Victims Commissioner

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Rt Hon Robert Buckland QC MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
sent by email

Dear Secretary of State

Criminal Injuries Compensation Scheme Review 2020

I am writing in response to your consultation in response to the MoJ Criminal Injuries Compensation Review, which was published on 16 July.

Firstly, I must congratulate your officials on a comprehensive piece of work. I am also grateful the review has acknowledged and considered the recommendations made by my predecessor, Baroness Newlove in her report "Compensation without Re-traumatisation" published in January 2019. There are some recommendations in her report that have not been covered by this review and I will be referring to these as part of my response.

Criminal injuries compensation is an important part of the package of support on offer to victims of sexual and violent crime. A compensation award can offer some catharsis to victims, in that society is acknowledging the terrible wrong that has been done to them. In delivering a compensation scheme of this nature, we must never lose sight of the fact that many victims who make applications are traumatised and still suffering from the life changing psychological and physical injuries inflicted upon them.

In my capacity as Victims' Commissioner, I am often contacted by victims, raising issues of concern about the criminal injuries compensation scheme. This correspondence is valuable in giving me a victim perspective of the scheme.

I also have regular one to one meetings with the CEO of the Criminal Injuries Compensation Authority(CICA), Linda Brown, and these meetings have been helpful in enabling me to understand how the scheme operates and some of its limitations. I am grateful to Ms Brown for being so responsive to the issues I have raised, and I will make further reference to this in my response.

I was also pleased to address the annual training conference of the Criminal Injuries Compensation First-Tier Tribunal Annual Conference on 12 November 2019 and was impressed by the appetite of the Tribunal to make changes to improve the quality of the victim experience when appealing against CICA decisions.

Compensation without Re-traumatisation

In compiling her report, “Compensation without Re-traumatisation”, (CWR) Baroness Newlove’s researchers engaged with over 200 victims, as well as a wide range of stakeholders. She concluded that whilst compensation awards were well received by victims, the process of making their claim was often traumatic, and beset by delays, uncertainty and poor communication. To many, fairly or unfairly, the scheme seemed “calculated to frustrate and alienate”.

She highlighted patchy and, in some cases, non-existent support for victims wishing to claim, with nearly 40% feeling the need to rely on third parties to make the claim on their behalf. She was particularly concerned that one in three of the victims who participated in her research did not recall being told about their entitlement to claim by the police or victim services, raising a question as to whether there are potentially thousands who fail to claim compensation simply because they are unaware it is available.

She flagged up concerns regarding the level of understanding of other criminal justice practitioners about how the scheme operates. She also raised the issues of victims, invariable of sexual violence, being cross-examined by defence barristers on whether they had made an application for compensation, and whether this had motivated their complaints.

She concluded there needed to be wide-ranging reforms focused on de-traumatising and simplifying the criminal injuries compensation application process, including not requiring victims repeatedly having to relate the details of the crimes against them and providing victims with named caseworkers who handle their claim and keep them updated.

She called for free access to legal support to those vulnerable victims who cannot reasonably be expected to submit a claim without assistance. At present, these victims are using lawyers and are losing up to 30 per cent of their award in legal fees.

She also asked Ministry of Justice to review specific aspects of the Scheme relating to monies held in trust, conduct, and unspent convictions, all of which are issues that adversely impact upon groups of particularly vulnerable victims.

Eighteen Months Later

In the 18 months since CWR was published, a lot has changed and much for the better.

Staff and managers within the CICA have invested a significant amount of work in the past year reviewing their processes and seeing how they might be improved. The number of cases taking more than 12 months to resolve is steadily falling and they have taken steps to make their standard letters more empathetic and reduce the complexity of the application form.

Sexual abuse complainants are no longer being asked to repeat their story of the traumatic crimes committed against them in order to make an application, since CICA will rely on the police report for its basic facts about the case. This is a welcome development and will make the application process much less traumatic for these victims.

I particularly welcome the move to provide a single point of contact or named caseworker to victims who had either suffered bereavement, were aged over 70, had limited life expectancy, had complex cases, including multiple applications or claims which had previously fallen under the “same roof rule”. I understand this has been well received by victims.

I note the sharp increase in recorded victim satisfaction with CICA and feel sure these improvements will have contributed significantly to this.

