

HOME OFFICE / CRIMINAL JUSTICE SYSTEM (CJS)

REBUILDING LIVES: SUPPORTING VICTIMS OF CRIME

**A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS
(APIL02/06)**

February 2006

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 following members in preparing this response:

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REBUILDING LIVES: SUPPORTING VICTIMS OF CRIME

Executive Summary

- Those with less serious injuries should not go uncompensated. APIL believes that support services should be provided to victims as well as, and not as an alternative to, financial compensation.
- All victims of crime view the matter as ‘serious’ to them. The scheme should not be refocused around a concept of ‘seriousness’ which is based upon monetary or clinical thresholds which would result in a huge percentage of applicants being unable to claim compensation for their injuries.
- APIL believes that there should be no cap on the maximum amount which can be awarded to victims within the CICA scheme.
- The removal of loss of earnings and special expenses will result in a complete lack of individual consideration of cases, leading to under compensation for many, for the benefit of very few.
- Tariff awards would have to increase significantly in real terms in order for them to be in line with the amounts awarded by the civil courts as set out in the Judicial Studies Board Guidelines.
- APIL finds the assertion that the *“enforcement of financial penalties has improved significantly over the last two years with the national average payment rate currently at 82%”*¹, surprising bearing in mind other evidence, see paragraph 8, page 11.
- Although the award for bereavement is higher within the CICA scheme than it is under the Fatal Accidents Act 1976, bereavement damages

¹ Consultation document, page 14

should be more than a nominal amount, and should compensate for the devastating effects which bereavement can cause. There should be further discussion about the levels of awards for bereavement within both the CICS and for civil awards.

- APIL endorses the continued use of 'date of the application' as the determinant for timings within the scheme.
- APIL suggests that if a claim is accepted as eligible within the criminal injuries scheme, there should be a presumption that an interim payment will be made to take care of the immediate difficulties faced by the claimant.
- The mediating factor when deciding to accept or reject an application should not be the presence of a criminal record, but evidence that sustaining the injury was related to a criminal act. This would allow appropriate compensation to be awarded to the right people.
- No fault insurance to cover criminally injured employees would be an additional cost to businesses which would be unfairly penalised by the need for insurance to cover the random acts of people over whom they have no control.
- The same concerns apply to the possibility of public sector employers being forced to compensate their employees, rather than relying on the Criminal Injuries Compensation Scheme which in addition, would place considerable additional financial pressures on public sector bodies.
- Heroism and gallantry of all people should be supported through compensation for injuries inflicted as a result, regardless of their job. There should be no differentiation between the classes of victim covered by the CICS. A citizen, regardless of profession, should be encouraged

to act to prevent criminal acts, or assist victims of them, and any injuries resulting from these actions should be compensated.

- APIL would prefer to see appropriate funding provided for those categories which are still eligible for compensation under the scheme, rather than extending the remit of the scheme beyond the bounds of that which is recoverable under common law.
- If properly implemented and supported, the provision of advice from police officers to victims could ultimately lead to a rise in the number of CICA applications, increasing access to justice for the many who do not currently make a claim to the CICA. APIL has reservations, however, about whether the appropriate support and resourcing will be made available to make this possible.

Introduction

1. APIL welcomes the opportunity to put forward its comments in relation to the Home Office and Criminal Justice System's (CJS) consultation entitled '*Rebuilding lives: Supporting victims of crime*', (the consultation paper).
2. APIL has already responded to the Home Office's previous consultation '*Compensation and Support for Victims of Crime*' concerning changes to the criminal injuries compensation system. 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*"². The Criminal Injuries Compensation Scheme (CICS) is the mechanism by which this recompense takes place.
3. APIL is concerned that the findings upon which the Government's recommendations and proposals are based relate to unreleased 2004/05 figures. As far as we are aware the only figures which are publicly available - and therefore open to wider scrutiny - are those for 2002/03. As a consequence APIL would appreciate the release of the 2004/05 figures as soon as possible in order to allow interested parties to examine the figures quoted in the consultation paper, in full.
4. While there has been a significant drop in the number of violent crimes reported to the British Crime Survey (BCS) since its peak in 1995, the most recent recorded crime statistics show a seven per cent increase in violent crime in 2004/05 compared with 2003/04. In particular, '*more serious violence against the person*' has risen by three per cent and '*other offences against the person – with injury*' has risen by 13 per cent³. There should be no complacency at the CICA: the types of crime

² See Appendix A – APIL's response to the Home Office consultation – '*Compensation and Support for Victims of Crime*' (March 2004) (a copy of this consultation response can be downloaded at: <http://www.apil.com/pdf/ConsultationDocuments/120.pdf>).

