



National office: Cranmer House, 39 Brixton Road London SW9 6DZ

Telephone: 020 7735 9166 Fax: 020 7582 5712

www.victimsupport.org

Registered charity no. 298028

President: HRH The Princess Royal Chief Executive: Dame Helen Reeves DBE

Victim Supportline 0845 30 30 900

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Insult to injury

How the criminal injuries compensation system is failing victims of crime

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“Although money can never really compensate for the suffering I went through, it certainly helps. I believe it is important as a symbol.”

Adult survivor of child abuse

Introduction

Victims of violent crime, or bereaved relatives of someone who has died as a result of criminal injuries, can apply for compensation under the state-funded Criminal Injuries Compensation Scheme (CICS).

For many victims of crime, compensation is the only form of recognition that they will receive. According to government figures, only 3% of all crimes reach court. If a crime is not solved, help from voluntary organisations - such as Victim Support - and the possibility of getting criminal injuries compensation are the only recognition or services that many victims will receive.

Part of Victim Support's work is helping people to make criminal injuries compensation claims and every day we see the positive impact that a compensation award can have. For many people, it can mean that society has recognised their suffering; that it cares.

How Victim Support helps

Every year, we help around 20,000 people to claim compensation. We believe that this is a very valuable part of our service.

Victim Support believes that criminal injuries compensation is essential because:

- crime victims should not be left to suffer alone. Victims of crime experience particular distress because their suffering is caused by the deliberate act of another person. An element of this distress is a sense of being let down by society as a whole. Compensation by the state should help to address this, by acting as symbolic support.
- crime can have serious financial consequences for its victims. Many people suffer long-term hardship. Compensation can help with an individual's recovery, including reducing financial hardship caused by the crime.

Unrecognised victims

Last year, there were just under 1 million recorded incidents of violent crime.¹ Only half of the 80,000 victims of violence who apply to the Criminal Injuries Compensation Authority (CICA) are successful in their claims. These few - 40,000 - make up a very small proportion of the total number of victims of all crimes.²

Injuries are compensated depending on their severity and according to a tariff of twenty-five levels, ranging from £1,000 to £250,000. No compensation is paid for injuries that are deemed not serious enough to qualify for the £1,000 minimum level.

The founding principle of the state compensation system was "an expression of public sympathy".³ But, because of the nature of the system, what many people experience is far from sympathetic.

The need for change

Victim Support believes that the CICS discriminates against some victims. This report focuses on three examples where we believe that the scheme, which was set up to improve society's response to crime victims, actually results in re-victimising them. The most vulnerable and the worst off are, invariably, those who are let down.

¹ 991,800 violent crimes recorded by the police 2002/03. *Crime in England & Wales 2002/2003* Home Office Statistical Bulletin, Editors: Jon Simmons & Tricia Dodd, July 2003.

² 2001/02: 39,813 people received a tariff award. For the same period, 78,272 new applications were made.

³ 679 *HC official report* (5th series) cols 89-94 (24 June 1964).

I. Consent and claims for sexual violence

Under the CICS, there is no definition of a 'crime of violence'. This omission gives the CICA and the Appeals Panel (CICAP) a lot of discretion over which crimes will qualify for an award.

Victim Support believes that this leads to unjust outcomes, particularly for those where there is no obvious sign of physical violence. This frequently occurs with sexual offences, and those who were sexually abused over a period of time are even more prone to refusal.

For example, the CICS makes a distinction between 'consent in law' and 'consent in fact'. This means that someone under the age of 16 may be denied compensation for sexual assault - even though they are under the legal age of consent - if they are thought to have agreed to sex. We are not suggesting that a 15 year-old should be eligible for genuinely consensual sex with a 15 year-old partner. However, compensation should not be denied to victims of abuse, simply because the incident is not accompanied by physical violence. The abuse of power, which leaves the victim with no choice but to consent, must be taken into account. This abuse of power should be obvious where the victim is a minor and the perpetrator is an adult.

Impact

Victim Support believes that the CICS is perpetuating an old-fashioned - and insulting - notion that physical violence is an essential component of a sexual offence. It has caused extreme distress to a number of victims who, we believe, should be entitled to compensation. Victims of abuse (and, in particular, child abuse) are some of the most vulnerable crime victims and are in particular need of protection and recognition.

The impact of these types of crime can be particularly severe and long-lasting and can affect a person's self esteem and mental health. This has been recognised by the Department of Health.⁴

The impact of abuse may be compounded by a refusal of a criminal injuries compensation award; and the rejection could lead to people feeling that they are not seen as worthy of society's sympathy. This flies in the face of the Government's stated commitment to help vulnerable victims and its work to review the law on sex offences.