The decision to rescind the unlawful “same roof rule” is also welcome and has removed a long standing and terrible injustice, although as my predecessor pointed out, new applications will have to be made under the 2012 Scheme, which is significantly less generous than earlier schemes under which many victims had previously applied and were rejected. This continued inequality cannot be right.

Raising awareness of criminal injuries compensation

Paragraph 10 states that raising awareness of criminal injuries compensation is outside the scope of the review, although in paragraph 15, the report acknowledges that there is a lack of awareness.

I am aware that this issue will be considered as part of the work currently being undertaken on the Victims Code, but given our concerns about lack of awareness, I believe this issue should be addressed separately and as part of this review.

Baroness Newlove was particularly concerned that one in three of the victims taking part in her research did not recall being told about their entitlement to claim by the police or victim services. This raises a question as to whether there are potentially thousands of victims who fail to claim compensation simply because they are unaware of the compensation scheme.

The current Victims' Code of Practice is silent on the issue of which agency is responsible for advising victims of their eligibility for compensation and this is an important omission, to be addressed by the new Code which is likely to come into force within the coming months.

However, simply placing this into the Code is not sufficient. There needs to be a concerted campaign to raise awareness and understanding of criminal injuries compensation across the criminal justice system. This will ensure more victims are properly advised of their eligibility, as opposed to finding out by chance or through a third party.

Of equal importance, it should also mean that victims are not misinformed by criminal justice agencies. There is strong anecdotal evidence that police officers are advising victims of sexual violence not to claim compensation until after the trial is over. This is because victims are frequently being cross-examined by defence barristers about whether they had made an application for compensation, and whether this had motivated their complaints. Clearly, police officers are seeking to protect the victim from this particular line of questioning and have their best interests at heart. Nevertheless, given the delay in getting cases to court, this means taking these victims outside of the two-year window for submitting a claim.

The motivation of the police in giving this advice is well meaning, but the possible outcome is serious for the victim. Later in this document, I advocate amending the time limit for submitting an application in order to avoid this dilemma.

Non-contact crimes

The report considers the issue of whether victims of certain no-contact crimes should be eligible to claim compensation and concludes that they should not.

At present, a crime of violence is defined widely enough to allow the victim of a threat which puts them in fear of immediate violence to make a claim, so it would be wrong to claim that someone who is not touched and who suffers no physical injury (though perhaps a psychological injury) is currently ineligible to make a claim. Eventually this is bound to call into question why other non-contact crimes which can cause trauma or psychological injury, are excluded from the scheme. These offences might include stalking, harassment, coercive control, image-based abuse and potentially many others.

I have reflected carefully on this issue. The list of non-contact crimes that can cause psychological harm is extensive and the question is where you draw the line? Therefore, and with some reluctance, I accept the premise that the scheme was not intended for non-contact cases and at this stage, I am not calling for this to be changed.

However, we should not rule this out at some future point. Our understanding of trauma and psychological harm is constantly evolving, and we now recognise the long term and debilitating impact this can have on victims. Instead, I would prefer that this issue be given further consideration, with

possible options for what offences might be ruled in or out and what the supporting rationale might be.

Consent in sexual assault claims

I don't accept the argument that there should be a factual question whether an under aged complainant 'in fact' consented to sex. The determinative argument should be that the law says, with good reason, that a person under 16 does not have the capacity to consent. Anyone who has sex with a person under the age of 16 has therefore imposed a criminal injury. It contrary to public policy for a state institution to take a stance which contradicts the law.

I accept CICA guidance is now less exclusionary than it was prior to the 2017 campaign to establish this very point. The scheme now operates a presumption that there was no consent. However, I believe this is insufficient and I am very concerned how an official within CICA will purport to assess whether a child who the law says cannot consent, in fact consented.

The scheme requires that the claimant reports to police and supports their action in seeking to pursue a prosecution. That means that a subsequent CICA finding that the child consented to sex is an assertion that s/he lied to police and arguably perverted justice in doing so.

There is abundant research showing the prevalence of rape myths and stereotypes in the population including, as with all other sectors, inevitably, officials required to make these decisions. Young girls have suffered in the recent past from criminal justice and social services officials approaching their early involvement with males as a lifestyle choice, based on precisely such myths and stereotypes. I fail to understand on what possible basis is a CICS official, not a paediatric psychologist or in any other way qualified to judge, can determine whether an under aged child in fact consented to sex when they say that they did not?