³ Home Office Statistical Bulletin – Crime in England and Wales 2004/2005 (see <http://www.homeoffice.gov.uk/rds/pdfs05/hosb1105.pdf> for a copy of this report).

for which applicants will be compensated are on the increase and not falling, as suggested on page three of the consultation paper.

Rationale for the Criminal Injuries Compensation Scheme

5. APIL is concerned that the consultation paper states this Government, and previous administrations, have *“made clear their view that the state is not liable for injuries caused to people by the criminal acts of others”*⁴. This position appears to be contrary to government’s involvement in the actual development of the criminal injuries compensation scheme. The impetus for the creation of the scheme,

*“is generally credited to Margery Fry who campaigned throughout the 1950s on behalf of the victims of violence. Originally she wished to revive reparations by the offender, but she quickly realised that most offenders would lack the necessary means and, thereafter, envisaged that the State would pay compensation based upon the model of the Industrial Injuries Scheme. In order to bolster her argument, she emphasised the existence of collective responsibility for sickness and injury in the modern western State as well as the spread of risk sharing through the medium of insurance”*⁵.

Eventually *“her proposal attracted support from JUSTICE and various other influential persons”*⁶ leading to a decision by the Government to implement the scheme. A subsequent government working party reported in 1986 that criminal injuries compensation represented a *“practical expression”* of *“public sympathy”*⁷. The background to the scheme indicates that governments, past and present, have accepted the social justice function which the scheme has performed since its inception in 1964. APIL believes it is iniquitous for the current Executive to resile from

⁴ Consultation document, page 14

⁵ P Duff (1998) *“The Measure of Criminal Injuries Compensation: Political Pragmatism or Dog’s Dinner?”* Oxford Journal of Legal Studies 18: 109.

⁶ *Ibid*

⁷ *Criminal Injuries Compensation: A Statutory Scheme. Report of an Interdepartmental Working Party (1986)* – paragraph 6.2

this previously accepted position, potentially leaving hundreds, if not thousands of injured people without much needed compensation.

The need for legal advice

6. In contrast to the Government's view that one of the advantages of the new scheme would be the reduction in *"the number of victims seeking assistance from lawyers"*⁸, APIL believes that lawyers represent an essential means of ensuring that criminally injured people receive fair and necessary compensation from the Criminal Injuries Compensation Agency (CICA). Without independent legal advice the injured person is unlikely to challenge a first offer from the CICA. The low level of compensation being offered to some applicants is evidenced by the fact that *"[o]f the 4,079 resolved appeals, 1,876 (or 46%) were successful, measured by the appellant doing better than the review decision of the Authority which was appealed against"*⁹. This would seem to indicate that when an award is appealed there is almost a 50 per cent chance that it will be increased.

Operation of the current scheme

7. Prior to addressing the Government's current proposals, APIL believes that certain issues within the existing scheme need to be examined. Many of the problems within the current system will ultimately affect any proposed changes to the Criminal Injuries Compensation System:
 - APIL feels the current procedures for evidence gathering are far too slow and unwieldy. The system relies on the CICA sending out standard pro-forma documents to the relevant police force. APIL members report that this process is a 'hit and miss' affair: pro-formas are often delayed when sent to the wrong department, the wrong officer or when sent out from a central point to the station or officer who conducted the relevant enquiry.

⁸ Consultation document, page 19

⁹ Criminal Injuries Compensation Appeals Panel (CICAP) – Annual Report 2003/04 – page 9

Once received by the correct officer there is further delay as the officer has to complete the form in addition to all the rest of his paperwork.

