

<p>1 Tuesday, 21 February 2017 2 (10.00 am) 3 Welcome by THE CHAIR 4 THE CHAIR: Good morning. My name is Alexis Jay and I am 5 the chair of the Independent Inquiry into Child Sexual 6 Abuse. Could I introduce the other panel members here: 7 Professor Sir Malcolm Evans, on my right; Ivor Frank; 8 and Drusilla Sharpling. 9 I am pleased to welcome you all to the second 10 seminar of the investigation on accountability and 11 reparations. Everyone here is welcome today in the 12 public gallery, of course. I am particularly pleased to 13 see many of you who attended the first seminar. So it 14 is good to see you all again. 15 This seminar has been organised as part of 16 the accountability and reparations investigation and as 17 a result of the responses to the inquiry's issues papers 18 published on 4 August 2016. The consultation formally 19 closed on 29 September, although the inquiry received 20 a small number of submissions after that date. 21 All submissions received have been reviewed and 22 considered by the inquiry. Responses were received from 23 a range of individuals and organisations and those 24 responses have been published on the inquiry's website. 25 The panel and I would like to thank everyone who</p> <p style="text-align: center;">Page 1</p>	<p>1 thoughts for reform. 2 The panel and I will be listening to what you all 3 have to say with keen interest, and these discussions 4 will undoubtedly inform the accountability and 5 reparations investigation as a whole and, I believe, may 6 also identify future areas for further work. 7 I thank you for your participation and everyone's 8 presence today, and I will now hand you over to 9 Peter Skelton QC. 10 Opening comments by THE FACILITATOR 11 MR SKELTON: Thank you. Good morning, everyone. It feels 12 a bit more formal than our last few seminars, I think 13 probably from the size of the room and the way we all 14 seem to be set off against each other. But the idea is 15 this is going to be a discussion which I am 16 facilitating. I am not asking or cross-examining anyone 17 around the table, you will be pleased to hear. I am 18 going to just set the agenda, first of all, for this 19 opening seminar. I will ask you to introduce yourselves 20 and then we will start the discussion going. 21 I will make sure everyone gets their say, as I did 22 last time, but if you feel there is an issue where 23 I haven't quite noticed that you are looking at me 24 intently and want to say something, then please will you 25 just chip in. That is the idea today, that we just make</p> <p style="text-align: center;">Page 3</p>
<p>1 took time to consider and respond to the issues papers. 2 Without your valuable input, we would not be able to 3 host this seminar. 4 I would also like to thank those individuals who 5 agreed to take part in the seminar today. It is being 6 live streamed over the internet with a short delay. 7 Core participants and members of the public who are 8 unable to attend in person will therefore be able to 9 follow the proceedings. The panel and I are looking 10 forward to open, lively and respectful discussion in 11 relation to a number of key areas relating to criminal 12 compensation. 13 Last Friday, the inquiry published a document 14 summarising the themes raised by participants, and 15 I hope that some of you have had the opportunity to read 16 that document. 17 It is important to state at the outset that the 18 purpose of this seminar is not to gather evidence in the 19 formal sense. This is a forum for important issues to 20 be discussed, facilitated by Peter Skelton QC, who is 21 the lead counsel to the accountability and reparations 22 investigation. 23 We have participants who will bring to the table 24 a wide range of experience and knowledge about criminal 25 compensation, and they will also bring forward ideas and</p> <p style="text-align: center;">Page 2</p>	<p>1 sure everyone gets to share their views on all of these 2 important subjects. 3 First of all, can I ask you all to introduce 4 yourselves. I know some of you have been here before, 5 but many of you haven't. 6 Introductions 7 MS BRUMPTON: I am Sarah Brumpton. I am an associate 8 solicitor with Irwin Mitchell based in Leeds. I have 9 spent a large amount of my practice, for over 20 years, 10 representing innocent victims of crimes of violence in 11 pursuing claims of compensation to the Criminal Injuries 12 Compensation Board. 13 MR GOODIER: Good morning. My name is Roger Goodier. I was 14 a solicitor, now retired. I was the chairman of 15 the Criminal Injuries Compensation Appeals Panel from 16 2002 to 2009 and an adjudicator from 2000 to 2015. 17 I stress that the Criminal Injuries Compensation Appeals 18 Panel, now the First-tier Tribunal, is separate and 19 independent from the Criminal Injuries Compensation 20 Authority, to whom applications for compensation are 21 initially made. 22 MS STOREY: Good morning. My name is Tracey Storey. I am 23 the coordinator of the Association of Personal Injury 24 Lawyers special interest group on child abuse. I am 25 representing, APIL, the Association of Personal Injury</p> <p style="text-align: center;">Page 4</p>

<p>1 Lawyers today and we have submitted a paper. I am 2 a partner at Owen Mitchell solicitors and have 3 experience of criminal injury claims on behalf of 4 claimants. 5 BARONESS NEWLOVE: Good morning, I am Baroness Newlove, the 6 Victims Commissioner for England and Wales. I am also 7 a victim of crime and I cover victims of crime from 8 every aspect of what they go through from the justice 9 system. 10 MS BROWN: Good morning. I am Michelle Brown. I am one of 11 the advisers to Baroness Newlove, Victims Commissioner 12 at the office of the Victims Commission, here to assist 13 today. 14 MR ENRIGHT: Good morning. David Enright from Howe & Co 15 Solicitors. I represent a significant number of core 16 participants in the accountability reparations 17 investigation, through the Forepark Survivors Group, the 18 Stanhope Castle Survivors Group, Survivors of Organised 19 and Institutional Abuse and also Survivors of 20 the Bryn Alyn Communities. 21 MR CASTLE: Mark Castle. I am chief executive of victim 22 support. Over the last two years, we have helped over 23 10,000 victims claim compensation through the Criminal 24 Injuries Compensation Scheme. 25 MR GREENWOOD: Hello, good morning. My name is</p> <p style="text-align: center;">Page 5</p>	<p>1 for just a few minutes towards the end, just so you are 2 aware. I am going to use first names, if that is okay, 3 because that is the nature of this more informal forum. 4 As I say, please chip in when you have something that 5 you want to say. 6 Discussion re introduction to criminal compensation 7 MR SKELTON: This first session is an introductory session. 8 We have to assume that some of those watching will not 9 necessarily know about the things we are talking about, 10 so I need you to keep your language as straightforward 11 and plain as possible, without, of course, making it too 12 simple. 13 I am going to ask you to explain, or someone to 14 explain, what these orders are that the courts can make 15 in terms of criminal compensation and also someone to 16 introduce the Criminal Injuries Compensation Scheme and 17 what that means and how it is briefly dealt with with 18 victims. 19 We will then look at the comparison with the civil 20 justice system, which is another introductory topic, 21 having looked at the original schemes that are 22 available. 23 I am going to point the finger at someone. Probably 24 a solicitor, I think. Tracey. Have you had experience 25 of taking clients or had clients who have gone through</p> <p style="text-align: center;">Page 7</p>
<p>1 David Greenwood. I am a solicitor, having worked in the 2 area of compensation for victims of child abuse for, God 3 knows, since '94, I suppose, when I first started. So 4 hopefully I have enough experience to be able to 5 contribute today. 6 MR BRIDGE: Good morning. My name is Jonathan Bridge. I am 7 the partner who heads the abuse department at 8 Farley Solicitors. Similarly, I have over 25 years' 9 experience representing abuse victims and submitting 10 claims to the Criminal Injuries Compensation Board, as 11 was, and Authority as is now. 12 MS BRANT: Good morning, everyone. I am Rebekah Brant and 13 I am representing Rape Crisis England and Wales today. 14 I am a frontline practitioner with 10 years' experience 15 as an independent sexual violence adviser in submitting 16 claims representing claimants at plaint stage and 17 tribunals. 18 MR SKELTON: Thank you very much. Just in terms of 19 the format, I will ask a few questions to get things 20 rolling. As we get towards the end of the session, 21 which is in just over an hour's time, what I am going to 22 do is invite those who are in the room to see if they 23 have any comments about what we have heard today. 24 I will do that by asking them to stand up and take 25 a microphone, so that you can all hear. That will last</p> <p style="text-align: center;">Page 6</p>	<p>1 the criminal justice system and been awarded or been 2 refused an order of criminal compensation? 3 MS STOREY: I was rather hoping you weren't going to pick on 4 me, Peter, to start off with, because the reality is, 5 and I think my colleagues who undertake civil work will 6 agree with this, that often claimant lawyers keep well 7 out of criminal proceedings because of trying to make 8 sure that your clients get the opportunity to give their 9 evidence against the perpetrators of abuse without it 10 being suggested that they are just in it for the money. 11 I think that is a theme that runs through some of 12 the submissions that we have heard. 13 So we tend to take a back seat. That is actively 14 encouraged by the police, because, in reality, the 15 purpose of the criminal proceedings is to punish 16 perpetrators of abuse. The focus isn't really on 17 compensating in the same way that the civil justice 18 system is. So in my experience, we often come in later. 19 The survivors and victims of abuse haven't had 20 representation. There is a low awareness when I do 21 speak to people about criminal compensation orders 22 anyway. I very rarely see somebody who has had the 23 benefit of those orders and come to me as a civil lawyer 24 following that. 25 So I think there is very low awareness. There is</p> <p style="text-align: center;">Page 8</p>

1 very little input from lawyers. Survivors and victims
2 are very much on their own in the criminal courts, and
3 it can be quite -- they have no representation in that
4 forum, and I don't think the focus is very much on
5 compensating them at all.
6 MR SKELTON: David, are you in a similar position?
7 MR GREENWOOD: Not quite as similar as Tracey. I do have
8 some experience of clients having been awarded damages
9 through the criminal courts. It is fairly rare, but
10 I say that only because I think when judges apply their
11 minds to it, they weigh up whether the person who has
12 caused the abuse or carried out the abuse has any means.
13 It is pointless making an order that a person pays
14 GBP50,000 to a victim of a crime when that person is
15 unable to pay that.
16 I did have one instance in which there was a wealthy
17 guy, who had abused two boys in their childhood, who
18 lived in Canada but did have assets in this country, and
19 he was ordered to pay GBP50,000 to each of those. So in
20 that sense, it was pretty quick justice. But I did get
21 the sense, in that case, that it was very much summary
22 justice and there was no real assessment of the value of
23 that award as against what could be awarded in civil
24 cases.
25 MR SKELTON: Roughly how many people have you seen who may

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1 have received these sorts of awards?
2 MR GREENWOOD: There is one other. So three over my time.
3 MR SKELTON: This is something which comes at the end of
4 the case, a successful prosecution, a judge is meant to
5 consider whether or not to make an award.
6 MR GREENWOOD: Yes.
7 MR SKELTON: From your experience, do the judges actively
8 know about this provision that they are meant to
9 consider it and think about it in any particular way at
10 the end of the case?
11 MR GREENWOOD: Yes, in my experience, they do consider it.
12 They are aware of these types of orders and either rule
13 them in or rule them out, yes.
14 MR SKELTON: What kind of levels of awards -- you mentioned
15 you had one wealthy perpetrator who may have been the
16 recipient of a heavier award.
17 MR GREENWOOD: Yes.
18 MR SKELTON: What other levels of awards have been made, in
19 your experience?
20 MR GREENWOOD: The only other one I have seen is GBP40,000.
21 That was against a perpetrator who owned his own home,
22 we'd established. But that's as much as I know. That's
23 my experience, at least. In all the other cases, as
24 I say ...
25 MR SKELTON: Did the judge actively investigate the

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1 convicted person's means to come to that view, or was it
2 done relatively summarily and simplistically?
3 MR GREENWOOD: I think he'd asked the barristers to go away
4 and ask some questions between conviction and sentence.
5 MR SKELTON: Mark, does your organisation -- because you
6 will be involved with the criminal justice system,
7 probably more than many people around the table. Do you
8 support people in pushing for these orders to be made
9 for their benefit?
10 MR CASTLE: The orders are there ostensibly as a way of
11 recognising the pain and suffering of the victims -- if
12 we are talking about court-ordered compensation, that
13 is. Two component parts of that. One is about
14 recognising the suffering; the other is about relieving
15 any financial hardship they may have suffered. So we do
16 see these being awarded. The statistic I have is, in
17 2015, there were 147,983 defendants, but only
18 12 per cent of those were actually given court-ordered
19 compensation. So in that sense, it's something that
20 maybe we should see more of rather than less.
21 MR SKELTON: Do you know the reason why that percentage is
22 so small? David mentioned that perpetrators may not be
23 people of means.
24 MR CASTLE: I think that is often the difficulty. One is
25 establishing the degree of suffering and harm caused but

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1 the other is the ability for the defendants to be able
2 to make that sort of reparation.
3 MR SKELTON: Unlike the Criminal Injuries Compensation
4 Scheme, there isn't a tariff system of any kind. Nor is
5 there a formal assessment process, as I understand it.
6 Is that right?
7 MR CASTLE: Yes.
8 MR SKELTON: May I ask you, Helen, whether this has come to
9 your organisation's knowledge?
10 BARONESS NEWLOVE: Not really in the sense of court
11 compensation orders, something that's about payment of
12 the order, not actually the amount of the order. The
13 actual -- when the victim receives the payment that
14 they're supposed to receive -- and this is something
15 I speak to the government about, because, if they are
16 awarded, say, GBP200, they will remember the GBP200, but
17 when they lose it and they don't actually receive
18 GBP200, nobody chases that up at all. So most victims
19 come to me with a criminal injuries compensation more
20 than court compensation orders. I don't think they
21 actually realise themselves that they are available or
22 it could be something that they have been communicated
23 about. But the majority of victims are really on the
24 compensation scheme, not on the court. It is very rare
25 that somebody will write to me to say "I have been

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1 awarded this and I have not received a penny", but it
 2 looks, on the landscape, to actually say they have never
 3 received any payment. I just think it is the chasing
 4 up, it's left to the victim, how do they do that? And
 5 the process fails to recompensate them again.
 6 MR SKELTON: So at the conclusion of the case, the judge
 7 will make an award, having done some quite basic
 8 assessment of whether the person can pay it, and then
 9 the court system process comes to an end and the person
 10 is left waiting for a cheque or a bank transfer, which,
 11 if it doesn't come through, he or she has then got to
 12 have contact potentially with the perpetrator to get
 13 that money?
 14 BARONESS NEWLOVE: Yes.
 15 MR SKELTON: That's the way it works. So that's an obvious
 16 disadvantage to the system and a disincentive.
 17 BARONESS NEWLOVE: It is because they remember that amount
 18 as they leave the courtroom and they think that's what
 19 they are going to receive. But the reality is, you
 20 know, GBP5 a year. If the offender hasn't got the means
 21 to actually pay, how do you get that money from the
 22 offender? It doesn't work very well for victims in that
 23 sense.
 24 MR GREENWOOD: Can I just add here, it is a long time since
 25 I have been in a criminal court, but I think the courts

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1 have the means to enforce these orders. When
 2 compensation orders are made as a routine in sort of
 3 burglary cases and that type of thing, I think the
 4 courts have the means to follow that up and take
 5 enforcement action.
 6 MR SKELTON: Although presumably they would require the
 7 victim's, sort of, assistance to come back and say,
 8 "I have not been paid, could you chase it, could you
 9 initiate the enforcement process?"
 10 MR GREENWOOD: I'm not sure. I don't know whether the
 11 payment has to be paid direct to the victim or into
 12 court to be paid out. I'm not sure.
 13 MS BROWN: Can I say as well, I think it was mentioned,
 14 there is no formal means to assess the income of
 15 the offender. That's the first problem. Then, based on
 16 what -- it is all dependent on what the offender
 17 provides to the court. So they could know the system
 18 quite well and underestimate their true income, and that
 19 could be reflected in any financial penalty that's
 20 imposed for compensation against the offender and, in
 21 addition, in terms of how that can be recouped,
 22 sometimes it could be minimal payments based on what the
 23 offender has reflected on the means form, so that could
 24 be, rather than it be paid upfront, maybe payments of
 25 instalments, which isn't always to the benefit of