I profoundly disagree that an under-age child should be exposed to deeply intimate personal scrutiny by unqualified civil servants within CICA in order to second guess, for compensation purposes, the law's stance that she/he is incapable of giving consent. Any wrong finding of consent will be deeply injurious to the future well-being of such a child, compounding the injury done to him/her by what the law clearly accepts was a sexual assault in the first place

Victims of Terror

I welcome the fact that CICA set up a special incident team of experienced staff to handle claims arising from terror incidents. This should speed up the process and provide a single point of contact for victims. This is a good initiative.

Paragraph 79 refers to the fact that a high proportion of victims of terror make civil claims and that tax-payer funded compensation may be deferred as a result. This causes me concern. Deferring payments may cause real hardship for victims, particularly given the civil process can sometimes take years

before a settlement is made. I would prefer victims be offered tax funded compensation, with an understanding that it will be refunded if their civil claim eventually succeeds.

Paragraph 80 goes on to state there is a “strong case” for having a “stand alone” scheme for these victims. It is not clear what this case is and how victims will benefit from such a move. Paragraph 80 acknowledges there are comparable outcomes for applicants for terror incidents as there are for applicants of all other types of crime. If there is a desire to improve these outcomes, for example, accelerating the decision-making process, I would hope this would apply to all applicants and not just to those of terror incidents.

In the absence of a clear and compelling case for making this change, I fear we might be accused of creating a “victim hierarchy”.

There is also a need for the government to review the handling of public donations in aid of victims of terror. There is a lack of transparency in how this money is distributed and as the report acknowledges in paragraph 77, the level of donation varies significantly from one attack to another, even though the impact on victims can be the same.

Victims of Homicide Abroad

I strongly support the proposal to extend eligibility to criminal injuries compensation to include families who have lost a loved one to homicide in another jurisdiction.

My report “Struggling for Justice” highlights the experience of bereaved families when a loved one is murdered abroad. To lose a loved one to murder is a horrific and devastating experience, no matter where the crime takes place and, in that report, I argue that we have a duty to treat all such victims equally and fairly.

Currently, families of those murdered abroad have fewer entitlements than other bereaved families. These families are not entitled to criminal injuries compensation, unless the death occurred as a result of a terror attack. This is unjust, particularly when bearing in mind they will have just the same additional financial burdens as a victim of terrorism abroad and significantly more than someone bereaved at home.

Paragraph 85 states if the death occurs within the EU, the families can apply for compensation from the country in which the death occurred. This presents logistical difficulties, such as language and getting information on how the scheme operates, Furthermore, the report in paragraph 127 refers to the UK scheme as “one of the most generous in the world”. Therefore, what we are saying is that these families should apply to a less generous scheme compared to the scheme on offer to other bereaved UK families. How can this provide equal and fair treatment in comparison to the treatment of bereaved families of a homicide in the UK.

Paragraph 88 refers to operational difficulties, namely in getting information on how the death occurred when it happens outside of the UK. These families

will be only too familiar with these difficulties, but this should be used as a reason for not offering them parity of treatment.

I would like to see the government move at speed to extend eligibility to claim compensation to all UK families bereaved following homicide abroad.

Time Limits

When gathering evidence for the CWR report, victims, legal representatives and Police and Crime Commissioners reported that the police often advise victims not to apply for criminal injuries compensation before or during a trial. This is because defence lawyers could use this against them at trial, implying they were only making allegations in order to claim compensation. Some legal representatives also reported that they had witnessed defence lawyers using victims' applications for criminal injuries compensation against them in court.

The victims' lead for the NPCC also acknowledged there are occasions when this happened, although such advice is contrary to College of Policing guidance.

Given the increasing delays in getting cases to trial, particularly sexual violence cases, victims who delay their applications are very likely to be out of time to apply for compensation.

Police officers and others supporting victims of sexual violence must be made aware of the implications of such advice and judges should be alert to defence counsel using compensation applications as a means of undermining the veracity of a complainant's evidence.

Of course, the decision to no longer require applicants who are victims of sexual violence to give a fresh account of the crime (referred to earlier) avoids any suggestion that differences between the account on the CICA form and the original witness statement suggests the allegation is untrue.