- APIL members report that the delays are also due to the CICA's follow-up procedures, many of which are only performed 90 days after the original request. There is also no evidence that the CICA is being proactive in following up by telephone or e-mail, for example.
- APIL believes that the compilation of medical evidence is similarly far too slow. It relies on the same pro-forma request approach described above. Unsurprisingly the completion of these pro-formas is considered a low priority task for the doctors and medical experts concerned. Often the initial response to the request for information is that the incident cannot be traced. In addition, the financial payments for medical reporting are small, despite re-negotiated rates last year, and represent no incentive to the medical expert to dedicate sufficient time to give a proper report and prognosis.
- APIL members report that numerous applications to the CICA are initially refused for a variety of reasons, many of which fail to take into account the individual circumstances of the victim. Members report the extremely robust and often unsympathetic approach of claims officers who refuse applications at first instance on issues of late reporting, client conduct or non-cooperation which are a particular problem when the applicant has serious fears of reprisals and intimidation. For example, an application can be refused if the CICA decides that the applicant is being uncooperative or returns the pro-forma late, regardless of the reason. In addition, an application can often be refused due to a minor criminal conviction or issue of conduct. Refusals lead many unrepresented applicants to give up rather than face a lengthy review process. Those who do have legal representation tend to challenge a refusal and are more often than not, successful, but their applications can be delayed by many months as a consequence.

- APIL considers that the CICA review process takes far too long. If the initial application is refused, often after considerable delay, the applicant has to go through another long process in order to have the decision reconsidered. We know that it is commonplace for the CICA to accept that, due to under-resourcing, any review is likely to take months.
- As with the other components of the criminal injuries compensation scheme (CICS), the appeal process is slow. While APIL accepts there have been positive steps taken to improve the situation in recent years by the Criminal Injuries Compensation Appeal Panel (CICAP), the need for evidence gathering and preparation for the appeal to be conducted by the CICA hinders the process. A CICA case worker in the Presenting Officers Unit can often take several weeks to prepare this evidence, preventing a prompt start for the appeals process. APIL has already suggested to the CICA that it considers the use of a simple document scanning system, which can be purchased at modest cost without sophisticated software, which would speed up the preparation and forwarding of files being appealed.
- Hardship is experienced by those who suffer loss of earnings for periods of up to 28 weeks, the earliest date at which an award for such losses can be claimed. The House of Commons library estimated in 1996 that *“up to 12 million people in work could be excluded by the 28 week rule”*¹⁰.
- The current cap on compensation leaves many applicants severely under compensated. The cap of £250,000 on tariff awards and £250,000 on special expenses has not changed since the inception of the current scheme in 1996¹¹. In addition, the CICA has been slow to recognise and devise systems to deal with these very serious claims. For example, with the CICA needing to take account of publicly available care when

¹⁰ Dismore, A (1996) *Briefing Note – The Criminal Injuries Compensation Scheme* Journal of Personal Injury Litigation Special Report – (1996) J.P.I.L. S.R. 1, page 16, paragraph 5.5

¹¹ Using the Lawtel inflation calculator tool (which uplifts quantum values in line with *Heil v Rankin & Anor* (2000) 2 WLR 1173), a £250,000 settlement in January 1996 is worth £430,758.99 in December 2005; a 72.3 per cent increase.

assessing the level of compensation to be paid, applicants can find themselves caught in a battle between the CICA and the local authority as to who should provide this care. This causes delay, expense and frustration to the applicant and those caring for them. These issues are indicative of the potential complexity which exists in the process, and effectively illustrate the need for an impartial legal representative.

Consultation Questions

Chapter 2 – Financial Support:

1) Compensation orders. We would welcome views on:

a) whether to deduct court-ordered compensation from benefits.

8. While the consultation document states that the *“enforcement of financial penalties has improved significantly over the last two years with the national average payment rate currently at 82%”*¹², APIL finds such a high figure surprising. In a recent select committee report concerning small claims, involving monetary amounts similar to those which compensation orders would hope to recover from offenders, the Association of District Judges stated that *“only one third of judgments are paid in full”*¹³. While APIL agrees that enforcement mechanisms need to be improved, APIL questions what help the Government is going to provide in order to help unaided claimants recover money owed from offenders.

2) Maximum award limit. We would welcome views on:

a) whether to increase the maximum award limit.

9. APIL believes that there should be no cap on the maximum amount which can be awarded to victims within the CICA scheme.
10. Even with a maximum severity claim it is highly unlikely that injured claimants would be much better off as long as the cap remains in place.

¹² Consultation document, page 14

¹³ House of Commons Constitutional Affairs Committee ‘The courts: small claims’ First Report of Session 2005-06 (HC519) 6 December 2005, page 13 – paragraph 30

The current scheme allows for a maximum of £250,000 tariff award for pain and suffering and £250,000 for special expenses, such as care costs and loss of earnings. Those claimants who reach the £250,000 threshold for pain, suffering and loss of amenity (PSLA), would probably exceed it, if no cap existed. The new scheme will simply allow the applicant to claim those additional sums by way of PSLA, but disallow any claims for special expenses such as care costs, leaving the applicant no better off than under the current scheme: the applicant will be fairly compensated for his injury, but unfairly compensated for his care costs.