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1 the victim if it's coming in small instalments.
 2 MR SKELTON: It seems to me the starting point might be
 3 there are significant advantages potentially to this
 4 form of award which haven't been activated by the
 5 criminal justice system, in that it is associated with
 6 justice and accountability through punishment. It
 7 allows for it to be done in public and it can allow for
 8 significant amounts of money to be enforced without
 9 a complicated procedure of going through the criminal
 10 injuries scheme or litigating in the civil courts. What
 11 is stopping that from happening? Is it judicial
 12 awareness, do you think, from your perspective?
 13 MS BROWN: In terms of how that money is recovered?
 14 MR SKELTON: Just in terms of setting the tariffs,
 15 investigating the means, enforcing the payments. What
 16 is stopping that from occurring on a routine basis?
 17 MS BROWN: It could be resources, because in the court the
 18 offender is expected to provide their details of their
 19 means, and if they're someone that regularly comes into
 20 contact with the court system, they can, like I say,
 21 underestimate their income, and there is no -- as we
 22 said, there are no formal means to assess their true
 23 income, so that can determine the level of compensation
 24 that's imposed and, in terms of resources to recoup that
 25 compensation, that's perhaps another issue, the court is

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1 there to expedite speedy justice, wants to process the
 2 cases through the court. Yes, there are measures to
 3 assess why the financial penalties haven't been paid,
 4 but then that goes away again and it's lost in the
 5 system for another few months while further attempts or
 6 time is given for the offender to make payment, some
 7 more time is lost. So it could be a resource issue as
 8 well.
 9 BARONESS NEWLOVE: We also have to remember, in a criminal
 10 court the victim doesn't have a representative to argue
 11 this. They have no rights within the criminal -- they
 12 are not represented. It is the prosecutor. So they
 13 don't have any right of audience themselves. So all the
 14 process is managed without their voice being recognised,
 15 and so they do not have that audience to go back to and
 16 say -- especially if it is your partner and you know
 17 they are not going to pay and you can't stand up and say
 18 that because you have no legal rights of audience.
 19 MR SKELTON: David, on that point -- I don't mean to put you
 20 on the spot because you have had so few clients who have
 21 received these awards -- would it be the CPS who would
 22 try to advocate on behalf of the victim in these
 23 circumstances or do they take a reasonably passive role
 24 when it comes to requesting certain amounts against
 25 certain types of people with needs.

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<p>1 MR GREENWOOD: I'm not sure whether it is initiated by the 2 CPS or the judge, him or herself. My experience is that 3 judges have been fairly active in considering these 4 things. 5 MR ENRIGHT: I sit as a magistrate as well, and although we 6 don't deal with child abuse cases, we do issue criminal 7 compensation orders. It's for the CPS to make the 8 application and, as has been pointed out, the victim has 9 no locus, no standing, no representation in all of that. 10 So if it isn't raised -- and it is the policy of 11 the Crown Prosecution Service not to ask for it in 12 complex cases. So that is a problem. It doesn't come 13 up automatically. 14 Secondly, as you rightly say, there is no assessment 15 of means. It is just taken on trust unless it is 16 obviously untrue. So there isn't a proper exploration 17 of the means. 18 Thirdly, it is right to say that compensation orders 19 take precedence over court-imposed costs, but it is 20 quite normal also for it to be paid in instalments. It 21 is supposed to have a maximum of a two-year period for 22 the compensation order to be paid. 23 The downside of that is that it ties the victim to 24 the perpetrator for a protracted period of time, 25 potentially feeling as if you are going, cap in hand, to</p> <p style="text-align: center;">Page 17</p>	<p>1 44 per cent of these awards remain outstanding after 2 18 months. So that's doing no good for either. 3 MR SKELTON: That's particularly unfortunate in 4 circumstances where actually this is one of the times 5 where the victim can get reparation directly from the 6 perpetrator, which you may not get from the civil 7 justice system, where you may be looking at the 8 organisation that that perpetrator worked for, or the 9 criminal injuries compensation system, which, by 10 definition, is a state payment on the tariff award. So 11 it has an obvious advantage in that the person is being 12 punished and then, as well as being sentenced to prison 13 or some other punishment, paying for that. So it has 14 potential, but the practical application is not 15 satisfactory. 16 In terms of the relationship, the interrelationship, 17 between these awards and the criminal injuries 18 compensation award, I know a few of the respondents to 19 our issues papers have mentioned that, actually, the 20 interaction isn't favourable to victims and that you 21 have to pay back money or have money deducted from when 22 you get your award. Do some of you have experience of 23 this having happened? 24 MR BRIDGE: Yes. It's a frustration, really, to the 25 claimants because they will come in with one of these</p> <p style="text-align: center;">Page 19</p>
<p>1 your abuser again and again. 2 It will be enforced by the court, which is a good 3 thing. But coming back to, I think, the point you made 4 just now, there is the potential here for a scheme if 5 used in an automatic way, if it was an automatic issue 6 that was raised, there was a proper exploration of 7 means, that there could be -- the criminal process could 8 be enhanced to provide more of accountability and 9 reparations in a quicker, cleaner way, but it would need 10 the training of judges and the training of crown 11 prosecutors really to bring that forward, to fruition. 12 MR CASTLE: David has actually said much of what I was going 13 to say. The key thing here, in these terms, is part of 14 sentencing and, therefore, you shouldn't apply it in 15 that way. I think one of the challenges is, because it 16 is part of sentencing, the factors such as the piecemeal 17 payments over time, the continued impact on the victim 18 of this piecemeal nature actually undermines the 19 confidence in the criminal justice system as part of it. 20 So there are two things happening here: one is the 21 victim is repeatedly being prevented from achieving 22 closure; and the other is their confidence in the 23 criminal justice system's ability to deliver a sentence 24 is being undermined. 25 One of the statistics I have heard is that</p> <p style="text-align: center;">Page 18</p>	<p>1 awards for a nominal amount that's possibly been paid 2 monthly over a long period. So say they have a claim 3 that's worth GBP1,000 from the Criminal Injuries 4 Compensation Authority, they then have to deduct the, 5 say, GBP200 they are getting from the criminal system so 6 they only get GBP800 immediately, and then they might 7 have to wait another 18 months to two years for the 8 other GBP200 to come in. My experience of the victims 9 is that they do see these things in separate ways. The 10 criminal courts are there to punish, hopefully imprison, 11 the offender. Compensation is a separate issue they 12 tend to deal with separately. I don't know if it is 13 necessarily an advantageous thing to tie the two things 14 in together. 15 MR SKELTON: What I was going to ask is, I can see from the 16 state's perspective, why should the state be paying 17 extra money on top of what has already been paid by the 18 person who has actually done the abuse, so the deduction 19 seems fair in that regard, that the state shouldn't be 20 penalised in those circumstances. But what you are 21 saying is, conceptually, it feels different to the 22 recipient of the money. They are getting money from the 23 abuser as punishment and money from the state for what's 24 happened to them separately, and they ought to stay 25 separate. Is that what you are saying?</p> <p style="text-align: center;">Page 20</p>

<p>1 MR BRIDGE: I don't know what the other solicitors who deal 2 in this area would say to that, but certainly my 3 experience is they do look at these separately and, 4 really, we are discouraged from becoming involved until 5 the criminal proceedings are concluded and compensation 6 can take various forms. You can be suing the abuser, 7 you might be suing his employers, you might be doing 8 a criminal injuries claim. Those are issues they tend 9 to want to leave until the criminal proceedings have 10 taken their course.</p> <p>11 MS BRUMPTON: Sorry, I just want to mention on the part of 12 victims, sometimes they don't want to take that money 13 because it is a sort of payment. That is how they feel 14 about it, that it is a kind of payment they are getting 15 from the abuser. The whole concept of it is just awful 16 for them and they don't want to do it. They don't want 17 to be tied in that way. They don't want to take the 18 money because it links back to what happened to them and 19 they feel like they are getting some payment. A lot of 20 women feel like that, when that happens.</p> <p>21 MR SKELTON: Does that mean they say to the judge, in 22 reality, "I don't want this money"?</p> <p>23 MS BRUMPTON: I haven't actually come across it. It rarely 24 happens. They don't have the resources to pay. We are 25 not getting any cases where we see people with</p> <p style="text-align: center;">Page 21</p>	<p>1 on the amount that could be awarded for loss of 2 earnings, and there were certain instances when you 3 could be awarded special expenses for care and medical 4 expenses.</p> <p>5 There were some eligibility provisions, and there 6 have been eligibility provisions in all the schemes. 7 For example, there has to be a crime of violence, which 8 does include sexual assault. There are some provisions 9 regarding not cooperating with the police to bring the 10 assailant to justice. Criminal convictions has always 11 been an issue. Failing to report the matter within 12 a reasonable time to the police or, prior to the 2012 13 scheme, any other appropriate authority was also an 14 eligibility issue.</p> <p>15 But there has been a compensation cap, ever since 16 the tariff scheme started, of GBP500,000. That has not 17 changed over the last 22 years. That remains the cap. 18 Compare, for example, with the common-law-based scheme 19 where the most serious injuries would attract awards of 20 up to GBP6 million or GBP7 million, for example, in 21 brain-damaged baby cases, where there was quite a long 22 life expectancy, there would be large amounts awarded, 23 primarily for the care aspect. But the levels of 24 compensation have insidiously been eroded over the 25 years. For example, a single incidence of rape or</p> <p style="text-align: center;">Page 23</p>
<p>1 reasonable amounts being ordered through the criminal 2 court so it doesn't really come up. But the occasional 3 time it does come up, then people say they don't want 4 the money from the perpetrator because they feel it is 5 dirty money and they don't really want it.</p> <p>6 MR SKELTON: Does that resonate with you, Rebekah?</p> <p>7 MS BRANT: I echo what Sarah says. Often survivors and 8 victims come to us and they say they don't want to take 9 money from the court because it is linked to getting 10 payment for what's happened to them. I think, as well, 11 we need to acknowledge that a court-linked payment would 12 rely on a guilty verdict. For those where cases are 13 acquitted, those orders wouldn't be an option.</p> <p>14 MR SKELTON: I will move on, if I may, to the Criminal 15 Injuries Compensation Scheme. Can I ask you, Roger, to 16 give us a very brief introduction, a few sentences only, 17 as to what that is and who is entitled to bring a claim 18 for an award?</p> <p>19 MR GOODIER: The first scheme started in 1964/1965, which 20 was based on common law. That carried on until 1995 21 following the Criminal Injuries Compensation Act. 22 A tariff-based scheme was introduced which meant that, 23 if you were eligible for an award, the amount of 24 compensation that was awarded was based on a tariff, 25 particularly for the injuries. There was also a limit</p> <p style="text-align: center;">Page 22</p>	<p>1 nonconsensual penetration is GBP11,000 in the 2001 2 scheme. I think it was GBP11,000 also in the 1996 3 scheme, and it remains at that figure. So there is 4 a concern that the awards -- I mean, compensation, 5 I think, is a term that is not appropriate to a lot of 6 the awards that are now permitted to be made under the 7 scheme.</p> <p>8 MR SKELTON: You have touched on many important issues 9 there, I think, which we will come back to in our later 10 seminars, particularly the eligibility criteria, the 11 amounts that are awarded. The latest iteration of 12 the scheme is 2012. It is an obvious point, but you 13 have to actively apply to get an award rather than wait 14 for the state to give it to you.</p> <p>15 MR GOODIER: Yes. There are time limits as well which have 16 often been the source of quite a lot of litigation, 17 a lot of the issues to be dealt with on appeal.</p> <p>18 Awareness of the Criminal Injuries Compensation 19 Scheme, in my view, in my experience, is very patchy. 20 The police often, as has been referred to before, don't 21 mention the existence of the Criminal Injuries 22 Compensation Scheme to victims when there is 23 a prosecution pending because the feeling is that the 24 defence counsel will cross-examine the victim on the 25 basis that they are only in it for the money. They aim</p> <p style="text-align: center;">Page 24</p>

1 to discredit the victim on that ground. So that's one
 2 reason. There are several police forces -- we have seen
 3 several police officers giving evidence that that is so.
 4 They are advised by counsel and they don't do it.
 5 Sometimes the police don't tell them anyway.
 6 Generally speaking, when there has been a successful
 7 prosecution or when the prosecution of the criminal
 8 process comes to an end, the police are more likely then
 9 to advise the applicant or the victim of the existence
 10 of the scheme, by which time, of course, quite a lot of
 11 time can have elapsed since the actual commission of
 12 the offence and the reporting of it, and that then
 13 brings into focus time-limit issues, which the authority
 14 often take against the applicant, and that causes even
 15 further litigation, appeal and reviews appeals and you
 16 go down -- if they succeed on the time limit issue, it
 17 goes down the ladder to be dealt with again.
 18 MR SKELTON: Time limits are important issues which I will
 19 park, if I may -- I know it is difficult to do so --
 20 until later in our session.
 21 You mentioned awareness. Can I ask you, Sarah, in
 22 terms of awareness, how do victims and survivors become
 23 aware of this scheme? How do they find out about it?
 24 Who tells them about it actively?
 25 MS BRUMPTON: It is really difficult to answer that. When

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1 they come to me, we do ask people how they found out
 2 about it. We do get quite a lot of referrals from
 3 treating doctors and people who have been working with
 4 victims that way, they have referred them in or they
 5 have seen an advert on television or been to one of
 6 the various charities and heard from them or victim
 7 support. So they come in through all different ways.
 8 But there isn't much awareness of the scheme. I think
 9 that's a really important issue that needs to be raised.
 10 We need to know more policemen, we need to get more
 11 involved in raising awareness about the scheme, its
 12 availability and the time limits for people.
 13 MR SKELTON: Do you think the reality is that there is
 14 a significant group of people that don't ever become
 15 aware of the scheme --
 16 MS BRUMPTON: Yes.
 17 MR SKELTON: -- and, therefore, don't do anything about it?
 18 Is that the same experience for others?
 19 MR GREENWOOD: Definitely, I would agree.
 20 MS BRANT: Our experience is victim and survivors are often
 21 not aware of the scheme and we have to be very careful
 22 in terms of the criminal justice process to ensure that
 23 those victims and survivors aren't questioned by defence
 24 counsel about, are they in it for the money, and
 25 I completely agree. So that's quite difficult for us,

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1 as professionals, not giving information about the
 2 scheme very early on in fear of the impact on the trial.
 3 So that's a very difficult position for Rape Crisis
 4 workers.
 5 MR SKELTON: Without being hypocritical and speeding through
 6 to the end of our seminars, one of the issues we are
 7 going to talk about is reform. Clearly, it seems odd,
 8 to say the least, that the state provides a form of
 9 compensation to victims of crime, while, at the same
 10 time, by providing that form of compensation, exposing
 11 them to failing to get their crime convicted. It seems
 12 an obvious tension and unfairness.
 13 David, do you have experience of your clients having
 14 been hauled over the coals by defence counsel for this
 15 issue, seeking compensation, being in it for the money
 16 and, therefore, making up an allegation?
 17 MR GREENWOOD: Definitely it happens all the time. It's the
 18 first thing that is raised. You know, we have requests
 19 made by the CPS and the police for access to our files,
 20 and they have to obviously go through their disclosure
 21 obligations to work out whether there is anything
 22 relevant or that could prejudice the trial there. Most
 23 of the time, it's obviously ruled out as being pretty
 24 irrelevant and not needing to be disclosed to defence
 25 barristers and solicitors, but, yes, that happens