However, whilst this is an ongoing issue, I remain concerned about the impact on this group of victims of a two-year time limit.

In paragraph 74 of the report, it is stated that a three-year caseload of 75,000 cases included 13,000 applications received after the two-year cut off point. Whereas sexual injuries account for 25% of all claims, they accounted for 82% of late applications, and this re-enforces my concern about the advice being given to this group of victims.

Of those who made an out of time application, 72% received an award, which offers some reassurance. Nevertheless, some who gave evidence to CWR claim they had to challenge an initial refusal before their claim was considered. We also do not know how many were put off from claiming as their believed their application would not be considered.

I accept there needs to be a cut-off point, but the evidence suggests the current two-year limit is unfairly disadvantaging a specific group of victims and this needs to be addressed.

Baroness Newlove, in her report, recommended a sensible amendment to address this issue, namely a two-year limit from the date of reporting the crime or one year from the completion of criminal justice proceedings, whichever is later. I strongly recommend that this proposal be given further consideration.

Unspent convictions

Baroness Newlove, along with other stakeholders such as IICSA and the APPG for Adult Survivors of Childhood Sexual Abuse, have argued that the rule making claimants with unspent convictions ineligible to claim compensation should be either revised to give decision-makers the discretion to make case by case decisions or abolished altogether. This is on the basis of the impact this rule has had on victims of abuse, exploitation and controlling and coercive behaviour.

The scheme fails to differentiate between victims who have been forced to offend by their exploiters and abusers, and offenders who have more agency over their actions and it penalises individuals who have already been through harrowing experiences. It will have a disproportionate impact on victims of trafficking, criminal and sexual exploitation and domestic abuse.

I agree with this analysis and am not convinced by the arguments set out in the report in support of retaining the current exemption. The report argues that offenders must fairly bear the impact of their offending, including exclusion from compensation. In doing so, it presents a binary view of criminality and victimisation at a time when the rest of the criminal justice system, law enforcers, prosecutors, sentencers, are becoming increasingly aware of the overlap between the two.

In recent years, we have seen many examples of this overlap, including organised sexual exploitation (Rotherham, Newcastle) criminal exploitation (county lines), institutional child sexual abuse, and the recognition that coercive control should be a criminal offence.

There is also disproportionality built into this exemption, since a minor unspent offence loses the claimant compensation even where they may have sustained life-changing injuries. They are treated in exactly the same way for this purpose as someone who has committed a very serious (unspent) offence and is, perhaps rightly refused compensation for a relatively minor assault or a threat.

Last year, I had the pleasure of addressing a training conference for Tribunal members dealing with criminal injuries compensation appeals. They wanted a return to the ability for them to exercise judgment/discretion over who should and who should not be disqualified from compensation through unspent offences. I support this view. They are highly qualified and are accustomed to assessing what is fair and able to exercise good judgement in a graded and nuanced approach to what is just. If they were given that responsibility, they would quickly establish a bank of precedents, which would be of great use to

help CICA staff to make a preliminary decision on the same point, subject to appeal to the Tribunal.

Having said there needs to be some discretion, I also recognise some very serious unspent offences probably ought automatically to exclude someone from compensation. I can see the point of having a threshold of offences above which there will be no award, so that the CICA is not flooded with unrealistic applications

In conclusion, whilst recognising the complexity and many challenges created by the overlap between victimisation and criminality, these should not be an excuse for not finding mechanisms to reflect this within the criminal injuries compensation scheme. Those who are caught in this overlap will have been punished for their criminality by the justice system, but in certain cases, this should not mean society no longer recognises them as victims.

I am calling for applications where the victim has an unspent criminal conviction being dealt with on a case by case basis, with CICA staff being given careful guidance on how their discretion should be applied.

The "Same Roof" Rule

I support the proposal to remove the same roof rule which applies only to adults. The same roof rule was unfair and created inequality of treatment for many victims of abuse. Following the ruling of the Court of Appeal that it was discriminatory, the government was right to abolish it in cases where the victim was a child. For exactly the same reasons, it should do the same in cases where the victim was an adult at the time the abuse took place.

Police reporting requirement

It is important that the current reporting requirement remains in place, not least because this is the basis on which we have been able to remove the requirement for victims of sexual assault to provide a detailed account of the offence on the application form.