Many victims will already feel guilty, as if they are to blame in some way. Victim Support believes that the refusal of an award on these grounds will look like confirmation of their guilt. This is the complete opposite of the message that the scheme was set up to send out.

⁴ *Mainstreaming Gender and Women's Mental Health – Implementation Guidance*. Department of Health, September 2003.

Laura was sexually abused at school by a teacher who was twenty years older. She decided to report the crime twelve years later, after the birth of her daughter. At the end of a three-day trial, Laura's abuser was found guilty of indecent assault of a minor. Laura says the CICA rejected her claim because it did not accept that she had not consented, despite being under sixteen at the time and incapable of giving consent in law. She says she could not face an appeal, and the prospect of seeing her abuser again. Laura says what happened - her 'secret shame' - has affected every aspect of her life, and that she now trusts no-one.

How the system must change

Outcomes such as these reveal a lack of understanding of the nature of sexual offences and in particular, the role of so-called 'grooming', in cases of abuse. Grooming is a well-established tactic of abusers, and the CICS's policies should be updated to reflect this.

The current distinction between 'consent in law' and 'consent in fact' should be scrapped. As it stands, it is unfair, out-of-line with public opinion, and contrary to the criminal law. Victim Support believes that all victims of sexual offences should be entitled to criminal injuries compensation, whether or not physical violence is used.

2. The 'October 1979 rule'

Until 1 October 1979, victims of crime could not claim criminal injuries compensation if they were injured or abused by people living in the same household. Under the current scheme, compensation will not be paid if the incident took place before October 1979, and the victim and offender were living together at that time as members of the same family.

The Government attempted to justify the restriction by claiming that it would be illogical to backdate it (ie to allow victims to claim for injuries suffered between 1964 when the first scheme was introduced and October 1979 when it was updated). This provision was challenged in the High Court in 1994, but was upheld. Victim Support asked for it to be reviewed when it commented on the tariff scheme during the Government's comprehensive spending review in 1998. The then Home Office Minister replied that a review had been considered, but added that it would be costly and that changes in the law, rules and procedures were not usually made retrospectively.⁵

Impact

This provision causes extreme distress to victims who suffered physical or sexual abuse within the family before 1 October 1979. Many feel that they are being blamed for living with their parent or abuser when, in reality, they had no choice. Child abuse is always wrong. Compensation should not be denied to those who had the misfortune to be living with the abuser at the time.

The unfairness of the October 1979 rule is best illustrated by looking at abuse in a family. For example, two sisters - both abused by the same father - could be treated very differently. If one sister was abused before October 1 1979, she would not be entitled to compensation; the other, abused after that date, would be entitled to an award.

⁵ *Hansard* 23 June 1998 vol. 314 column 444

case study

Jane was eleven years old when she was repeatedly sexually abused by her uncle, who was living in the family home. Much later, Jane told her parents, but says the abuse was not reported to the authorities. She says she was expected to forget what had happened. On the advice of a professional, Jane went to the police three years ago. She applied to the CICA for compensation, but the case was disallowed under the 'October 1979 rule'. Jane is still receiving counselling. She says her uncle has ruined her life.

case study

Joanne and Sarah are sisters who were violently, emotionally and sexually abused by their father. When she was thirty-three, Joanne sought counselling and reported her father, who was charged with abusing four members of his family and received an eight-year jail term. Sarah was refused CICA compensation under the 'October 1979 rule' and had a subsequent review and appeal turned down. Joanne's claim for compensation was also rejected under the same rule.

case study

A woman had been systematically raped and sexually abused between the ages of 7 and 13 by her stepfather, who was living in the house at the time. Her CICA claim and appeal was rejected as the abuse had taken place between 1967 and 1973. She appealed to the European Court of Human Rights, claiming that (under articles 3 & 8) of the *European Convention on Human Rights*, the State is under a positive obligation to provide practical and effective protection against treatment such as that by her step-father, and that this obligation extends to compensation when it cannot be obtained from the perpetrator. She also complained that the distinction between victims of criminal injuries who were living together as family members with their assailants at the time the incident took place, and other victims, is discriminatory. The EC declared the application inadmissible.

How the system must change

We argue that it is illogical not to compensate these victims. What they suffered was a crime at the time. Compensating victims who were living with their offender before October 1979 would prevent a major injustice. We believe the cost to the State would be finite, as it would be limited to cases between 1964 (when the CICS was established) and 1979. Victim Support calls on the Government to make compensation available to these victims.