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1 routinely.
 2 A point that I would like to make, in terms of
 3 the contribution from the state and from the
 4 perpetrator, is that a number of my clients don't want
 5 to go through the Criminal Injuries Compensation Scheme
 6 because they don't see why the state should have to pay
 7 for it. A number of people over the years have said to
 8 me, "Why should the state have to pay? It should be the
 9 perpetrator having to pay". If we can -- if there is
 10 some kind of mechanism, maybe through the criminal
 11 courts or through a scheme, whatever it emerges in years
 12 to come, of that scheme or the state being able to take
 13 money direct from the perpetrator and put it into the
 14 scheme, that would probably be a more sensible way of
 15 doing this.
 16 MR SKELTON: Would that problem be met, though, by the state
 17 paying initially and then separately recouping the
 18 money? Because the danger is, otherwise, you are back
 19 into a system where you are seeking it directly from the
 20 perpetrator or their organisation and you are into
 21 a civil litigation scenario.
 22 MR GREENWOOD: Yes. It would save money all round if we are
 23 not in civil litigation. The mechanisms of the state
 24 can identify the perpetrator and seize their assets in
 25 the way that -- you know, the police are using all sorts

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1 of tools that they have to seize assets of people who
 2 commit crime -- you know, drugs dealers, that type of
 3 thing. That type of power should be available to those
 4 prosecutors and police officers who are investigating
 5 this type of crime also.
 6 MR SKELTON: Can I bring in the Victims Commissioner and
 7 victim support as well from your perspective and your
 8 involvement with this scheme?
 9 BARONESS NEWLOVE: Criminal injuries is very complex, so if
 10 you are not aware of it, at the end of the day -- this
 11 is something that I keep saying about -- compensation
 12 feels very dirty for victims, actually, because they're
 13 traumatised. I agree, they want the perpetrator to pay
 14 in that sense, but it is a very difficult minefield --
 15 this is what we are told -- to do that. I have always
 16 said about the court compensation that the offender pays
 17 it -- the perpetrator pays upfront and the state then
 18 gets it back. It shouldn't be on the back of a victim.
 19 That is my challenge to government: they should be paid
 20 upfront. With the criminal compensation scheme, it is
 21 very patchy and, sadly, you have victims helping other
 22 victims to complete the documents when they do find out
 23 about that, and raising it is very traumatic for the
 24 victims.
 25 I think what we have seen on the landscape recently

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1 is, we have had lots of high-profile cases, so when the
 2 victims are cross-examined, it is about money, because
 3 they are, say, celebrities and wealthy and everything
 4 like that. This is not what the compensation is about.
 5 This is a compensation scheme that's been there for
 6 a long time, no matter what you look at the money. But,
 7 for me, it is also about ensuring that they feel that
 8 this is part of their recovery, it is not dirty money.
 9 But we should be able to get this from the perpetrator.
 10 If you look at our society for care now, if people
 11 go into care homes and they own their own home, the
 12 local authorities put a charge on the home straight
 13 away. So simple to do. Yet, when we are saying, "Get
 14 it off perpetrators", there are lots of barriers and
 15 I disagree with that. You can quite easily put a charge
 16 on a home for a care home, so you can recoup your
 17 charges. I'm sure governments, whatever colour party,
 18 can put legislation to ensure that offenders -- it also
 19 sends a message that, actually, you can't play around
 20 with the system. If we are not looking at forms of
 21 assessment to see if they're really true, they could be
 22 hiding a lot of money. This means business. So when we
 23 do order compensation or we go to the Criminal Injuries,
 24 it is a very powerful message to protect citizens in our
 25 society and to engage with victims and give them the

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1 confidence that, actually, you are listening to them,
 2 you are protecting them and you are going to
 3 rehabilitate them to the best they can be.
 4 MR SKELTON: We don't, unfortunately, have a representative
 5 of the Ministry of Justice around the table today.
 6 I can't speak on their behalf, and I don't think any of
 7 us can, but when you have raised this issue with the
 8 government, what's the pushback from it? It seems the
 9 obvious advantage is the government can recover money
 10 that it is otherwise paying out.
 11 BARONESS NEWLOVE: They went quiet. That's all I can say.
 12 To me, it is about the victim, and they have suffered
 13 enough. We should make this as simple as possible.
 14 They do not have a legal representative in court, so the
 15 only way to give victims representation is to have
 16 a victims law and that is something I am going to be
 17 looking at for the government to do. But I also keep
 18 raising that maybe we need a victims' advocate. I don't
 19 want the judiciary to go off on one when I mention the
 20 word "advocate", but actually having somebody to speak
 21 to them on behalf of them, understand their journey.
 22 Because, at the moment, they have to go and source
 23 a solicitor to do it for them, which is very costly.
 24 I remember meeting one victim, it wasn't child
 25 sexual abuse, but it was an horrendous crime to their

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1 child, where they needed representation from a solicitor
 2 but the cost that the solicitor was going to take was
 3 astronomical and that put them off. That shouldn't be
 4 a hindrance. That's why I'm saying the government
 5 really need to look at this. If you can do this in care
 6 homes on your home, and yet this is what you are
 7 supposed to leave for your children and whatever, and
 8 you have worked all your life. I'm sure there is
 9 a mechanism that we can look to bring and support
 10 victims.
 11 MR SKELTON: On funding, we will come back to that because
 12 I think it is a very important issue.
 13 Can I ask you a question globally? The three
 14 mechanisms for reparation, financial reparation, are the
 15 civil justice system, the court orders after the end of
 16 a conviction, and the criminal compensation scheme.
 17 Which do you see as being the best mechanism for
 18 victims, or is it a question of, it depends on the
 19 victim and how they feel about what's happened to them
 20 and whether they want to seek redress?
 21 BARONESS NEWLOVE: I think it depends on the victim, but
 22 I would also say the process has to be more seamless and
 23 open and in a language people can understand and, if you
 24 are not communicating the information, how do they then
 25 make the decision? Because it seems to be very window

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1 dressing in the sense of, when you do inform victims, it
 2 actually becomes a further challenge to access those
 3 funds, no matter what, whether it is in a court or
 4 through the criminal compensation scheme.
 5 MR SKELTON: Michelle, do you want to add anything to that?
 6 MS BROWN: I tend to agree as well on that. It should be
 7 for the victim. We have heard two sides. We have heard
 8 in some cases the victim wouldn't want to accept
 9 compensation from the defendant because they see that as
 10 dirty money and in some cases we have heard also the
 11 converse as well. So it should be available from both
 12 options, but that needs to be made more open so that
 13 victims are aware of the access -- the routes into
 14 access and compensation.
 15 MR CASTLE: I think we have talked about two components.
 16 Looking at the victims is about the impact and harm to
 17 the victim. From the perspective of the victim, the
 18 court-ordered compensation we have talked about where
 19 there is a reparation as part of sentencing from the
 20 perpetrator to the victim. In this case, what we are
 21 talking about is recognition by the state that harm has
 22 been caused. I think one of the important things about
 23 the criminal compensation scheme is that there does not
 24 have to be a successful prosecution in order for that
 25 recognition to occur, and I think that's an important

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1 part of this, because there you are getting something
 2 that can occur without the process being followed all
 3 the way through. We do encourage people to be aware and
 4 to claim where they can, and we help them to do so, and
 5 the criteria is the recognition of their pain and
 6 suffering, so the state recognising that; the other is,
 7 if they have been unable to work for 28 weeks, that they
 8 can be compensated for that; and for any medical care
 9 they might require as a result. These are all important
 10 component parts. It is recognition by the state that
 11 something has occurred to that victim which has had an
 12 impact on them and has caused them harm. I think it is
 13 an important part of it. It very much depends on the
 14 circumstances of each individual victim.
 15 MR SKELTON: As an organisation, will you take a view on
 16 where to sort of nudge them, in terms of whether to go
 17 down the scheme route or go and see a solicitor who may
 18 help you do the scheme or may help you actually litigate
 19 to get more money?
 20 MR CASTLE: It depends on each individual and the
 21 circumstances of the individual. What we will do is
 22 make them aware of the various different avenues they
 23 might want to pursue and we will help them on whatever
 24 journey they want to take.
 25 MR SKELTON: What about this issue which has been raised by

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1 a number of participants today about the police and
 2 being careful about compromising the criminal
 3 proceedings by initiating that process too early? How
 4 do you get through that?
 5 MR CASTLE: One of the things we talked about there is the
 6 fact that the scheme applies whether there is
 7 a successful prosecution or not. For us, it is very
 8 much of being aware where the victim is on the journey
 9 through the criminal compensation scheme. So each one
 10 will -- through the criminal justice, rather. So each
 11 one will vary depending on that. But we have to be very
 12 aware of the potential impact on court proceedings. So
 13 we are constantly aware of that.
 14 MS BRUMPTON: Just to add on that point, a lot of people
 15 don't want to do that, put the claim in, because they
 16 think that will backfire on them in a criminal trial --
 17 which is right -- to the Criminal Injuries Compensation
 18 Authority to say, "We will be putting in a claim at some
 19 point, but not now". So we put them on notice that
 20 something is going to be put forward, but we don't do it
 21 straight away, just so we have some recognition that we
 22 are going to be doing it, so when we come back with the
 23 time limit issue, we can say, "Well, we did tell you,
 24 it's just that we haven't done it because of the issues
 25 with the criminal trial".

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1 MR SKELTON: Does that always work?
 2 MS BRUMPTON: Sometimes, sometimes not. We have to do what
 3 we can to protect their position. We have to do what we
 4 can to try to protect the victim in their future claim,
 5 if we can.
 6 MR SKELTON: Roger, from your perspective, how does the
 7 organisation cope with this tension where you may have
 8 people who are perfectly entitled to bring claims but
 9 are disincentivised from doing so, possibly actively,
 10 because they are involved in criminal proceedings which
 11 may take some time?
 12 MR GOODIER: Generally speaking, delay doesn't help anybody.
 13 Secondly, the scheme, the state, the government,
 14 specifically state that this scheme really is a scheme
 15 of last resort, rightly or wrongly. There is provision
 16 in the scheme to say an application can be put on hold
 17 until all other avenues have been explored and
 18 finalised. So that doesn't help anybody in those
 19 circumstances, when they may have parallel claims to
 20 make, criminal compensation orders, civil claims. The
 21 criminal injury side of it can be -- can and often is --
 22 put on one side, simply because that is what the scheme
 23 says.
 24 As I said, delay -- it is like a three-pronged
 25 attack. There may be some scope for trying to bring

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1 everything together, to have a joint approach, but we
 2 have got these three separate arms, criminal
 3 compensation orders, civil claims, criminal injury
 4 compensation schemes, which all have to be put into the
 5 melting pot.
 6 MR SKELTON: They interact financially, as we have already
 7 heard, that you may have to pay back --
 8 MR GOODIER: As I understand it, the Criminal Injuries
 9 Compensation Authority have started deducting from the
 10 awards they make the amount of any order that is made by
 11 way of a Criminal Injuries Compensation Order. We have
 12 heard from others today that there's an enforcement
 13 issue, even when an award is made -- when an order is
 14 made, often not paid, but the authority will deduct that
 15 award from the amount of the compensation awarded under
 16 the scheme. Obviously, if there is a civil claim,
 17 a successful civil claim, any amount has to be deducted
 18 from that. Generally speaking, if there's a civil
 19 claim, one would expect the amount from the civil claim
 20 to be worth more than a criminal injuries compensation
 21 award.
 22 MR SKELTON: Tracey, when you have a client coming through
 23 the door who may or may not be involved in active
 24 criminal proceedings, how do you present the options for
 25 them seeking financial reparation, either by the state

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1 route, the scheme, or through civil litigation? How do
 2 you portray the advantages of each or the disadvantages?
 3 MS STOREY: Routinely, we will see people -- we will speak
 4 to people who haven't perhaps disclosed yet. So at the
 5 very beginning of their journeys. The legal advice at
 6 that stage will be very basic, but it will say, "This is
 7 a crime and you are entitled to report it to the
 8 police". Often, it is civil lawyers who are
 9 recommending that people go to the police.
 10 I have to say, I don't, generally speaking, then
 11 advise people that there is a remedy in the criminal
 12 courts because it doesn't often occur.
 13 Also, my advice at that stage would be, "If you go
 14 to the police and if there is a prosecution, there is
 15 going to be a focus on punishing the defendant and
 16 proving that he is guilty. You are not going to be
 17 represented and there isn't an opportunity in that forum
 18 for your pain and suffering and the impact it's had on
 19 your life to be examined". So I would be telling
 20 somebody that criminal proceedings are about punishment,
 21 they are about bringing somebody to criminal justice,
 22 but it is not necessarily where you are going to be
 23 properly compensated.
 24 Then moving on to the criminal compensation scheme
 25 itself, the advice now -- it's changed over the last

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1 20-odd years. The advice used to be, "That's an option,
 2 you will get compensated, you will get financial
 3 redress, and that financial redress would be on the same
 4 basis as if you were to go to a civil court". But now,
 5 I think -- and my colleagues will probably agree with
 6 this -- it is a token. If you achieve an award from the
 7 CICA, it will be a token and nothing more. It won't
 8 compensate you for what you have been through. It won't
 9 pass any test of what a reasonable person would expect
 10 a tariff award to be made for a sexual assault of any
 11 nature. I think the general public would be appalled to
 12 find out that indecent assaults over a long period of
 13 time only result in a few thousand pounds. Nobody would
 14 think that anybody should go through that and just get
 15 that kind of token.
 16 So what I say to people usually is, "If you have
 17 a free standing civil claim, you might want to put in
 18 a criminal injuries claim, park it, stay it, explore
 19 your other options, and in the civil justice system is
 20 where you get the focus on you and look at how you have
 21 been affected, and properly evaluate the compensation
 22 that should flow from it".
 23 So for me, it is very much -- it is a last resort.
 24 It is sometimes -- it is tokenistic. It's got to that
 25 stage. It didn't used to be like this. But as Roger

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1 explained in the introduction, that's where we have got
 2 to. It is a lot of faffing around for not very much
 3 redress. I think that a lot of people are very
 4 disappointed with their own experiences of criminal
 5 injuries.
 6 MR SKELTON: Presumably, there are advantages of the scheme,
 7 in that you are not going to be cross-examined. It is
 8 not adversarial.
 9 MS STOREY: You say that, but in my experience, a lot of
 10 people have to go through a lot of hoops and they don't
 11 usually get the right decision at first instance. They
 12 have to go through review. It is only when they get to
 13 the panel that they get a proper hearing. So often
 14 people do face cross-examination and a long drawn-out
 15 process. So what should be quick and slick and easy can
 16 take years and years and years.
 17 MR SKELTON: Can you give me an idea of the timescale it
 18 does take routinely?
 19 MS STOREY: No, I'm afraid. For me, often I will stay --
 20 I focus on the civil claims, generally speaking, so
 21 often we will submit an application and stay it and then
 22 focus on the civil proceedings. So my experience of
 23 CICA claims is probably not an accurate reflection.
 24 I think, Sarah, you would probably be better able to
 25 answer that in terms of freestanding CICA claims?