If we were to move from this, it is likely to require CICA staff having to get involved in a significant amount of fact finding as to whether there was a crime and who started it etc. If there is a report but no prosecution, it is right that the scheme continues to rely on police reports

Emergency Workers

I agree that more should be done to raise awareness across the emergency services of the criminal injuries compensation scheme and the fact that there needs to be a report to the police before the emergency worker becomes eligible.

Injury Awards

I agree that no amount of compensation can ever make up for the harm and suffering caused to victims of violent and sexual crime. Nevertheless,

compensation is an important and public recognition of their suffering and with this in mind, it is disappointing that the tariff of payments is not adjusted in line with annual inflation. In practice, this means public recognition is in effect being steadily eroded year on year. The impact of the crime upon the victim remains the same, but the level of recognition is gradually diminished.

One example is the maximum award, which is set at £500,000. This has remained the same since the Scheme was first set up in 1996. Accounting for inflation, £500,000 in 1996 is equivalent to £892,264.28 in 2017, though the maximum award has not been adjusted to reflect this.

I have flagged this concern with ministers and although this consultation does not touch on the indexation of awards, this important point still needs to be made.

It is difficult to understand who and how many victims will be affected by the proposed changes in Section 4 of the report. I note the authors of the report make clear any changes will be cost neutral, indicating there will be those who gain and those who lose.

However, on a wider issue, I am in favour of measures that simplify the scheme and make it more clearly understood by those claiming. This was a central theme of CWR.

For example, more than half of victims that responded to the survey conducted by the researchers for CWR found it difficult to understand whether they were eligible for criminal injuries compensation (56%), whereas a third (35%) found this easy. Of those who had been informed that they would be awarded compensation, just over half (55%) felt they understood the reasons why they had been awarded the amount of compensation they were given very well or quite well. However, approximately 2 in 5 (38%) felt that they did not understand these reasons.

The report also refers to the complexity of the process leading to delays in claims being processed and the number of times decisions are successfully challenged by legal representatives.

Therefore, I welcome any attempts to simplify the tariffs and make them more easily understood by victims and those who submit claims on their behalf.

I also welcome the proposed modifications to the description of injuries, removing overly complex medical language and removing insensitive descriptions such as “minor injuries”.

I support treating children the same as adults when it comes to making payments in respect of sexual violence. As stated above, keeping it as simple as possible is usually a good idea.

Bereavement Payments

I support the use of the term “bereavement payment” as it is a better reflection of the payment’s purpose. I also support the proposal to have a single rate

payment for bereavement awards as another step in simplifying the award structure and speeding up the assessment process.

CWR raises valid concerns about the fact bereavement payments maybe withheld or reduced on the grounds of conduct or the character of the deceased. A decision of this nature can have a devastating impact on the family of the deceased and Baroness Newlove argued that it was wrong to penalise those who were suffering grief and trauma on the grounds of perceived shortcomings of their loved one.

Paragraph 182 gives an example of where the conduct of the deceased could lead to a refusal or reduction in an award, for example, if the deceased was identified as the instigator or aggressor. However, whatever the provocation, the starting point should be that they lost their life as a result of a crime being committed.

I have no issue with victims of non-fatal violent crime being penalised in this way if they were believed to have contributed in some way to the attack on them. Furthermore, given such victims would have been aware of the chain of events leading to the attack, they would be in a position to challenge the facts upon which a decision to reduce or withhold a payment was based.

On the other hand, all too often, bereaved family members are in no such position to challenge the decision makers as they did not witness the fatal attack.

One way forward, if the government has a concern that payments in certain cases might bring the scheme into disrepute, is to reflect on whether such payments be left to the discretion of the Tribunal, by analogy with decision-making on the impact of unspent convictions on personal applicants? I see the point that the bereaved are not responsible for the conduct of their lost loved one and are still bereaved, but I can also see some gross cases where the public would dislike an award of compensation to the family of a deceased who savagely attacked someone with a knife or a hammer and was killed by his victim in excessive self-defence.

A judge could sort out what was right in that situation in a way that no rules can. I hope the government will re-think its position on this issue.

Funeral payments

I support the ambition to make it as straight forward as possible for bereaved family members to be able to apply for funeral payments through the scheme. With this in mind, I support the proposal to move to a single payment of £4500.