11. The removal of loss of earnings and special expenses will result in a complete lack of individual consideration of cases, leading to under compensation for many, for the benefit of very few.
12. Any increase in the cap will ultimately be paid for under these proposals by the abandonment of lower value cases because the Government has made it clear there is no new money available for the scheme. While an increase in the awards for severe injury claims is needed, it should not be paid for by the removal of smaller value claims from the scheme. For example, in 2002/03 there were only nine awards made at or above the £75,000 threshold, only three of which were at the £250,000 level. This suggests that even if there was an increase in the amounts available for severe injury claims it would only affect a minority of applicants, to the detriment of the vast majority of those with lower value claims.
13. APIL is concerned to note that the Government intends for the care needs of the injured person to be met by local provision. The local authority's assessment of *eligible* needs will usually be substantially less than the claimant's *reasonable requirements*. By depriving claimants of the ability to make a claim for care costs to fund these reasonable needs, the Government effectively leaves the applicant at the mercy of regional budgets and discretionary services.

14. Page 17 of the consultation paper states that ‘the tariff payments for the pain and suffering of the injury are broadly in line with the amounts awarded by the civil courts as set out in the Judicial Studies Board ... Guidelines’. APIL suggests in fact tariff awards would have to increase significantly in real terms in order for this to be true. For example, awards for paraplegics and tetraplegics can range from £1 million up to £4 million depending on the age of the claimant and severity of the injury. Tariff payments for the pain and suffering element of any CICA award are already substantially lower than those awarded in the civil courts when compared with the Judicial Studies Board “*Guidelines for the Assessment of General Damages in Personal Injury Cases*”. For example, the total loss of an eye within the JSB is valued at between £30,000 and £36,000, while the CICA tariff award for the same injury is only £25,000, a difference of at least 20 per cent.

3) Refocusing the scheme. We would welcome views on:

- a) whether the scheme should be refocused around the concept of “seriousness”; and**
- b) how best to define “seriousness”.**

15. Those with less serious injuries should not go uncompensated. Financial rewards for the less severe injuries are warranted because they:

- represent a “*practical expression*” of “*public sympathy*”¹⁴;
- provide an incentive to Government to reduce violent crime and its causes.

16. The consultation paper suggests that “*those injuries which did not fall within the definition would no longer receive financial compensation from the scheme but would benefit instead from improved support services*”, such as “*someone to talk to about the crime and protection from further victimisation*”. APIL believes that support services should be provided to victims as well as, and not as an alternative to, compensation.

¹⁴ *Criminal Injuries Compensation: A Statutory Scheme. Report of an Interdepartmental Working Party (1986)* – paragraph 6.2

17. All victims of crime view the matter as ‘serious’ to them. The scheme should not be refocused around a concept of ‘seriousness’ which is based upon monetary or clinical thresholds which would result in a huge percentage of applicants being unable to claim compensation for their injuries. According to the figures within the consultation document, “[v]ictims with the most serious injuries account for a small proportion of the successful claimants”¹⁵ with only 11 per cent of applicants receiving awards of more than £5,500 (or band ten) upwards¹⁶. If bands one to nine were deemed ‘not serious’ and removed from the scheme, 89 per cent of current applicants would be denied compensation. Even a modest amount of compensation has a significantly positive impact on peoples’ lives. While £3,000 represents a week’s wages for a High Court judge¹⁷ – for many others it will represent an enormous amount of money. The same amount of money also represents a whole years Jobseeker Allowance (not the lowest rate).

18. The current definitions of seriousness suggested by the Government do not allow for an element of latitude or discretion. An example of where eligibility based on ‘seriousness’ would cause injustice is the issue of permanence. Two of the Government’s suggested definitions of ‘seriousness’ rely heavily on the fact that the injury sustained causes permanent damage. The definition of disability in the Disability Discrimination Act 1995 states: “*a physical or mental impairment which has substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities*”. Even though a broken finger could develop arthritis and materially affect the life of the person who sustained the injury, APIL feels that it is unlikely that a broken finger would be considered ‘serious’ within the Government’s proposals. What if the broken finger belongs to a talented musician whose skills are blighted as a result? It is essential that individual circumstances are considered for

¹⁵ Consultation document, page 16

¹⁶ *Ibid*

¹⁷ A High Court Judge earns £155,404 per annum, which equates to approximately £2,988 a week before tax (see <http://www.dca.gov.uk/judicial/2004safr.htm> for further details of judicial salaries).

all types of injuries and a definition of 'seriousness', APIL believes, is inappropriate for the CICA scheme.