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<p>1 MS BRUMPTON: It depends. Under what I call the new scheme, 2 which is the 2012 scheme, that is administered 3 differently to old scheme cases. So the old scheme 4 cases have -- for people allocated them, they go at 5 a different pace. But with the 2012 scheme, it 6 generally takes -- we put the application in, it 7 generally takes about two or three months for a decision 8 on eligibility, which is not actually a decision, it is 9 just an indication that the claim has been accepted and 10 will be looked at. From then, I would say occasionally 11 you get ones quite quick, but it can be over a year, 12 18 months, two years; longer, if there are any 13 complicating factors.</p> <p>14 MR SKELTON: Does that chime in with others' experiences? 15 There are nods around the table. Mark?</p> <p>16 MR CASTLE: Yes. On average, to first decision we work on 17 11 and a half months and, if it is challenged, we would 18 see another six months to review of that, would be the 19 norm. Currently, we have 7,500 cases in the system that 20 have been there for two years or more. 2,700 cases date 21 before 2012. So that gives a sense.</p> <p>22 MR SKELTON: Thank you. I know I keep saying this. We will 23 come back to some of these important issues like delay. 24 Can I ask you, Mark, briefly where your statistics are 25 from?</p> <p style="text-align: center;">Page 41</p>	<p>1 MR SKELTON: You also have to go through a lot of 2 examinations potentially by doctors, psychiatrists and 3 the like, including those instructed by the defendant, 4 which presumably is a disadvantage which people just 5 simply don't want to go through.</p> <p>6 MR GREENWOOD: Definitely. In nearly all cases, the 7 claimant has to be examined by two psychiatrists, and 8 then their whole background and where they have come 9 from and what kind of psychological overlay that has 10 caused before this abuse has happened, and any harm 11 caused by the abuse is factored in. So the person's 12 whole life is really torn apart and examined in not 13 a positive way, and that puts a lot of people off, 14 I fear. I think a lot of people -- certainly I speak to 15 people regularly who are considering, you know, their 16 options, considering whether to do the civil claim, and 17 lots of people say, "That's really not for me. I will 18 drop out, thank you".</p> <p>19 I fear that there are lots of people who have heard 20 how difficult it is and just don't come forward in the 21 first place. Some of those people know about criminal 22 injuries compensation claims, some don't. But I think, 23 overall, we are missing out on capturing and looking 24 after -- you know, nursing back to some kind of decent 25 existence lots of people who are put off by the whole</p> <p style="text-align: center;">Page 43</p>
<p>1 MR CASTLE: Because we deal with so many claims, these are 2 our own statistics from our own knowledge.</p> <p>3 MR SKELTON: It does sound like the system is quite 4 protracted but does it still compare, dare I say it, 5 favourably to the civil justice system in terms of 6 resolution time?</p> <p>7 MR GREENWOOD: Definitely, from my point of view. In terms 8 of resolution time, some of my cases have lasted ten 9 years plus. If we have a difficult defendant, lots of 10 complicated issues to be drawn out by defendants, on 11 average, a civil case will take three or four years, 12 I would say. It's -- I don't know whether you want an 13 explanation from me now, but I would say that the civil 14 justice system is a much more intrusive system than the 15 CICA system. There are much more issues that cause 16 anguish and pain for claimants coming forward that are 17 examined in the civil justice system than in the CICA 18 system. My preference is for some kind of scheme 19 similar to the civil justice system for all sorts of 20 reasons.</p> <p>21 MR SKELTON: The disadvantage. We heard about those in 22 great detail at the last seminars. But for those who 23 are new to today, it is an adversarial system where you 24 have to prove your case in court and be examined on it.</p> <p>25 MR GREENWOOD: Yes.</p> <p style="text-align: center;">Page 42</p>	<p>1 system, both civil and criminal injuries.</p> <p>2 MR SKELTON: David, what about the point -- the 3 counterpoint, it might be -- that you don't get justice 4 through the scheme? That actually some people really do 5 want to hold the person who abused them or their 6 organisation to account in court openly and have 7 a judgment against them?</p> <p>8 MR ENRIGHT: The criminal system provides, in the minority 9 of cases where there are prosecutions, accountability, 10 but not reparations, certainly not effective 11 reparations. The civil system, in the minority of cases 12 that go forward through the civil system, provides 13 reparations but often no accountability. So they fall 14 between a number of stools.</p> <p>15 As Roger said, the CICS scheme is a scheme of last 16 resort. It was set up as a recognition by society that 17 persons who have been harmed, and there is no other way 18 forward for them, society owes them a duty of care. It 19 is a wonderful starting point as a scheme because it is 20 a collective where society recognises that each one of 21 us owes a duty of care to all of us.</p> <p>22 The Forde Park clients were very clear about the 23 fact they did not think the state should be paying 24 through the CICS scheme, it should be the abuser should 25 be paying, if at all possible. It goes back to the</p> <p style="text-align: center;">Page 44</p>

<p>1 starting point, the criminal compensation order. 2 Perhaps a better way forward is for it to be automatic 3 that it be considered by the court and the judge will 4 make a recommendation that CICA make a proper assessment 5 of that case and they have the facility, wherewithal, to 6 assess properly the means of the abuser, to identify 7 their assets and recover from that. So there is no loss 8 to the public purse. Because the CICA has a limited 9 budget. It is not an open-ended budget. This is the -- 10 the issue needs to be recalled, it's not infinite. So 11 each financial year, the CICS has a certain amount of 12 money. I think, quite often, that's why a lot of claims 13 are refused in the last quarter of each financial year. 14 Other people might know something about that. 15 MR SKELTON: Roger, not wanting to put you on the spot, but 16 first of all, there is a perception that's come through 17 from the issues papers that, first of all, there is 18 a change, a seasonal change, when the organisation 19 starts to run out of money towards the end of 20 the financial year, and, secondly, there is too much 21 pushback, that actually the organisation is spending all 22 of its energy on not giving money out rather than 23 facilitating the delivery of reparation? 24 MR GOODIER: On the first point, I can't say categorically 25 from first-hand experience that there is a pushback</p> <p style="text-align: center;">Page 45</p>	<p>1 seeking awards, which is to slow down the process, to 2 make it difficult, to delay and then -- 3 MR GOODIER: There are quite a lot of occasions where you 4 wonder why there has been such a delay between 5 application and first decision or between application 6 for review and review decision by the authority. 7 We only see the ones that come to appeal. So 8 I can't speak about any cases that were resolved before 9 an appeal. So in that respect, it is quite difficult. 10 There are other reasons for the authority not being 11 able to give a decision as promptly as they might. For 12 example, police investigations. Sometimes, quite often 13 in fact, a police force will have a clerical officer 14 whose job it is to gather all the information and the 15 clerical officer will then respond to requests from the 16 authority for information about whether there has been 17 a crime of violence or whether someone's assisted in the 18 prosecution, or whatever, and that may take time. 19 Again, the police forces don't have a uniform way of 20 dealing with these things. Sometimes it's clear that 21 the authority has been trying to get information from 22 the police and there's been delay or non-replies. So 23 it's not just the authority who will be responsible for 24 delay. It can be resources by other people, including 25 Social Services departments of local authorities and the</p> <p style="text-align: center;">Page 47</p>
<p>1 towards the end of the financial year. However, that is 2 an issue that's been raised and suggested on countless 3 occasions, that the number of review decisions that are 4 made by the authority reduce from between January 5 and April of each year. I can't say that with the 6 statistics that I have, but it's been a common feature, 7 that the authority is getting to the end of 8 the financial year, its budget is under pressure and, 9 therefore, to avoid paying out a fair bit of money in 10 the last three months when the budget is under pressure, 11 they delay things and then, come April, a stack more 12 decisions are being issued. 13 Sorry, what was the second bit? 14 MR SKELTON: Can I just stay with that question, first of 15 all. Did you get a sense in which you're under 16 pressure, as a panel judge, to change tack slightly? 17 MR GOODIER: Not at all, no. That was totally out of -- not 18 in our consideration whatsoever. We listed cases when 19 there was an appropriate venue, when a case was ready 20 for hearing, and got on with it. The matter of payment 21 is a matter for the authority, not the tribunal. 22 MR SKELTON: The second part of my question, which I think 23 is something we are going to come on to when we get to 24 the eligibility aspects in the later seminars, is really 25 just the organisation's general attitude towards those</p> <p style="text-align: center;">Page 46</p>	<p>1 police generally. 2 MR SKELTON: Again, can I ask if that chimes in with your 3 experience? Tracey, I think you were nodding your head? 4 MS STOREY: Yes, I was just thinking of some of the things 5 that -- and picking up on what David was saying about 6 the intrusive nature of civil proceedings compared to 7 CICA claims. Routinely, in the CICA claim, the case 8 worker will fire off letters to your client's treating 9 GP or a treating counsellor and there is no real 10 mechanism for chasing that up or looking at the quality 11 which comes back, whereas, in the civil proceedings, we 12 are getting expert evidence and we're -- it is more 13 intrusive and quite difficult and stressful, but at the 14 same time, we are trying to get to the bottom of what 15 problems have been created by the crime that's been 16 committed against the person. Whereas in the CICA, 17 there is a sort of scatter-gun approach of going off to 18 the GP, finding out -- some people haven't even been to 19 their GP, some people haven't even talked about it, so 20 the evidence they get back doesn't really reflect what 21 that person has gone through at all. Because they have 22 gone to the GP having problems with sleep, but they 23 haven't really reported all the things they are going 24 through. 25 So what you get back from the general practitioner</p> <p style="text-align: center;">Page 48</p>

1 doesn't really help the case worker make an award
 2 because it doesn't really tell the whole story.
 3 Routinely, clients will say to me, "I keep chasing
 4 them up" and they say they are waiting for a reply. It
 5 is very bureaucratic and longwinded. Whereas, in civil
 6 proceedings, because there is representation, we can be
 7 more forceful about what evidence we get in and how we
 8 control that evidence. Whereas the case worker at CICA
 9 will fire off a few letters and hope for the best.
 10 It is not a proactive process. It is -- it adds to
 11 the delay before somebody like Roger will get hold of
 12 the case. We see that routinely.
 13 BARONESS NEWLOVE: I agree with what Tracey and everybody
 14 else has said. As somebody who has gone through it
 15 personally, and I know it's changed -- it is 10 years
 16 this year, then scars are still with me because I was
 17 the only parent who had to go through this. You know,
 18 even though the scheme says it's changed, I don't think
 19 it's changed to the extremes, it is putting barriers.
 20 An example with the GP is, you sign your form to say you
 21 consent for them to go and -- you know, go to your GP,
 22 but I don't think victims are in the right sense of mind
 23 to understand what that means. It means that they will
 24 write to say, as I say, for sleeping patterns. An
 25 example is that my youngest daughter didn't sleep for

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1 months, but because she declined -- because there is no
 2 fast track for psychological assessment, nobody can be
 3 fast tracked, you are all treated through the same door
 4 at the same pace, she declined. She was 13 years of
 5 age, but she hadn't slept in over three months. The
 6 fact is that she declined. The GP put she declined
 7 further services. So the claim for psychological damage
 8 was basically, well, there wasn't -- unless you are
 9 going to put her through to see a clinical
 10 psychologist -- when you open up on the health side of
 11 things, there are a lot of things that victims are not
 12 aware that are going to be put into a report that the
 13 Criminal Injuries are actually sourcing, it is very
 14 traumatic. I know you say the civil is intrusive, but
 15 actually the Criminal Injuries is more intrusive and
 16 more damaging and will actually make victims say,
 17 "I don't want to go any further" because their pride --
 18 and there's personal stuff that they don't want things
 19 to know. So I agree with Tracey, they seem to put
 20 barriers, they throw out letters. There is a timeframe.
 21 To be told there is a timeframe is more damaging,
 22 especially if, like me, you are the only parent left and
 23 you've lost your breadwinner, you could lose your home,
 24 your children need providing for, what do you do? This
 25 isn't people going with a begging bowl, this is a right

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1 of way. It saddens me that actually we are fighting for
 2 money for victims when actually it should be seamless
 3 and quite easy to do and feel that you are being
 4 supported in all of this, because if this was
 5 a perpetrator, this is a right that everybody would walk
 6 around and give them that right to do. For victims,
 7 this is becoming such hideous things to do and it is
 8 shambolic to say that victims are not being supported by
 9 the state for having to prove every small step that you
 10 go through. You are unpicking a scab and it is bleeding
 11 every day as we do this.
 12 MR SKELTON: Thank you. We are now towards the end of our
 13 time. I am going to ask if there are any comments that
 14 those who have been listening patiently to those around
 15 the table have? I would like to make it a slightly more
 16 formal process than last time, if I may. I think
 17 somebody may have a microphone they can offer you. Does
 18 anyone have a comment to make? If you do make
 19 a comment, if you are happy to say your name, please do,
 20 and please stand up so we can see you. Thank you.
 21 CORE PARTICIPANT - MR O'MARA: Yes, Nigel O'Mara, East
 22 Midlands Survivors. The first point I would like to
 23 make is about the compensation made in court on
 24 conviction. What hasn't been mentioned is the fact that
 25 quite a lot of perpetrators are then sent to prison and,

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1 therefore, have no income, as such, to make a payment.
 2 So it may be some years before any payments are starting
 3 to be paid back. That could easily be remedied by the
 4 suggestion of Baroness Newlove in her submissions of
 5 making a payment directly and then the government
 6 recouping that back.
 7 The second point was about the survivors not wanting
 8 to come forward because they look at it as dirty money.
 9 Very often, I don't think it is recognised that,
 10 particularly with younger victims of child sexual
 11 exploitation, very often finance is involved in the
 12 abuse in the very first place and that sometimes brings
 13 the survivor to not want to make that claim and to not
 14 want to accept that money. Thank you.
 15 MR SKELTON: Thank you, Nigel.
 16 CORE PARTICIPANT - MR ROBSON: Peter Robson,
 17 Stanhope Survivors Group. As Nigel just said, the
 18 Baroness is right in what she said about getting the
 19 compensation. If you've got a fund, then the government
 20 can say, "We're going to grant you ... ", basically,
 21 "Tell your lad we'll give him GBP50,000", so he could
 22 have the money, that's fair enough. They get the
 23 50,000, that's in their hand. But other people, if they
 24 don't qualify for Legal Aid, they are out of it. If
 25 they do qualify for Legal Aid, then there's a greater

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1 chance of them having that money taken off them. So
 2 that 50,000 could have 25 per cent taken off for legal
 3 representation. Whereas Criminal Injuries give you
 4 11,000 and they're going to take all that out of that
 5 compensation.
 6 Two other things. One, criminal injury, when
 7 I first raised it with the police, I sent off the
 8 request for it in November of the year before last.
 9 When I phoned them up, they had never heard of me.
 10 One last thing I'd like to mention is what Roger
 11 mentioned as well. We have ladies here. I think the
 12 worst thing that could happen to a lady is to be raped.
 13 In some of the things I'm listening to, people go for
 14 criminal injuries, ask for compensation and are being
 15 told rape is not a violent crime.
 16 MR SKELTON: Thank you, Peter. That is an issue we are
 17 going to come back to.
 18 CORE PARTICIPANT - MR ROBSON: Another one was a young lad,
 19 a 13-year-old, who was curious about his sexuality,
 20 asked for help on the internet, or whatever you call it,
 21 with these people, and abused, and then they turn up
 22 saying it was consensual. Consensual at 13 is not
 23 possible.
 24 MR SKELTON: Thank you very much. Madam, that concludes our
 25 first seminar. May I suggest we reconvene in

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1 15 minutes' time?
 2 (11.26 am)
 3 (A short break)
 4 (11.43 am)
 5 Discussion re eligibility for awards under the Criminal
 6 Injuries Compensation Scheme
 7 MR SKELTON: Thank you. We are now starting the second
 8 seminar, and the subject of this is eligibility for
 9 awards under the Criminal Injuries Compensation Scheme.
 10 There is a lot to cover in this session. The
 11 provisions for eligibility; the criteria that are set
 12 for those trying to get awards; the grounds for
 13 withholding or reducing awards for people who are
 14 entitled to them but will not necessarily get the full
 15 amount; and time limits. We have, I think, touched on
 16 all of these issues in the earlier seminar but we are
 17 now going to delve into them in more detail.
 18 The first issue on eligibility is going to be the
 19 issue of consent, which I think in responses to our
 20 issues papers has been put front and centre as
 21 a problematic issue to grapple with. I think it was
 22 raised by, indeed, Peter in some of his concluding
 23 comments.
 24 One of the stories in the press recently has been
 25 about a boy who was 13 years old who ended up in