I am concerned by the delays in refunding families for funeral expenses and recognise this can cause significant hardship at a time when families are already suffering the distress of bereavement.

The report sets out the difficulties which all too often result in these delays and I am unable to offer a solution. Instinctively, I would prefer an option

where the CICA can pay funeral directors directly and wonder whether it might be possible for CICA to meet with representatives of the undertaker sector to discuss a standard process for submitting their invoices directly to CICA.

Loss of earnings payments

The 2012 statutory provisions substantially restricted the scope to claim loss of earnings and I am concerned it has gone too far. The numbers of potential claimants are relatively small and are described as having “catastrophic and life-changing injuries”. I believe the public would expect any compensation scheme to show exceptional compassion in such circumstances. If payments are capped at the level of statutory sick pay, they will have little impact upon the recipient, particularly those who have no or very limited capacity to work.

I would like to see this issue being given further consideration.

Court ordered compensation

I am concerned that the CICA is required to take into account the whole award of compensation ordered by the criminal court from the offender even when the court, and not the victim, is the only means of enforcing the order.

I am only too aware that HMCTS track record in pursuing these awards from offenders is poor and many victims can spend years waiting to be paid in full. In effect, we are in a position where the state is imposing a deduction on victims for court-ordered compensation that the state knows they haven’t received, and in many cases, are unlikely to do so.

Victims should not be out of pocket as a result of the failures of court ordered compensation. At the point at which an award is made by CICA, I would prefer to see whatever payment of court ordered compensation received by the victim being deducted from the award, and any future instalments being paid by HMCTS to CICA. This avoids victims being out of pocket and places the onus on HMCTS to recover the balance and refund CICA.

Use of Trusts to manage awards

CWR recommended the Ministry of Justice reviewed the management of trusts in cases where the person lacked the capacity to manage the funds themselves or where the perpetrator might benefit from the funds. I also believe these trusts must be managed with sensitivity and care and can understand why some of the examples referred to in CWR caused Baroness Newlove concern.

This report sets out when a trust is appropriate but goes no further. The operation of these trusts should be subject to periodic review. Where the beneficiary of a trust has a grievance about the management of the trust, there also needs to be an independent arbitration process so that the grievance can be independently reviewed.

I would like this issue to be given further consideration.

Hardship Funds

The Hardship Fund was set up to provide assistance to those victims who are on low paid. There is virtually no public awareness of the fund and it can be no surprise that so few victims have claimed from it.

One of the main issues of concern is that only one service provider, the charity Victim Support, is able to refer victims to the fund. In those parts of England and Wales where other providers are responsible for the provision of local victim services, it means the they cannot be referred. As such, ability to benefit from the fund is truly a postcode lottery.

It is important all victim hubs, whichever organisation is commissioned to run them, should be able to refer victims to the fund. Furthermore, it should be open to victims to be able to apply directly to the fund if they believe they meet the criteria. We should be empowering victims and not making them dependent upon service providers to decide whether to make a referral.

I also want to see Ministry of Justice run a campaign to raise awareness of the fund, so that practitioners in all parts of the criminal justice system know of its existence and can point potentially eligible victims to it. For example, it is particularly important police officers are aware of it.

Operational Improvements

The consultation states that the performance of the CICA is out of scope as it is an independent agency. Nevertheless, the CICA is dependent on the MoJ for its funding and can only operate within the resources allocated to it.
As set out above, I welcome the initiative to provide certain groups of victims with a single point of contact or named caseworker. This was an important recommendation in CWR as it personalises the service and avoids victims constantly having to repeat their stories.

In my meetings with the CEO of CICA, I have been told this way of operating is working well and is popular with both staff and victims. For example, staff can contact the applicants by their preferred method of contact, to seek additional information and secure a broader base of evidence for determining the claim.

Given that all victims eligible for claiming compensation have been subjected to the most serious sexual and violent offending or area bereaved as a result of it, it is likely that a high proportion will have experienced trauma. Therefore, consideration should be given to extending the offer of a single point of contact to all applicants and not just selected groups. For this to happen, the additional staffing requirement would have to be funded by MoJ. It would be a small price to pay for transforming the compensation scheme into a more personalised and supportive service, helping victims to cope and recover.