3. Criminal injuries compensation and benefits

At present, a compensation award is treated as capital. This can have serious consequences for victims who receive means-tested benefits, such as Income Support. Under current rules, a victim's state benefits may be reduced if they receive an award of more than £3,000. However, the benefits will be stopped altogether, if the award is over £8,000.

This is grossly unfair and discriminatory, because it affects people with the greatest financial need.

Victim Support does not accept the argument that somebody should be denied financial support from the state if they are also awarded criminal injuries compensation. Social security benefits and criminal injuries compensation serve different purposes. Benefits are intended to help cover the cost of living; and compensation is paid to ease the burdens after a crime, and to help reduce pain and suffering.

In negotiations with the Department of Work and Pensions, Victim Support has been told "whilst the government does have considerable sympathy for people who have suffered as a result of crime...it believes that it would be inappropriate to have different rules for the treatment of capital according to the circumstances in which it has been received".⁶ To treat all cases in the same way, the Government argues, is to "ensure equity of treatment in all cases".

Victim Support believes that the benefits system should make distinctions between the different ways in which somebody accrues capital. It is inappropriate to treat a criminal injuries compensation award in the same way as, for example, a gambling win.

To get round this problem, the Government recommends that victims should put their compensation awards in trust, because money held in trust is disregarded for the purposes of assessing eligibility for benefits. However, only those who have received the largest payouts can afford to set up and administer a trust. This method also restricts how, and when, the money can be used. This prevents victims from regaining control of their lives, which is a vital part of the recovery process after a crime and, admittedly, a process which criminal injuries compensation is meant to assist.

Impact

Many crimes have a financial impact on their victims so clearly people on lower incomes feel the impact more keenly than victims with more resources. The annual *British Crime Survey*, published by the Home Office, shows that a disproportionate number of victims of violent crime are likely to be on low incomes and therefore, more likely to be on benefits.

Yet as a result of Department for Work and Pensions rules it is only the financially self-sufficient (i.e. those not receiving state benefits) who retain a full award. Those on benefits are penalised. This is unfair.

⁶ Letter from department of Work and Pensions, Ministerial Correspondence Unit, 23 January 2002.

An elderly woman suffered long-term injuries as a result of an assault. Her compensation claim was successful but was counted as capital. This meant that her Council Tax Benefit was affected. As a result the award was valueless.

How the system must change

People should not be left to bear the cost of crime alone. The benefits system, as it currently stands, deprives some people of the support and public recognition to which they should be entitled. An award which acknowledges victims' pain and suffering should be equally available to all victims.

Victim Support believes that criminal injuries compensation should be exempt from social security capital rules. In other words, the award of compensation should be completely disregarded for assessing entitlement to benefits.

Further flaws in the compensation system

In this report we have detailed three examples of the way in which the CICS fails victims of violent crime. We could have listed many more - such as the treatment of bereaved relatives of homicide victims. For claims on behalf of bereaved children we think it is grossly unfair that, if the deceased parent had a previous conviction, the child will be denied compensation. Or the fact that loss of earnings is only compensated if a person's injuries cause them to be off work for more than 28 weeks. Employees will receive statutory sick pay, but this rule causes considerable hardship for the self-employed or those in temporary employment.

The way forward

“I know from past experience how important these awards can be. They can often be the cut-off point for many victims from the pain of the past to the hope of the future.”

Victim Support co-ordinator

We have some central concerns about how the CICS is currently constituted.

Victim Support believes that state compensation should recognise, on behalf of society, the experience that victims of crime have suffered and help people recover from it and to live as normal a life as possible.

Compensation has an important role in demonstrating that society cares about what has happened. But the scheme compounds - not helps - the harm caused to someone if it denies a compensation award on the grounds that they do not deserve it (ie because of the type of the crime, or if they were living with the offender).

The financial cost of crime to society is huge; the emotional cost incalculable. However, this cost is not spread evenly across society. The physical and emotional harm done to victims cannot be undone by society, but society can offer its support to people affected by crime. Nobody is claiming that financial compensation can make up for the harm done to victims but it can help to relieve financial problems, which may add to the stress caused by crime.

The Criminal Injuries Compensation Scheme as it is currently constituted is unfair and divisive. Victim Support believes that the forthcoming review of the CICS provides an ideal opportunity to remedy these problems. By taking action on the issues we have raised in this report, we believe the government could deliver real improvements for some of the most vulnerable victims of crime.

Note

Names and details of all ‘case studies’ have been changed to protect identities.