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1 relationships with adult men, having contacted them
 2 through websites. Those men were ultimately convicted
 3 of sexual offences against him but he found himself
 4 disintitled from bringing a claim because it was
 5 considered that he had consented to those acts of sexual
 6 contact for the purposes of the award system.
 7 I am going to ask Rebekah, first of all, if you
 8 could comment on the issue of consent?
 9 MS BRANT: In terms of consent, victims and survivors tell
 10 us that they are regularly receiving letters from
 11 Criminal Injuries stating that they cannot apply because
 12 they consented. We are also finding that victims and
 13 survivors of online grooming are receiving letters
 14 turning down their applications, stating that online
 15 grooming is not a crime of violence. That is
 16 a particular issue for us and we think that is an issue
 17 that could be dealt with immediately as a result of this
 18 panel, that children should not have to receive letters
 19 from the Criminal Injuries Compensation Authority
 20 stating that they have consented or that online grooming
 21 is not a crime of violence. I think that is something
 22 that could be dealt with very quickly.
 23 MR SKELTON: Roger, can you encapsulate for us the problem
 24 here, matching up what the criminal justice system views
 25 as being consent for criminal purposes and what the

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1 scheme views as being consent for the purposes of giving
 2 an award and why those two are not somehow connected?
 3 MR GOODIER: I'm not a criminal lawyer, and it's 18 months
 4 since I actually was involved in any adjudications, but
 5 the scheme itself says that a crime of violence is
 6 a crime which involves a sexual assault to which
 7 a person did not in fact consent. So that raises issues
 8 about what is real consent and what is true consent.
 9 That is a matter of taking evidence and trying to work
 10 out whether there was actually a true or real consent or
 11 not. For example, somebody who is drunk, for example.
 12 That wouldn't be true consent or real consent.
 13 Every case turns on its own merits. So far as
 14 grooming is concerned over the internet, I have not had
 15 to deal with any appeals on that subject. But it would
 16 clearly be difficult to overcome that particular hurdle,
 17 it seems to me, on the wording of the scheme, because it
 18 specifically states under this "Crime of violence" --
 19 none of the previous schemes actually identified what
 20 a crime of violence was. This scheme tried to do so,
 21 the 2012 scheme tried to do so, under annex B, headed
 22 "Crime of violence" and specifically states what I have
 23 already said, that it has got to be a crime of violence
 24 which is a sexual assault to which a person did not
 25 consent.

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1 Interestingly, there is a case, I think, where
 2 someone made a threatening telephone call which was
 3 regarded as a crime of violence in a different context,
 4 not a sexual one. So it is difficult to reconcile that
 5 being a crime of violence with sexual grooming not being
 6 a crime of violence. Is a telephone call a sexual
 7 assault?
 8 MS BRANT: I think these children are exposed to horrific
 9 imagery during grooming, online grooming, so it's very
 10 difficult to see how that isn't a crime of violence.
 11 MR SKELTON: Do you think, from your perspective, Rebekah,
 12 that consent just shouldn't be raised as an issue in any
 13 of these cases, that there is a presumption that you do
 14 not consent, as a child, to sexual activity, which you
 15 say constitutes --
 16 MS BRANT: I completely agree. Definitely, children under
 17 16 can't consent in the eyes of the law. It shouldn't
 18 be an issue at all. I think all children under 16
 19 should automatically be able to apply without being
 20 turned down on such grounds.
 21 MR SKELTON: What about if you have two children,
 22 a perpetrator and a victim, who have engaged in
 23 a consensual relationship, dated each other but ended up
 24 having sexual contact in a way which the law doesn't
 25 condone criminally. Does that make a difference?

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1 MS BRANT: I think that is very different. The difference
 2 between two young people exploring their sexuality
 3 consensually is very different to a power and control
 4 relationship in terms of online grooming.
 5 MR SKELTON: Do any of you around the table have experience
 6 of consent being used against your clients or those that
 7 you represent? Mark?
 8 MR CASTLE: I would agree exactly with what Rebekah was
 9 saying. The law's position is, where a person is under
 10 the age of 16, sexual activity is automatically criminal
 11 unless the victim is over 13 and the defendant
 12 reasonably believed he or she was over 16.
 13 So I think we have got to try to ensure that the
 14 scheme and the law are the same.
 15 The example I would give, we have been supporting
 16 a 14-year-old girl who was -- her first contact was
 17 through Facebook, who was then groomed by a number of
 18 men over a period of five years or so. They were
 19 sentenced to over 30 years in prison as a result of
 20 being convicted for the offences against her. She was
 21 denied compensation through the scheme on the basis that
 22 she was believed to have consented and, at the time, she
 23 was under the age of 16. So she quite clearly cannot
 24 understand how this could be the judgment of the scheme,
 25 but also she feels as though she's been victimised again

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1 by that.
 2 So there are numerous examples. That is just one
 3 that we are dealing with at the moment. The fundamental
 4 for us is, the law is the law, it should be the same.
 5 MR SKELTON: Jonathan, you have raised a similar issue.
 6 MR BRIDGE: I was going to say that we had a claimant that
 7 we took all the way to appeal, a 13-year-old girl, who
 8 had fallen pregnant with an adult. He was a young
 9 adult, he was a teenager, but he was an adult, and we
 10 lost that appeal because it was considered that it
 11 wasn't a crime of violence, she was in a consensual
 12 relationship with this boy at the time and she was
 13 denied compensation. That cannot be right. If she is
 14 13 and she is pregnant, a crime has been committed.
 15 MR SKELTON: Helen?
 16 BARONESS NEWLOVE: Two things. I think, with anything, age
 17 has become quite a muddy area, but it is a criminal act.
 18 That's what you have got to -- that should be the first
 19 point in all of this.
 20 Secondly, my alert button is actually, how trained
 21 and educated is the Criminal Injuries on grooming?
 22 Because we are all learning about grooming. It is kind
 23 of a new thing, you can say, but it's gone around for
 24 a long time, we are just recognising -- it doesn't mean
 25 to say it was never around. So it worries me, the

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1 understanding and mechanics of what grooming is, it is
 2 not a straightforward picture that we are seeing. It is
 3 quite intrusive and quite psychologically damaging. So
 4 not necessarily have you got any scars, never mind the
 5 sexual abuse.
 6 So, for me, it's not just -- you know, if there is
 7 a psychological claim that you can put in, are they
 8 going to lose that as well? Because that is what
 9 grooming is, coercive as well as abusive. So my
 10 worry -- and hopefully this forum can take this
 11 forward -- is, are they adequately trained and educated
 12 on making a judgment on grooming themselves? That's my
 13 worry in all of this, never mind just saying no to it.
 14 You shouldn't have to then get legal representation to
 15 fight it or go through the tier because you are trying
 16 to rehabilitate these people who technically can still
 17 be in love with their abusers. It doesn't end because
 18 the criminal process has done their bit. There is a lot
 19 of psychological damage and, for me, if we can, with
 20 this forum, further down -- that's my worry in all this,
 21 that they are not adequately trained in understanding
 22 what grooming means. Just putting words in a box
 23 doesn't give you the true picture.
 24 MR SKELTON: Do you agree with the proposition that the
 25 scheme ought to have an absolute presumption against

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1 consent in those sorts of circumstances?
2 BARONESS NEWLOVE: Yes, that early -- I mean, it is just --
3 there are so many conflicting issues here. Nothing
4 works. It is nothing consistent. I think each case
5 worker comes up with a different answer. So, for me, it
6 is about, we have to make sure that the criminal
7 injuries compensation actually gets up to date with
8 criminal law.
9 MR SKELTON: Does anybody around the table take a different
10 view, in the sense that there could be a grey area where
11 the state ought not to be paying for an act which could
12 be categorised as criminal in circumstances where it
13 wouldn't be right because the victim has not suffered?
14 MR ENRIGHT: That can be sorted out by people like Roger.
15 I think we shouldn't worry overly about that. There
16 will always be difficult cases. But the law is the law.
17 There is no reason for a state body to adopt a different
18 approach. Of course, there will always be difficult
19 cases and they will be sorted out by Roger.
20 MR GOODIER: It is interesting that in a consent case the
21 House of Lords in one case made a decision on the
22 majority. So that gives you an indication of
23 the difficulties that there are in these sort of cases.
24 MR SKELTON: Is this an area where we have criminal law
25 which is catching up with society's views of these

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1 activities and the way human beings relate to each
2 other, and then behind, even further behind, we have the
3 scheme and it's dragged behind the criminal system? Is
4 the criminal justice system up to speed when it comes to
5 the complexities of consent to sexual relations?
6 MR GOODIER: I don't think I'm the person to comment on
7 that, really.
8 MS STOREY: I think there is a lot of catching up to do by
9 the legal system generally as our understanding and
10 awareness of grooming increases. I was before an appeal
11 tribunal I think 10 years ago where a child had been
12 sexually assaulted by a man and the panel -- one of
13 the chaps on the panel said, "But he did give you
14 a bike, didn't he?", and it was -- so it brings in the
15 financial exploitation and the financial grooming that
16 goes on as well. It was regarded as a fair exchange.
17 Whereas our understanding is that that's part of
18 the grooming process, you know, these were people -- the
19 abusers were people that were -- you know, groom
20 children over a long period of time. It is a very
21 sophisticated process that was going on to a child that
22 was vulnerable. I think the criminal justice system and
23 the CICA need a better understanding of how these things
24 transpire.
25 We have these definitions like "Crime of violence".

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1 We will see people routinely who have suffered no
2 violence in the course of the abuse itself, but it
3 doesn't mean it was consensual and it doesn't mean it's
4 not been harmful. It's getting away from these outdated
5 notions of what sexual assault is.
6 MR SKELTON: Sarah, staying with this subject for a moment,
7 one thing that has come to the attention of the inquiry,
8 of course, is online sexual abuse, or exploitation,
9 which may be without any physical contact. Have you had
10 to deal with that kind of issue, where a child has been
11 sexually exploited, without there being any contact at
12 all?
13 MS BRUMPTON: We have a couple of cases which we are just
14 running at the moment, actually, because it takes so
15 long to go through the process, we are just dealing with
16 those at the moment. It is a fairly new thing for us.
17 But I think one of the points that Baroness Newlove was
18 raising was about specialist trained people making
19 decisions. I don't think they are. I think they don't
20 have any sort of system of giving it to a specialist
21 team. So you are just getting the ordinary case
22 officers making the decisions. A bit of a tick-box
23 exercise, I think. They are just looking for ways of
24 dealing with things quite quickly, so you get those
25 decisions made. They are not really looking at the

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1 legal test of what is being required to prove a crime of
2 violence. They don't have the specialist expertise to
3 look at the case properly and make the right decision at
4 the beginning. So what that ends up in is another
5 repeat of review and appeal and the cost involved in
6 that. You take the case the whole way through.
7 MR SKELTON: David, do you find that this issue is a problem
8 for you as well, the consistency of analysis of
9 the sexual relationship with a view to giving or
10 refusing an award? Is that a problem?
11 MR GREENWOOD: Definitely. I will echo what Sarah was just
12 saying, and that is that we have decision makers up at
13 the CICA in Glasgow who are making decisions on sex
14 abuse cases and during the same day they are making
15 decisions on people who have been assaulted in drunken
16 brawls, et cetera. So there is no sort of specialism
17 being developed. An idea that I have is that any kind
18 of new redress system that we replace our systems with
19 would have people who are trained to spot and make
20 consistently good, objective decisions on where consent
21 is in play or isn't in play so that we can all hopefully
22 get a consistent approach. I think there's more
23 specialism needed.
24 MR SKELTON: May I turn to the issue of the cut-off date.
25 First of all, with 1964. Does anyone around the table

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1 have an experience of this causing harm?
 2 MR ENRIGHT: Just briefly, I represent the Stanhope
 3 Survivors Group and four of them, F20, F29, F34 and F30,
 4 are all wholly or partly excluded because they were in
 5 care and were being abused before the cut-off date.
 6 In my view, the cut-off date -- the view of my
 7 clients, the cut-off date is wholly wrong. Of course it
 8 is correct that a scheme have a start date. But when we
 9 get to an advanced date of 53 years beyond the start
 10 date and the potential pool of people who might be
 11 making claims prior to the start date is very small and
 12 rapidly shrinking, there seems to be no further utility
 13 for that cut-off date, but it is causing people who are
 14 core participants in this inquiry to be completely
 15 excluded from the scheme.
 16 MR SKELTON: Do others have experiences of having to say to
 17 clients, "I'm afraid we cannot proceed because of
 18 the date"?
 19 MR GREENWOOD: I have a 1961 case, a Catholic priest in
 20 Birmingham -- he wasn't a priest at the time, he was
 21 just training -- where he got a conviction, went through
 22 a trial, enormously traumatic.
 23 My case was a chap who was abused in 1961, a trainee
 24 Catholic priest. He went through a trial in 2012 and
 25 got a conviction but because it was 1961, he can't

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1 pursue a criminal injuries compensation case.
 2 MR SKELTON: Tracey?
 3 MS STOREY: I was thinking, we have had cases involving the
 4 prosecution of abusers in very old age. These cases
 5 tend to hit the headlines, particularly if the
 6 perpetrators are very elderly. But it can sometimes
 7 take years and years and years for people to come
 8 forward and be ready to deal with the police and the
 9 criminal investigations, and then, to be told that they
 10 won't be able to pursue a criminal injuries claim after
 11 all the help that they've given -- and somebody who is
 12 being prosecuted later in life would have damaged a lot
 13 of children.
 14 MR SKELTON: So the reality is, for a small number,
 15 a diminishing number, of people this is still a very
 16 real problem? Nods around the table from those of you
 17 who represent clients. Thank you.
 18 Another eligibility criterion is the Same Roof Rule,
 19 which, again, has a time limit. I'm sorry to put you in
 20 the spotlight again, Roger. I am going to ask you to
 21 briefly explain what it is.
 22 MR GOODIER: Essentially, what the scheme said was, if you
 23 live under the same roof as the perpetrator, you are not
 24 entitled to bring a claim. It changed in 1979. There
 25 was one rule before 1979 and one rule afterwards -- I'm

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1 just trying to find it, actually.
 2 But it has been the subject of some litigation and,
 3 as I understand it, there's been no successful outcome
 4 as far as victims are concerned, it's been challenged
 5 under the human rights legislation and the applicants
 6 have failed.
 7 MR SKELTON: The principle is, if you were living together
 8 with your abuser prior to 1 October 1979, then you
 9 render yourself --
 10 MR GOODIER: Nothing doing.
 11 MR SKELTON: You can't claim.
 12 MR GOODIER: No claim.
 13 MR SKELTON: The rationale behind that. Would anyone care
 14 to -- not defend it, but explain it?
 15 MS STOREY: I don't think it is defensible. It was
 16 designed, I think, to stop perpetrators from benefiting
 17 from awards of compensation. So in years gone by, for
 18 example, a step-parent might abuse and then be fined by
 19 the criminal courts and remain in the family home and if
 20 the child then received compensation, the step-parent
 21 might then benefit from that award. So it's kind of for
 22 that scenario.
 23 But it is just completely and utterly unfair,
 24 because the majority -- a lot of people who are abused
 25 are abused by someone in their family and they were