I accept this way of working will need to be reliably evaluated, but it is already becoming clear that there were clear benefits, both for the victims and those assessing claims.

Baroness Newlove's report highlighted the need to de-traumatise the application process and specifically referred to impact upon victims of having to set out a full account of what happened to them. This particularly applied to victims of sexual assault. Some victims were either put off from making a claim or felt compelled to instruct a solicitor to avoid the trauma.

The CEO and I have discussed whether such an account is necessary, given that CICA always seek a copy of the police report and the victim's statement to the police. The CEO agreed to pilot this suggestion to see whether it was feasible and would not lengthen the overall time it took to process some claims.

Two hundred cases were tested in the pilot and the new way of working, where victims of sexual crime were not required to explain the crime. The pilot was a success and in future victims of sexual crime will no longer be asked to set out in their own words what had happened to them. Instead, CICA would rely solely on the evidence contained in the police reports. This is a significant development in de-traumatising the claims process and I would like to see this extended, potentially to all victims who are eligible to apply.

Support for Victims Claiming Compensation

This review has looked at the operation of the criminal injuries compensation scheme but has missed out a key element. How accessible is the application process to the most vulnerable of victims and those suffering from trauma?

Baroness Newlove's report found that there was no consistent support package across the country which was available to victims applying for criminal injuries compensation. Each Police and Crime Commissioner adopted a different approach, with some offering no support and at least two offering comprehensive advice and support.

This variation or postcode lottery was exacerbated by a legal challenge in 2017. A victim successfully sued Victim Support Scotland for £100,000 in damages, claiming he had missed out on tens of thousands of pounds in compensation because of the advice the charity had given him. This case has had a significant impact on the availability of support for victims applying for criminal injuries across Scotland, England and Wales. Victims Support and other charities have stopped giving advice and support (other than emotional support) to victims applying for criminal injuries compensation. Since that time, other charities had also withdrawn their support as well.

Between April 2016 to December 2018, on average 39 per cent of victims were represented by a third party, although it is not possible to determine which of those applicants are represented by legal representatives, charities or family and friends.

The lack of accessible free advice, guidance and representation from the charitable sector and local victim hubs is likely to leave vulnerable victims with no option but to seek paid legal advice and representation when applying for criminal injuries compensation.

Victims who took part in the online CWR survey chose several reasons for using legal representation. The most common reason was that they were too traumatised to complete the application themselves and that the application process seemed too difficult.

Similarly, the capacity of some victims, for example those with mental health injuries or brain injuries may be limited.

The current system, as well as being inconsistent across England and Wales, clearly discriminates against those victims who are vulnerable. If they wish to pursue a claim, many feel compelled to instruct solicitors, and as a result, they will lose 25-30% of any subsequent award to legal fees.

In practice, it means the most vulnerable will receive the least and this cannot be fair or equitable.

We need to consider how we can put this right. It might mean looking at those parts of the country where victims are being given some access to free legal support (Northumbria and Cambridgeshire for example). As the former PCC for Northumbria, I am well aware of how we were able to deliver this service. We paid the Newcastle law centre to help people with criminal injuries compensation applications. Where there are law centres, they can be put on retainer and paid on piece work. This can be much cheaper than using private practice firms and, in my opinion, it is the ideal model.

In areas where there are no law centres, there may be a requirement for Police and Crime Commissioners to cover the legal fees of those victims they assess as unable to make the application without assistance, with the additional cost being borne by the MoJ.

I would like to see the Ministry of Justice and the Association of Police and Crime Commissioners jointly look at options for addressing this important deficiency and would be happy to attend and possibly chair such a meeting.

Conclusion

In conclusion, there is much to be welcomed from this review, but in other areas, I feel the government must re-think its approach.

There is one overriding theme throughout Baroness Newlove's report and these submissions, that criminal injuries compensation must always been seen as part and parcel of the government's strategy to help victims to cope and recover from the crimes committed against them. It is not a transactional service and we must at all times be aware that many of those who make an application will be suffering severe trauma, grief or life changing injuries. The service we provide and the rules that underpin it must be mindful of this at all times.

In line with my usual practice, a copy of this letter is being placed on my website.

Yours sincerely

Dame Vera Baird QC
Victims' Commissioner for England and Wales