19. In addition, it is unclear whether the various definitions of 'seriousness' refer to serious mental harm or physical harm, or both. Typically all types of injury involve an element of mental distress, but this is particularly true with victims of crime. APIL members report that, in their experience, almost 80 per cent of victims of crime with whom they deal, will have some sort of psychological injury which affects the way they conduct their everyday life. APIL believes that if there is to be a definition of seriousness it must be holistic in its approach and incorporate all elements of any injury including psychological effects.

20. It is completely wrong, in APIL's view, to redefine the scheme to include any of the suggestions of seriousness made in the consultation paper, for the reasons set out in the paragraphs above. As a last resort, if such a definition is to be imposed by the Government, APIL would reluctantly suggest that the JSB guidelines model should be followed by the scheme, with all the bandings within the JSB guide being reflected in the new eligibility criteria.

4) Payments in fatal cases. We would welcome views on:

- a) whether the current payments for fatal cases are appropriate and, if not; and**
- b) how a different basis for compensation could be devised.**

21. Although the award for bereavement is higher within the CICA scheme than it is under the Fatal Accidents Act 1976, APIL has always stated that bereavement damages should be more than a nominal amount, and should compensate for the devastating effects which bereavement can cause. There should be further discussion about the levels of awards for bereavement within both the CICS and for civil awards.

5) Applying awards retrospectively. We would welcome views on:

- a) whether changes to the scheme should apply from the date of the incident or the date of the application.**

22. APIL endorses the continued use of 'date of the application' as the determinant for timings within the scheme.

6) Interim awards. We would welcome views on:

a) whether awards should become the norm.

23. APIL suggests that if a claim is accepted as eligible within the criminal injuries scheme, there should be a presumption that an interim payment will be made to take care of the immediate difficulties faced by the claimant. At the moment the onus is on the applicant to request an interim payment, and unrepresented applicants may not know that it is possible to do so. In order for interim payments to be effective, the CICA needs to ensure that eligibility is established as quickly as possible.

24. APIL welcomes the apparent changes at the CICA which have resulted in interim payments being made more often, for example in the case of the London bombing victims and that of Abigail Witchells. There is a common perception that such spontaneous offers of interim payments are less likely to be made to less 'visible' applicants who are not in the public eye and the CICA should take steps to address that perception.

7) An applicant's criminal record. We would welcome views on:

a) the sliding scale used to determine the level of compensation for a person who has unspent convictions.

25. APIL proposes that the mediating factor when deciding to accept or reject an application should not be the presence of a criminal record, but evidence that sustaining the injury was related to a criminal act. This would allow appropriate compensation to be awarded to the right people. In terms of spent convictions, it is the intention of the Rehabilitation of Offenders Act 1974 to allow people to start "*with a clean slate after they have paid their debt to society*"¹⁸. It would be deeply unfair to allow someone who was genuinely injured in a criminal attack to be refused

¹⁸ Liberty's Your Rights website (see <http://www.yourrights.org.uk/your-rights/chapters/the-right-to-privacy/spent-convictions-and-rehabilitation-of-offenders/> for further details)

compensation due to a past crime for which he has already been held accountable.

26. A further difficulty with this policy, APIL members report, is the inconsistency with which it is applied. While one person's application may be refused due to a minor criminal conviction, another person, with a similar conviction may be granted compensation. Part of this inconsistency comes from the fact that the wording of 'conduct' within the scheme is extremely wide and leaves a considerable amount of discretion to the claims officer.

8) Anomalous categories in the scheme. We would welcome views on:

a) whether this is appropriate in all cases of injury at work, or whether there are violent crimes that cannot reasonably be guarded against by employers and for which society as a whole should continue to provide compensation.

b) how compensating employees could be achieved in the private sector, for example through work based schemes or on a case by case basis.