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1 living with them at the time. If you are living with
 2 your abuser, they have a lot of access to you and can do
 3 an awful lot of harm. It is a really impossible rule to
 4 describe to people. You might have somebody who was
 5 abused from 1976 to 1984 and you have to then unpick
 6 what abuse is compensatable and what isn't. You might
 7 have children in the same family who are abused over
 8 that period, and some being compensated and some not
 9 being compensated. It is just one of those rules in the
 10 CICA which, when you tell people who are seeking legal
 11 advice, they just look at you with complete disbelief.
 12 MR ENRIGHT: Again, returning to core participants in this
 13 actual inquiry, one of my clients, F28, is excluded by
 14 the original cut-off date but also excluded by the
 15 "under one roof" rule from the CICA because he was
 16 abused by a stepfather in the late 1960s, and, as such,
 17 he's excluded by all of the cut-off dates in the CICA.
 18 Again, the cut-off date of 1979 is now approaching
 19 30, 40 years old. Again, the pool of people is small
 20 and shrinking. There is no reason for it. My firm made
 21 representations to David Cameron about this five years
 22 ago to highlight the iniquity of it. He showed some
 23 interest, at that time, in dealing with it, but took no
 24 action.
 25 MR SKELTON: Mark, from your organisation's perspective, do

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1 you see a lot of people who are caught by this rule?
 2 Does it affect a particular type of person? Perhaps
 3 those in foster care or who have been adopted and placed
 4 in homes by the state?
 5 MR CASTLE: I think, yes, all of those circumstances.
 6 I think the thing is, as David said, the time, is it
 7 really relevant, given what Tracey said earlier on, and
 8 is there a risk of the perpetrator benefiting? Time
 9 would suggest no.
 10 In terms of the impact it has on victims, they feel
 11 revictimised again by this. We were supporting two
 12 sisters, one of whom was eligible for compensation, the
 13 other one wasn't, because of when the abuse happened in
 14 the same family. That just can't be right.
 15 I think -- I can understand why, but I think it now
 16 needs to -- it makes no sense now at all.
 17 MS BRANT: I think for adult survivors of childhood sexual
 18 abuse this rule disproportionately affects those.
 19 I think that victims and survivors who have spoken to
 20 Rape Crisis Services have overwhelmingly said, "We had
 21 no choice about where we lived". They just cannot
 22 understand why such a rule would be in place when they
 23 had no choice about where they lived.
 24 MR CASTLE: Just the scale, in preparation for this we asked
 25 the authority to give a sense of the numbers, and nearly

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1 1,500 claims have been rejected over the past 10 years
 2 because of this rule. So that gives a sense of people
 3 affected by it.
 4 MR SKELTON: Does anyone have experience of an actual
 5 response from the government to the pushback on this
 6 issue? David, you have written to the
 7 ex-Prime Minister. Was there any particular answer that
 8 you got about why this policy was still there?
 9 MR ENRIGHT: No. We got silence. There was some initial
 10 indications of interest on the issue. In fact, The Sun
 11 newspaper ran a campaign account with Shy Keenan and
 12 Dr Sara Payne. We assisted them in making
 13 representations to the then Prime Minister and,
 14 unfortunately, silence. A bit like the reaction you had
 15 yourself.
 16 MR SKELTON: May I turn then to another area, which is the
 17 issue of convictions of those who have been abused and
 18 issues of character and how they can affect eligibility.
 19 Again, it would be useful to hear from someone who
 20 has had the experience of having a client who's, for
 21 whatever reason, had a criminal conviction which has
 22 prevented him or her from receiving an award.
 23 MS BRANT: I think, for us, a case I worked with a long time
 24 ago, he had said that he was offending, and his drug and
 25 alcohol use was a coping mechanism, which had then led

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1 to offending, was an impact of the child sexual abuse he
 2 experienced over many years. He had no support. That
 3 then led to that and he was completely turned down
 4 altogether because of the level of reduction due to the
 5 amount of offences.
 6 MR SKELTON: Helen and Michelle, can I ask you from your
 7 perspective? Some of the responses we have received
 8 identify the fact that a larger or greater proportion of
 9 people who have suffered child sexual abuse may be in
 10 care or may go on to offend in one form or another. Is
 11 that your experience and is there data on that which is
 12 reliable?
 13 BARONESS NEWLOVE: I have not had direct experience of that,
 14 but I have had solicitors and people writing to say that
 15 injuries, not child sexual abuse, but, say, in a case of
 16 one punch, where that has changed the personality of
 17 their client, has gone out -- because he's got no
 18 spatial awareness, he's gone out to commit an offence
 19 which wasn't his personality beforehand, he's
 20 a graduate, and Criminal Injuries have then declined it.
 21 But there have been psychological reports to support
 22 that fact. It does have an impact on that. But child
 23 sexual abuse is not something we see, unless Michelle
 24 has had direct contact. I'm not aware of it. But the
 25 landscape says it's not very good.

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1 MR GREENWOOD: This is a real issue for me and my practice,
 2 representing people who have been in children's homes,
 3 taken into local authority care. When they start to get
 4 into trouble and perhaps beyond the control of their
 5 parents aged 12/13, taken into residential care, at that
 6 point, they may have, very rarely, minor offences of
 7 theft, that type of thing, but when they get into
 8 residential care and find themselves being sexually
 9 abused by perpetrators, this completely is the straw
 10 that breaks the camel's back, sends them off the rails
 11 and they perhaps, for one reason or another, get into
 12 criminal activity, more serious criminal activity, and
 13 spend, you know, their years up until 25 or 30 in and
 14 out of prison.
 15 It is a pretty nebulous thing to isolate whether
 16 that person's behaviour has actually been caused by the
 17 abuse, but the psychologists and psychiatrists I have
 18 spoken to in the past tend to suggest it's been a major
 19 contributory effect.
 20 So I was -- gosh, from the mid '90s until probably
 21 the mid 2000s, I was having lots of rejections from the
 22 Criminal Injuries Compensation Authority on the basis of
 23 convictions. I thought, "We've got to do something
 24 here", so I ran five cases through to appeal to argue
 25 this out all the way through, but lost all five. The

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<p>1 appeals panel wouldn't allow them through. They felt 2 that the convictions issue was so clear that they 3 wouldn't allow them through, even though these were 4 post-abuse convictions. 5 MR SKELTON: Roger, is there any discretion within the 6 scheme to allow people -- 7 MR GOODIER: There used to be discretion until the 2012 8 scheme. In fact, I'm sorry to hear what David says, but 9 I have certainly sat on one case where a police officer, 10 a police inspector, came along in support of an 11 applicant who had significant criminal convictions and 12 there was clear evidence that this guy, the applicant, 13 had been groomed by somebody and, even though he'd got 14 a lot of what's called penalty points, which is a system 15 that the authority used to assess the seriousness and 16 repetitive nature of the convictions, this guy had 17 77 points and the authority's rule is, if you have more 18 than 10, you're out. This chap had 77 and they allowed 19 the appeal on that particular occasion because of 20 the strong evidence that the applicant and the police 21 inspector had given in support. 22 But the situation now, as from the 2012 scheme, is 23 that there is no discretion in certain circumstances. 24 It specifically states an award will not be made to an 25 applicant who, on the date of their application, has</p> <p style="text-align: center;">Page 73</p>	<p>1 I think the authority itself -- the authority did not 2 like this discretion issue, they did not like the panel 3 having discretion, even though discretion is a very 4 valuable tool, in my view, and it was used 5 appropriately, it's in many cases now, when there's 6 a criminal conviction, all or nothing; usually nothing. 7 MR SKELTON: I presume the rationale when this change came 8 through was to toughen up attitudes towards criminals? 9 MR GOODIER: The consultation paper said words to the 10 effect, "Do you think anybody who has a criminal 11 conviction should be the recipient of taxpayers' 12 money?", simple as that. The answer, of course, is many 13 people say no. But it didn't go into more detail as to 14 why people might have criminal convictions. 15 MR SKELTON: You mentioned that from your perspective the 16 discretionary power was unwelcome but worked. Can I ask 17 those, perhaps Sarah, whether you have experience of 18 anyone who has had a discretionary decision under the 19 old scheme that you consider has worked or hasn't 20 worked? 21 MS BRUMPTON: Under the old scheme, yes, we did do that. 22 Not particularly abuse cases but other cases where 23 somebody may, for example, have had a brain injury but 24 had no convictions at the time that happened but then 25 subsequently goes on to offend because of the way their</p> <p style="text-align: center;">Page 75</p>
<p>1 a conviction for an offence which resulted in all sorts 2 of things, including a community order. So you can have 3 a community order against you which is unspent at the 4 time of the application, and that will automatically 5 debar you from having any entitlement to compensation. 6 You are not eligible whatsoever. 7 There is a strange situation that can arise whereby 8 if someone delays making the application until their 9 conviction is spent, then they will be entitled to the 10 full award because the conviction is spent. If you make 11 a prompt application when the conviction is not spent, 12 then there is nothing doing. You will not be eligible. 13 There is a real anomaly and unfairness, it seems to me, 14 in this 2012 scheme at annex D. It fails totally to 15 take into account the fact that the criminal act against 16 the applicant can cause or contribute to the criminal 17 behaviour. 18 There is evidence from the Prison Reform Trust that 19 says, and this was a speech given by Michael Gove when 20 he was Secretary of State, that someone who has been in 21 care for between -- from the ages of between 10 and 22 I think it was 17 is, I think he said, 10 times more 23 likely to come into contact with the criminal justice 24 system. 25 So whereas there is no discretion now, and in fact</p> <p style="text-align: center;">Page 74</p>	<p>1 personality has changed and they have come into contact 2 with criminal justice. We have managed to argue that 3 that shouldn't be taken into consideration because it is 4 as a result of the brain injury. 5 But with the abuse case it is more difficult because 6 they will come to you already with a lot of convictions 7 having spent a lot of time in care and in and out of 8 prison, so you have a difficult situation there. 9 But the victims are left in the situation where they 10 have to go to appeal and they have to see it through if 11 they are prepared for that and to try to run those 12 arguments. But as David said, it's difficult. He 13 obviously failed on some occasions. It is a very tricky 14 one to pursue and not necessarily going to have a good 15 outcome, to go through that whole process with being 16 turned down right at the end. 17 MR SKELTON: Jonathan, can I ask you about the associative 18 issue of character and how that impacts on scheme 19 eligibility? Do you have experience of -- 20 MR BRIDGE: That's difficult. It is not something in 21 particular I have come across. I have come across the 22 convictions regularly but not so much on a character 23 side. 24 MR SKELTON: Does anyone have experience of that outside of 25 the --</p> <p style="text-align: center;">Page 76</p>

1 MS BROWN: We had a case where a victim wrote into the
 2 office. She'd been raped and her application by the
 3 scheme had been refused because the police said she
 4 didn't assist with the investigation.
 5 The reason they said she didn't assist with the
 6 investigation wasn't understood because her reasoning at
 7 the time, or her mental state, was to try to obtain --
 8 maintain her health and ensure that all was well with
 9 her health in respect of that. That was deemed by the
 10 police to be obstructive, and so, as a result, her
 11 application -- as a result of that, her application was
 12 declined.
 13 So she went to the office to seek advice, and advice
 14 from the office led her to go back to CICA to explain
 15 the reasons why her mental state was elsewhere or was
 16 more preoccupied with her health at the time, and as
 17 a result of the further information she provided, she
 18 was able to have her application reconsidered and then
 19 awarded -- I think it was the 100 per cent compensation.
 20 But initially, there was -- the overall picture, the
 21 holistic picture, wasn't taken into account in terms of
 22 why she may have been distracted from proceeding or
 23 giving the compensation her full priority and her health
 24 was her major concern at the time.
 25 MS BRANT: I just wanted to mention a case that we have

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1 not responding to letters, not providing forms, even
 2 raising issues about not claiming -- claiming benefits
 3 which they shouldn't perhaps have claimed or just
 4 bringing anything in as to noncooperation and conduct.
 5 I have even had a case recently where, in terms of
 6 character, they tried to bring in some old convictions
 7 which were actually spent, but using that as evidence of
 8 character, which was totally thrown out, but there's
 9 really any attempt to bring any sort of conduct into it
 10 at whatever stage is being raised on quite a lot of
 11 the cases that we are dealing with.
 12 MR SKELTON: Can I clarify one of the points which seems
 13 implicit in a lot of what people have been saying, which
 14 is that people who have suffered child sexual abuse are
 15 in a different category from some other victims of crime
 16 which makes them behave differently towards authority.
 17 Is that a point which is a valid one when it comes to
 18 assessing how they respond to the scheme?
 19 MS BRUMPTON: Absolutely. I have people go quiet because
 20 they are having a really bad time and they won't
 21 respond -- because they won't respond to letters because
 22 they don't like to open letters, because they find it
 23 traumatic. We are left with a situation where they are
 24 not in contact with us for a long time. So we get
 25 letters saying they are not cooperating, which we then

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1 worked with previously. The survivor had been told that
 2 she was not supporting the investigation and that was
 3 the reason for her application being turned down.
 4 We actually applied to the police authority that
 5 made the report to the Criminal Injuries and it was the
 6 officer's opinion that she had not supported the
 7 application although she had major trust issues around
 8 previous contact with police. So I think it is
 9 important that officers in charge of cases that are
 10 writing reports for criminal injuries compensation
 11 applications are fully trained in writing those reports.
 12 Often, after reading some of these reports given by the
 13 police authority, it's very much personal opinion and
 14 not a factual report on the circumstances of
 15 the investigation.
 16 Just as one example -- I think it may be in the
 17 summary here -- the officer stated within the report
 18 that he felt the rape couldn't have taken place by the
 19 father because the bathroom was too small. Obviously we
 20 brought a photograph of the family bathroom to the
 21 appeal and the panel was appalled by that report from
 22 the police.
 23 MS BRUMPTON: Can I just add about conduct of character?
 24 Clearly, it can come in in lots of ways. It's being
 25 brought in in terms of not cooperating with the police,

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1 have to deal with, saying, "They are not having a great
 2 time", and they can bring that noncooperation in as
 3 the case goes on, which is really unfair, because they
 4 might be having a really bad time at that point and not
 5 be able to deal with any correspondence or forms.
 6 MR SKELTON: Roger, by the time it's got to your level
 7 through the system, as it were, is that something you
 8 can take into account? We have heard in previous
 9 seminars, not today, that people who have suffered child
 10 abuse of some kind find it very difficult to disclose,
 11 to engage with any authority figures, including their
 12 own lawyers and their own family --
 13 MR GOODIER: I think there's been an improved understanding
 14 and appreciation over the years of the problems
 15 affecting victims of sexual abuse. When I first started
 16 as an adjudicator in 2000, I think we were less
 17 knowledgeable about the issues, as I think most people
 18 were at that stage.
 19 The problem in that respect is, it is up to -- the
 20 burden under the scheme is on the applicant to prove his
 21 or her case. So all the authority has to do is raise
 22 the issue and then the applicant has to prove, for
 23 example, that he or she did make all reasonable steps,
 24 and sometimes, as the indications are, there may be
 25 psychological issues, sometimes it may be helpful, to

