CICA and CICAP state that they will ‘reply’ within 20 and 21 days respectively; it is unclear whether this refers to a substantive response or simply an acknowledgement. APIL therefore suggests that for both organisations there should be a requirement for a substantive reply in 21 working days.

11. APIL questions whether there is a formal procedure for receiving compensation if you believe you *“have lost money as a result of a mistake”*⁶ by the CICA. The code document seems to indicate that victims who have lost money due to a mistake by the CICA can claim compensation in some form. While APIL is unsure whether such an award is official CICA policy, or it is simply at the discretion of the CICA, we would value a clear and unambiguous statement concerning any such procedure. There also needs to be clarity as to whether the remedy – if one is provided - will take the form of monetary compensation.

⁶ Ibid – page 31 – paragraph 18.11.1

12. On a more practical note, while the CICA and CICAP both provide addresses to which complaints can be sent, APIL believes that it would be helpful for victims if an e-mail address was also provided.