27. The current tort system ensures that employees who are injured at work, including through violent crime, can sue their employer, but only where there has been fault on the employer's part. As long as the employer carries out his obligations, such as appropriate risk assessments, he has nothing to fear in terms of litigation from employees who are injured due to workplace violence. No fault insurance to cover criminally injured employees would be an additional cost to businesses which would be unfairly penalised by the need for insurance to cover the random acts of people over whom they have no control.

28. APIL suggests that the Government should continue to provide compensation to workers injured as the result of violence via the criminal injuries compensation scheme.

29. In terms of the covering *“people injured in the course of crime prevention duties when taking an exceptional risk”*¹⁹, APIL believes that the heroism and gallantry of all people should be supported through compensation for injuries inflicted as a result, regardless of their job. There should not be any differentiation between the classes of victim covered by the CICS. A citizen, regardless of profession, should be encouraged to act to prevent criminal acts, or assist victims of them, and any injuries resulting from these actions should be compensated.

30. The provision within the scheme for train drivers who have witnessed suicides and suffer detrimental psychological consequences, should be retained. There is no other compensatory route for these claimants, as the individual bent upon suicide will not be insured to cover the train driver’s claim.

31. In respect of the suggestion within the consultation document that the Government is *“prepared to consider the possibility of public sector employers taking the responsibility of compensating their employees, rather than relying on the Criminal Injuries Compensation Scheme”*²⁰. APIL has similar reservations to those noted in paragraphs 28 and 29 above. A large percentage of public sector applicants are either police officers or health care workers. Their removal from the scheme would merely result in ‘budget shifting’, with the costs of these injuries being borne by police forces and the NHS, instead. APIL is concerned that this would place considerable additional financial pressures on public sector bodies.

Chapter 3 – Emotional & Practical Support:

- 9) Use of the Victims’ Fund 2007/08. We would welcome your views on:**
- a) whether the focus of the fund should be widened to cover other serious crime types e.g. the families of homicide victims or victims of hate crime.**

¹⁹ Consultation document, page 21

²⁰ *Ibid*, page 22

32. While APIL believes that victims of other crimes are equally deserving of support, we feel the scheme should reflect the current common law in terms of which crimes should be compensatable. Including other categories of crime within the remit of the scheme would extend it beyond the bounds of what is recoverable under the common law. APIL would prefer to see the appropriate funding provided for the categories which are still eligible for compensation under the scheme, rather than the inclusion of new compensatable categories, stretching available resources.

10) Support services. We would welcome your views on:
a) the services we want to provide in the future for adult and child victims of crime.

33. The provision of support services should be made alongside the current CICA scheme.

34. The consultation paper suggests that 'early, practical support', such as fitting new locks, will be offered to claimants. Such support is to be applauded, but only if it is available immediately after the crime occurs. If it is to be based on various eligibility criteria, as is the existing CICA compensation system, then injured claimants will get nothing until their application is approved. It currently takes 39 weeks (approximately ten months) for a decision to be made²¹.

Chapter 4 – Delivering Support:

11) Needs assessment. We would welcome views on:
a) how needs assessments for victims could be delivered as soon as possible after the crime for adult and child victims of crime; and
b) who could best carry out this role for adult and child victims of crime.

35. APIL is concerned that the Government is suggesting that the police will undertake the victim's initial needs assessment (INA) as well as becoming the primary means by which victims are made aware of the

²¹ Consultation document, page 20

CICA scheme. APIL would question whether adding another duty to the police's already considerable workload is an effective use of resources. It is APIL's members' experience that the police do not, at the moment, proactively direct injured people to the CICA. It would take a considerable change of culture, therefore, for the additional duties associated with aiding victims to gain access to compensation to be adopted by the police. A pertinent illustration of the lack of time and resources which the police have can be seen by the fact that a large part of the delays which occur within the current scheme are due to police delays in replying to the CICA in respect of eligibility.

36. If properly implemented and supported, the provision of advice from police officers to victims could ultimately lead to a rise in the number of CICA applications. For instance, between 2003 and 2004 the number of violent crimes recorded by the police stood at over a million²², while there are only approximately 60,000 applications made to the scheme each year. This would be a good outcome, as it would increase access to justice for the many who do not currently make a claim to the CICA.

²² See <http://www.esrcsocietytoday.ac.uk/ESRCInfoCentre/facts/index28.aspx?ComponentId=7103&SourcePageId=6970> for further details of figures.

Appendix A

THE HOME OFFICE

COMPENSATION AND SUPPORT FOR VICTIMS OF CRIME

(APIL05/04)

MARCH 2004

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:

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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.