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<p>1 say the least, that there is expert evidence in support 2 of that. That means that there's further costs to be 3 paid to pay for a psychiatrist report or clinical 4 psychologist report to show that, on the balance of 5 probabilities, the crime of violence, or the sexual 6 assault to which the victim has been subjected has 7 caused or contributed to the condition that, for 8 example, means he or she won't open letters. 9 MS BRANT: Under the current scheme, as we spoke about 10 earlier, the Criminal Injuries Compensation Authority 11 writes directly to GPs asking for a disclosure of GPs' 12 records. Often in cases of child sexual abuse where 13 there are adult survivors, they have never disclosed to 14 their GP, and they often use specialist services, in 15 terms of obtaining support for what they have 16 experienced. 17 Criminal injuries at present actually refuse to 18 accept evidence from specialist qualified counsellors 19 that work within specialist agencies, and they refuse to 20 accept those reports. So it is very difficult, where 21 you're saying that the burden of proof is on the 22 survivor, to provide that evidence, but at the same time 23 not allowing that evidence to be heard. 24 MR GOODIER: Obviously I don't know exactly -- but to 25 establish a claim for mental disability as an award,</p> <p style="text-align: center;">Page 81</p>	<p>1 again to go through is so traumatic, and I have had 2 these conversations with the chief executive, because 3 there should be somebody at Criminal Injuries' 4 organisation who understands the dynamics of this to 5 actually say, "That satisfies that criterion", but it's 6 just a carte blanche. If you are doing psychological 7 injuries, you have to have a clinical psychologist. 8 That's the same for any victim of crime who has got -- 9 their duty with psychological damage, you have to do 10 that. Myself, again, as a victim of crime, I had no 11 intention of putting my daughters, who witnessed 12 everything, through that, just to prove an award, 13 whereas they could have -- that's just not right. They 14 need to understand the dynamics. I appreciate they are 15 dealing with a lot of money that's at stake, but we have 16 to change the way people see. The crime is one thing, 17 it's the psychological injury to that person to have to 18 discuss it again, and having to source a psychologist is 19 not easy, as we know in this day and age. 20 MR GOODIER: Can I add one thing: interestingly, under the 21 Armed Forces Compensation Scheme, to prove 22 a psychological injury, a mental injury, you do not have 23 to have a report from a psychiatrist or a clinical 24 psychologist. I think the wording is "and appropriately 25 qualified practitioner". I cannot see the difference.</p> <p style="text-align: center;">Page 83</p>
<p>1 there has to be evidence from a clinical psychologist or 2 a psychiatrist. When it comes to proving that the lack 3 of -- the lack of assistance to the authority in 4 connection with the application is due to the incident, 5 then I'm not sure that the authority is right to be 6 refusing to admit evidence from the GP on that 7 particular issue. But in respect of the tariff injury, 8 there has to be report -- there has to be evidence from 9 the clinical psychologist or psychiatrist to prove the 10 case, that's for the award to be made. 11 BARONESS NEWLOVE: I quite agree with Rebekah. When I speak 12 to victims of rape, what people don't really understand 13 is that to put in a claim, you are told at the end you 14 have to have a clinical psychologist because that is 15 something Criminal Injuries will accept, but what they 16 don't understand is the actual relationship they built 17 with their counsellor to get them through. It could be 18 many months after, where they say, "We don't accept 19 that". So you put an application in, your evidence and 20 say you have gone to see these counsellors and they 21 don't understand the technicalities of building that 22 relationship on such a sensitive issue. It should have 23 a way in, but then having to find a clinical 24 psychologist -- there isn't that many in this country. 25 So having to go back to get an appointment to start</p> <p style="text-align: center;">Page 82</p>	<p>1 MR SKELTON: So that could be a general practitioner or 2 psychiatric nurse -- 3 MR GOODIER: Whatever an "appropriately qualified 4 practitioner" is. 5 MS BROWN: Specialist services employ professionally 6 trained, qualified counsellors, therapists and these 7 should be acceptable forms of evidence, as they are 8 qualified and trained. 9 MR ENRIGHT: One of the really useful things that comes out 10 of these seminars is right across, as you get from one 11 seminar to another -- I suppose the standout point for 12 me at the last seminar is when the insurance company 13 said that, in their opinion, people did not make 14 fraudulent child abuse claims. We write that across to 15 the Criminal Injuries Compensation Scheme where the 16 burden of proof on the balance of probabilities is on 17 the claimant. If the CICS had an appreciation that the 18 insurance companies accept that victims of child sexual 19 abuse don't make fraudulent claims, then you have an 20 easing. 21 This inquiry cannot resolve all of the issues of 22 the CICS. It can't. What it can do is make early and 23 strong recommendations for changes that the CICS should 24 make that are specific to child sexual abuse survivors, 25 including removing the initial cut-off date or at least</p> <p style="text-align: center;">Page 84</p>

1 there be a discretion that it should be normally waived,
 2 including removing the "under one roof" rule, including
 3 an acceptance that, for example, the time limit, that it
 4 will normally -- again, the insurers gave statistics on
 5 this. They said -- I think the estimate was six years
 6 was the normal period between incident reporting, which
 7 again demonstrates, for the CICS scheme, it just does
 8 not fit with the model of child sexual abuse. So we
 9 don't need to worry about all the problems with the CICS
 10 but there are focused things this inquiry could be
 11 making recommendations on in a very quick way that would
 12 enhance the experience of child sexual abuse.
 13 MR SKELTON: Before we come on to time limits, which is the
 14 last thing I want to discuss, are there any other
 15 issues, when it comes to eligibility, that we haven't
 16 talked about? We have talked about convictions, unspent
 17 convictions; we have talked about cooperation with the
 18 police when it comes to the criminal justice system;
 19 assisting the scheme, the authority, in administering
 20 the scheme. Are there any other issues which you have
 21 seen as being raised as obstacles to legitimate claims?
 22 David?
 23 MR GREENWOOD: I just have one issue, which I have come
 24 across quite a few times, and that is that local
 25 authorities -- when children are in local authority care

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1 and they are harmed, quite often we come across cases
 2 where children have left care and have not had that
 3 abuse recognised. There is no obligation on local
 4 authorities who have care orders from them to pursue
 5 criminal injuries compensation claims on their behalf.
 6 That's something -- perhaps it is an issue of training
 7 for local authorities or social workers. Maybe it
 8 doesn't have to be enforced by way of some kind of
 9 regulation or law. But that's an issue of -- that's
 10 a reason why some people are not making claims.
 11 MR SKELTON: They are not assisted.
 12 MS BRANT: In terms of the local authority and making
 13 a claim, they would need to make the claim because the
 14 state is the parent of that child. Often, we have tried
 15 to make out claims on behalf of young people that are in
 16 local authority care because the social worker hasn't
 17 done that, and Criminal Injuries do come back to us to
 18 say that the local authority is the parent, they will
 19 need to make the claim on their behalf. Social workers
 20 often don't do that. Although we badger them quite
 21 a lot to do that, that often doesn't happen. They then
 22 come back to us when they leave care. We then make
 23 a new application and they are out of time. It is quite
 24 difficult to prove that the social worker hasn't made
 25 the application on their behalf, so we keep copious

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1 emails to prove that we have requested that they make
 2 that application.
 3 One other issue, I think, that has been remiss
 4 across the whole criminal injuries process is adults can
 5 apply for lost time at work, et cetera. Young people
 6 who miss their exams, who have a long time off school,
 7 never have their impact on their education recognised
 8 through the criminal injuries scheme. That was just
 9 another point.
 10 MR SKELTON: Can I come back to that when we deal with the
 11 reform as well, just to work out what you would suggest,
 12 how that could be taken into account. I think it would
 13 be a helpful thing to look at.
 14 Time limits have been mentioned a number of times.
 15 The primary criteria, as I understand them, are, as soon
 16 as reasonably practicable and, in any event, within two
 17 years of the incident. If you are under 18 at the time,
 18 then the two years starts when you reach your majority
 19 at 18, to you get up to age 20.
 20 Can I, then, I'm afraid, ask for an example of where
 21 people have fallen foul of the time limits, in your
 22 view, unfairly? Jonathan?
 23 MR BRIDGE: There's another anomaly that adds to that at the
 24 minute, it's come in with the 2012 scheme, which is the
 25 reporting to the police, which a lot of people now fall

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1 foul of. It is in addition to this initial time limit
 2 of bringing the claim by the age of 20. You are now
 3 prevented from bringing the claim if you have reported
 4 to the police when you are younger but not brought the
 5 claim within two years of that date. So if it was
 6 reported at 25, and the assailant was convicted and, as
 7 an historic abuse claimant, you bring the claim when
 8 you're 42, you'll fall foul of that time limit as well.
 9 The other time limit to consider is, if you haven't
 10 reported it to the police when you bring your CICA
 11 claim, again, you are debarred. So you really can't
 12 win. If you are an historic abuse victim, you already
 13 have that hurdle to overcome. You either have to
 14 justify why you reported it to the police some years ago
 15 and then didn't bring the claim, or why you are now
 16 bringing the claim, having not reported it to the
 17 police. So you're immediately having to get over that
 18 hurdle. Virtually every client we have, we expect to
 19 get refused on first application. You have then got to
 20 go to a review and produce medical evidence to show why
 21 there has been a delay either in bringing the claim or
 22 in the report to the police.
 23 MR SKELTON: Do you find that, ultimately, it works out if
 24 you push back?
 25 MR BRIDGE: If you can get good medical evidence -- and a GP

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1 letter will do -- to say that this abuse victim has
 2 found it very, very difficult to come to terms with what
 3 happened, to give instructions to a solicitor to bring
 4 the claim, you will normally succeed on review. But the
 5 difficult cases -- and this is where the 2012 change has
 6 made the difference -- is where there has been a report
 7 to the police historically and then a claim wasn't
 8 brought then and the claimant comes forward a lot later,
 9 you are outside that two years. It is much more
 10 difficult to say, if you had the capacity to report it
 11 to the police ten years ago, that you didn't have the
 12 capacity maybe to bring a CICA claim.

13 MR SKELTON: David?

14 MR ENRIGHT: I had a small discussion with Roger outside.
 15 I think we would benefit from him clarifying for us the
 16 position on the time limit. He understands the point
 17 I'm making, database and date of report.

18 The key factor here, again, at least, I believe, is
 19 something we have learnt from the civil side, where we
 20 know that people do not disclose within the time limits.
 21 The time limit simply doesn't fit child sexual abuse.
 22 It doesn't. We know that. It is something the inquiry
 23 could make recommendations to the CICA very quickly on.
 24 There would be a built-in discretion that in cases of
 25 historic child sex abuse the presumption should be that

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1 less the same as in the scheme prior to that, the time
 2 limit can be waived where it's practicable for the
 3 application to be considered and in the particular
 4 circumstances of the case it would not have been
 5 reasonable to expect the applicant to have made the
 6 application in a two-year period.

7 In this case, those paragraphs were the subject of
 8 quite a lot of the Upper Tribunal's decision -- at one
 9 stage, we had three Upper Tribunal judges all coming to
 10 completely different decisions, which was unhelpful to
 11 us because we are supposed to follow, as a First-tier
 12 Tribunal, what the Upper Tribunal say. So it was then
 13 changed under the 2012 scheme, as we have heard, that
 14 the rule is that it's got to have -- if it's been
 15 reported to the police before the applicant's
 16 18th birthday, the application should be made within the
 17 period ending on the 20th birthday or, if it's reported
 18 to the police on or after the 18th birthday, within two
 19 years after the date of that report to the police. It
 20 goes on to say this is the sort of waiver, if you like
 21 to call it a waiver:

22 "An application will not be accepted unless the
 23 claims officer is satisfied that the evidence presented
 24 in support of the application means it can be considered
 25 without further extensive enquiries by a claims officer

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1 the time limit should be waived because we know so much
 2 about delay.

3 Secondly, the presence of the time limit deters
 4 a huge number of people who might initially look --
 5 think about doing this. They'll have a quick look at
 6 the rules online and see there is a time limit and say
 7 "I can't do it, and I won't go to a solicitor". Even
 8 those who go to solicitors, unless they go to
 9 a specialist solicitor, the first thing a solicitor will
 10 do is get out the rules and say, "There is a two-year
 11 time limit", that's not very easy. There are also
 12 issues relating to funding. You cannot overcome that
 13 time limit really unless you are legally represented.
 14 You can't. I know that comes into the second session,
 15 where we will be talking about access to justice and all
 16 that, but the truth is that that is a chilling factor
 17 right there that we have probably hugely underestimated.

18 MR SKELTON: Roger, again, I don't want to put you on the
 19 spot, because you are not a defender of the scheme, you
 20 are just a neutral critic. But there is discretion of
 21 the 2012 scheme to allow --

22 MR GOODIER: There is hardly a discretion. It is only if
 23 there are exceptional circumstances, which is much
 24 tighter than the previous scheme. The previous scheme,
 25 2008 scheme, for example, and I think that was more or

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1 and, due to exceptional circumstances, the applicant
 2 could not have applied earlier."

3 Now, that "due to exceptional circumstances, the
 4 applicant could not have applied earlier", you can
 5 imagine there is a fair bit of litigation about that.
 6 What I would certainly urge applicants now, and
 7 I entirely agree that the more specialised legal advice
 8 you get, the more chance there is of pursuing a claim
 9 and not being turned down by your adviser, whoever that
 10 may be, it would be worth pursuing those issues and
 11 going to appeal and seeing what the first tribunal --

12 MR SKELTON: From your perspective, would you see child
 13 sexual abuse as being an exceptional event which gives
 14 rise to justification?

15 MR GOODIER: On its own, a lot depends on the individual
 16 person. I think one has to -- what are the
 17 exceptional -- you have to work out what the exceptional
 18 circumstances are.

19 Now, it is an exceptional circumstance, I would
 20 suggest, for a person to be abused, for a child to be
 21 abused. That is not normal. I think the definition of
 22 "exceptional" is "not normal", so there is an argument
 23 to say that on its own that is an exceptional
 24 circumstance. I wouldn't like to say that's
 25 a definitive answer because every judicial body will

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1 have to look at the case on its own merits.
 2 But that's what the -- "due to exceptional
 3 circumstances" is tighter than "it would not have been
 4 reasonable to expect the applicant to have made the
 5 application within a two-year period". I think the
 6 rules are tighter now and more against applicants or
 7 victims to overcome that two-year time limit than they
 8 were prior to the 2012 scheme.
 9 MR SKELTON: Thank you. Sarah, the point Roger mentioned in
 10 passing was about the "determined without extensive
 11 enquiries". How does that -- what does that mean?
 12 MS BRUMPTON: It means there are some records of these
 13 incidents taking place and whether they have -- the
 14 police still have records of it. If there are still
 15 records around, it means they can still pursue the
 16 application without having to carry out lots of
 17 enquiries. That's not the problem, really, it is the
 18 "exceptional circumstances" and there is a bit of a trap
 19 here for people because, if people are acting on their
 20 own without specialist advice, in their review they
 21 might say, "Well, I didn't know about the scheme". That
 22 might just be what they say in their review, but
 23 actually, the reason they didn't do it is because
 24 they've put it all to the back of their mind, they have
 25 dissociated and not done anything about it. What they

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1 can then do is say, "I didn't know about the scheme".
 2 That will automatically be another rejection because
 3 that is not an exceptional circumstance. So there is
 4 a trap for people who are acting on their own that they
 5 fall into and they end up saying the wrong thing and
 6 only specialist advice, really specific to that issue --
 7 it is really difficult to get over that hurdle of
 8 "exceptional circumstances", you have to show you
 9 couldn't really deal with it and there are all sorts of
 10 traps to fall into. It is a really difficult issue.
 11 I think a lot of people are being refused awards because
 12 of that. Without specialist help, they are just not
 13 getting them through and they are getting turned down
 14 and will be walking away from it and it is really
 15 unfair.
 16 MR SKELTON: What about the other issue mentioned earlier
 17 about the police discouraging people? Again, it seems
 18 odd that you get one state agency telling you not to
 19 apply and another state agency judging you for not
 20 applying. Mark?
 21 MR CASTLE: I can't give an example of that, but I think
 22 what we know is that the duration of cases is such that
 23 they could easily go beyond the two years. Therefore,
 24 immediately, if you have chosen, for whatever reason,
 25 not to begin -- to make your application until the end

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1 of proceedings, maybe as a result of advice on police
 2 and so on, there is a danger you will go to the wrong
 3 side of the application process and go beyond the time.
 4 So -- that wouldn't be seen as being exceptional
 5 circumstances either.
 6 So I think that the time limit is something that is
 7 not conducive to victims feeling that they are being
 8 supported through some -- through the process that
 9 they're going through.
 10 MR BRIDGE: I have got two clients at the moment who are
 11 both going to appeal where they have deliberately not
 12 submitted the claims for two years because their
 13 criminal proceedings was ongoing. In one, it was only
 14 about two years, six months after she first went to the
 15 police. They have been refused on this two-year
 16 reporting to the police rule. I think Sarah mentioned
 17 earlier on one way around it may be to write to the CICA
 18 to say "We do intend submitting an application once the
 19 criminal proceedings have been concluded", but it's
 20 a big risk not to submit that application when rule 88
 21 says, if you don't submit it within two years of going
 22 to the police, you have no claim. So you have the
 23 police saying, on the one hand, "Don't do anything to
 24 prejudice the criminal proceedings, don't bring
 25 a claim", but, on the other hand, the CICA saying "Two

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1 years and you're out". It's very difficult to know how
 2 to advise your clients, really.
 3 MR SKELTON: Have you found the holding position can work,
 4 which is to register an interest without going through
 5 the application process so as not to prejudice --
 6 MR BRIDGE: I can't see how that would work. If a defence
 7 counsel in a criminal case asks a client "Have you seen
 8 a solicitor about bringing a claim?", they're going to
 9 have to say "Yes". Even if you've sent just a holding
 10 letter and you've not actually pursued the claim, you
 11 have still opened a file, you've still sent a client
 12 care letter out, you've still accepted instructions. So
 13 that client in the criminal proceedings will probably
 14 have to say, "Yes, I have consulted a solicitor about
 15 a possible compensation claim".
 16 MS STOREY: We have also had experiences, as civil lawyers
 17 advising people about civil claims and/or CICA claims,
 18 of them being called in court, to the criminal court, to
 19 give evidence on what the survivor has said to them. So
 20 whilst we are keen for the police not to discourage
 21 people from coming forward, because we want people to
 22 get their rights and remedies, at the same time,
 23 sometimes it can really backfire if people take advice
 24 about the reparations because the lawyers can end up
 25 having to reveal what they have told us in a privileged

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<p>1 conversation when the criminal court asks us to give 2 evidence on what has been said. "Did you advise them 3 that they could claim compensation?", "Well, yes, that's 4 what I do. It is civil justice that I am advising on". 5 MR SKELTON: The privilege should be -- you should be able 6 to maintain the privilege, but is the reality that you 7 have to say to your client, "I am going to -- it is in 8 your interest for this prosecution to succeed and 9 therefore I am going to have to say what advice I have 10 given, even though ordinarily I wouldn't be forced to"? 11 MS STOREY: It would usually, at that stage, be fairly 12 routine advice about the rights and remedies available 13 without it being necessarily very detailed. But defence 14 might think that gives them an angle in terms of 15 explaining financial motive in coming forward for 16 a prosecution. 17 MR SKELTON: Helen? 18 BARONESS NEWLOVE: I think, in all of this, consideration 19 needs to be given in court how these applications for 20 criminal injuries are approached. Why does it have to 21 be disclosed to the defence lawyers? In all of this, 22 this is something for the victim to consider. 23 In the other breath, you have the Criminal Injuries 24 Compensation Scheme saying, "Well, just apply". They 25 don't see the dynamics of what could happen. So</p> <p style="text-align: center;">Page 97</p>	<p>1 and the number of victims, genuine victims, out there. 2 In my experience, through the Rotherham cases and 3 through a number of other prosecutions, although this 4 defence has been run pretty vigorously, it hasn't 5 succeeded. 6 MR SKELTON: Is that similar to others? 7 MS STOREY: I think recent experience -- I agree with David. 8 In recent experience, some of my clients have given some 9 very coherent and brave answers to these questions, and, 10 you know, given a very good account of why they are 11 looking into their rights and remedies without it 12 necessarily interfering with the truth of the matter. 13 So, no, I don't think it tends to work. 14 MR ENRIGHT: One of the traps we could fall into is, when we 15 are discussing routes and remedies and courtroom 16 tactics, we do it all as very experienced, capable 17 lawyers, but what we need to always bear in mind is that 18 the overwhelming majority of survivors of child sexual 19 abuse have none of those skills and have no access to 20 those skills. So the kinds of things we are discussing 21 here that we might utilise, et cetera, do not apply to 22 the overwhelming majority of people. We must always 23 bear that in mind. 24 MR SKELTON: Thank you. I think in this afternoon's 25 sessions we will come back to the issue of lawyers'</p> <p style="text-align: center;">Page 99</p>
<p>1 I think, you know, maybe we could look at -- I know we 2 are going to look at reform and how we do this, but 3 maybe as a practice direction to say, "Why do you want 4 to disclose this?", so there is not that motivation for 5 the defence. I think, for me, that's about protecting 6 that victim's right in all of this, because what you are 7 losing is the police are not disclosing -- having to 8 disclose this, but then you're actually putting victims 9 off. It's their right of passage for them to put in for 10 compensation. So, again, this would be coming down to, 11 you know, legalising victims' rights. I'm sure we could 12 work with the judiciary to say, "There is a practice 13 direction here, why do you need to do that? What has 14 that got to do with the evidence before the court at the 15 end of the day?" 16 MR SKELTON: A difficult question, and there may not be an 17 answer to it, does it work, this line of attack by 18 a defence to a prosecution, to actually get to the point 19 where it does look like the victim has wrongly been 20 making things up? 21 MR GREENWOOD: From my point of view, until fairly recently, 22 really post Savile, I would say, it was working. 23 Defence barristers were able to put this argument and 24 were succeeding. But post Savile I think juries are 25 much more understanding of the rights that victims have</p> <p style="text-align: center;">Page 98</p>	<p>1 added value, if I can put it, again, in quite neutral 2 terms, to see what value lawyers bring to the process of 3 applying for those forms of awards. 4 Madam, I don't know whether you and the panel have 5 any questions you would like to ask the delegates? 6 THE CHAIR: One brief question for Tracey, linked to 7 Mr Enright's last contribution, really. 8 Just linking the issue you raised earlier about the 9 lack of specialist training and understanding of 10 grooming pretty well throughout the system and issues 11 around character and offending where actually part of 12 the grooming process, for example, through drink or drug 13 addiction, may lead to a dependency that causes 14 offending behaviour, et cetera, do you think -- what is 15 the remedy to this in the system? Is it simply a matter 16 of better training or is it a much more fundamental 17 question about moral judgment? 18 MS STOREY: I think that in my experience of previous 19 schemes, where there was a discretion about convictions, 20 that did work reasonably well because we were able to 21 get evidence in certain cases where people had -- their 22 offending was clearly linked to the abuse, so it was 23 problems with figures, with male figures of authority, 24 so crimes of violence which were linked -- where they 25 had been triggered in similar circumstances to where the</p> <p style="text-align: center;">Page 100</p>

<p>1 abuse took place. You still have to get very good 2 evidence, and that is expensive. The onus is upon the 3 applicant to get that. I think we will come to it this 4 afternoon, but at times the CICA will pay for it but 5 most of the time it is down to the individual to get 6 that evidence. 7 I think it worked well, but the reality of 8 the scheme now is, it's been restricting, restricting, 9 restricting, so it's becoming increasingly worthless to 10 many, many people and, you know, from a financial point 11 of view, I can understand the need to save money, but if 12 you take a person who hasn't had a chance to have any 13 rehabilitation or counselling or treatment, they are 14 going to cost the state a hell of a lot more. So it is 15 kind of like false economy, because if you make a decent 16 acknowledgement and a decent redress to that person to 17 enable them to be part of our society, then you give 18 them a fair chance. It's looking at the cost, the cost 19 benefit, of having a scheme that actually works for 20 people who have been the victims of sexual abuse. 21 MS SHARPLING: A general question: I just wondered if 22 anybody in the room had experience or had a greater 23 understanding of the victim surcharge which was imposed 24 upon conviction and how that resource is directed? 25 MR ENRIGHT: This is my contribution as somebody who has</p> <p style="text-align: center;">Page 101</p>	<p>1 a process admin fee to administer the process of 2 the criminal justice system. Tax, really. 3 MR FRANK: Just a general question: in the absence of CICA 4 being directly represented here today, according to 5 their annual report and accounts, they claim that they 6 have achieved in the last year a customer satisfaction 7 rating of 95 per cent. I am just wondering whether that 8 is a figure that rings well with anyone here? 9 MR GREENWOOD: I would say it's probably likely to be 10 a customer dissatisfaction rating. 11 MR FRANK: Thank you. 12 MS SHARPLING: One for Roger, if I may, and a very specific 13 one: we have heard quite a lot of discussion of how, if 14 a victim makes a claim before the criminal trial has 15 commenced and possibly exposes him or herself to 16 cross-examination on the basis of credibility or 17 reliability and the defendant is acquitted at the end of 18 that -- we don't know the reasons, of course, why juries 19 acquit -- would the fact of that attack or 20 cross-examination with credibility or reliability have 21 a bearing on the decision as to whether to grant an 22 award? 23 MR GOODIER: Well, clearly, one would investigate the 24 reasons as to why the defendant was acquitted. Often we 25 would be assisted by the evidence of the investigating</p> <p style="text-align: center;">Page 103</p>
<p>1 imposed regularly as a magistrate, but the magistracy 2 was absolutely and implacably opposed to it, bending 3 itself over backwards to try to find ways of 4 ameliorating it. That's what I can say from the 5 magistrates' side, nobody wanted to impose the victim 6 surcharge because it was not going to the victim. 7 MS BROWN: There is a tendency to exercise discretion. It 8 should be imposed, but where it's seen that the offender 9 may not be able to pay the financial penalty, there is 10 sometimes a tendency to waive the victim surcharge or 11 reduce any compensation award. So, yes, although the 12 victim surcharge is there and the funds are to go 13 towards Victim Services, if it is imposed in every case, 14 that would be helpful. That's one issue of it, in terms 15 of how it's properly being collected. 16 BARONESS NEWLOVE: And victims, let's be honest, don't know 17 where this money goes. They don't receive it. If it 18 goes into Victim Services and no victim engages with 19 them services, are they benefiting from the victim 20 surcharge? They are not. It is a question a lot of the 21 magistrates have asked me, "Where does this go?". It 22 goes into the transport department and Victim Services. 23 But it's very clear that nobody has a clear 24 understanding what victim surcharge is and I don't think 25 it actually goes down to the victim. It actually is</p> <p style="text-align: center;">Page 102</p>	<p>1 police officer at the hearing. I have to say, my 2 experience of the investigating police officers in 3 sexual abuse cases, especially over the last five to six 4 years, is pretty good. The ones who are regularly 5 involved in sexual abuse cases have been very helpful 6 and, generally, the ones who are supportive of victims. 7 So the fact that there's an acquittal does not 8 automatically mean there is nothing doing. Of course 9 the applicant has to get to the tribunal before that is 10 all investigated. As we have heard from David, it may 11 well be that if the applicant has not seen an 12 experienced lawyer, the applicant may have been put off 13 because they felt they won't be believed. The problem 14 is, with a criminal case, where the victim is -- where 15 the perpetrator or the alleged perpetrator is found not 16 guilty, the victim will often feel that she or she has 17 not been believed and will be seriously upset and 18 disenamoured with the whole judicial system and leave it 19 like that. 20 I certainly had a case which I actually did refer to 21 in the long report I send to the inquiry whereby an 22 applicant was -- the perpetrator was refused or was 23 found not guilty -- the perpetrator was found not 24 guilty, many, many years ago, and then the police, out 25 of the blue, called on this applicant again and said,</p> <p style="text-align: center;">Page 104</p>

1 "Look, he is up again", and this witness gave evidence,
 2 bad character witness evidence, and the High Court judge
 3 said it's clear that, had her case been heard more
 4 recently, he would have been convicted and she then made
 5 an application to the authority, years afterwards, and
 6 was successful.
 7 So that was a pretty exceptional case, I have to
 8 say, but it does illustrate the fact that the fact that
 9 a perpetrator is found not guilty does not necessarily
 10 mean that the applicant has got no chance.
 11 We will often -- tribunals will often ask for the
 12 report by the police to the CPS, for example. If that
 13 was forthcoming, that can often be highly valuable
 14 evidence as to what the police were thinking at the time
 15 as to whether the -- we can't always regard the police
 16 as expert witnesses, but they will often come and say
 17 that they genuinely believe the truth of the victim.
 18 MR SKELTON: Thank you. May I ask, before inviting those
 19 who are in the room if they have anything to say, to do
 20 so by standing up and using the mic, if you would like
 21 to say something.
 22 CORE PARTICIPANT - MR ROBSON: (Inaudible). The other one
 23 is, when young boys -- when children are growing up,
 24 they go through these emotions, and all that, and they
 25 don't know what they done and people can be misled. So

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1 there's that point.
 2 Then there's the Child Act at 1990, where the law
 3 was changed. Prior to 1990, if my child had been
 4 getting messed about, I could go to the police and say
 5 "Look, I want that person dealt with", and that person
 6 would be prosecuted. After that, it then became the
 7 onus on the child, the 13-year-old, to make the
 8 complaint, and nothing to do with the parents. So the
 9 parents were out of it. I have one example where his
 10 daughter was (inaudible), 13 years old, the police said
 11 they couldn't do a thing because she had not complained.
 12 CORE PARTICIPANT - MR O'MARA: Nigel O'Mara, East Midlands
 13 Survivors. The point I would like to raise is that we
 14 have talked a lot about the police and how they are
 15 acting and interacting now, but this is an historic
 16 abuse inquiry and the police didn't act that well
 17 before.
 18 I first reported when I was 12. I reported again
 19 when I was 15. My report was finally taken seriously
 20 two years ago, by which time all of the perpetrators
 21 were dead. But at least I could see it and it was shown
 22 that I had reported earlier and that things weren't
 23 going in the correct way. So if the police hadn't taken
 24 that into account previously and hadn't properly
 25 prosecuted in the past, it makes it very difficult for

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1 anyone to go anywhere near applying for any form of
 2 compensation because it is decades ago.
 3 CORE PARTICIPANT - MS GRAY: Karen Gray of Bryn Alyn
 4 Survivors. Two points. The ideas behind gifting within
 5 grooming aren't only ignored by criminal injuries and
 6 civil litigation, they are also ignored by the police.
 7 Recently, there was one female victim from
 8 Cotsbrook Hall, part of Bryn Alyn community, which was
 9 based in Shropshire. The Warwickshire police told her
 10 it was her own fault because she had accepted the
 11 cigarettes that had been given to her as payment for
 12 a blow job, and this left her obviously devastated.
 13 As for payouts and eligibility vis-a-vis, one member
 14 of staff from Bryn Alyn community was in Court,
 15 Supreme Court 2003, KK v Bryn Alyn v Royal Sun Alliance
 16 Payout was awarded by the judge on, I believe, all
 17 claims at that point. One of the members of staff named
 18 in that document as a physical abuser had also been
 19 a resident of the home. In 2015, he was paid out in his
 20 own right for violence he had suffered within that home.
 21 But he had gone on to become staff knowing the regime of
 22 that home. How can that be right?
 23 MR SKELTON: Thank you, Karen. Madam, I think that
 24 concludes our last morning session. I think we will
 25 reconvene at 2.00 pm.

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1 (1.00 pm)
 2 (The short adjournment)
 3 (2.00 pm)
 4 Discussion re the administration of the Criminal Injuries
 5 Compensation Scheme
 6 MR SKELTON: Good afternoon, everyone. This is the third
 7 session of the seminars. This topic is about the
 8 administration of the scheme we have been discussing
 9 this morning. I would like over the course of the next
 10 hour or so to touch on accessibility, legal
 11 representation and funding, the process of making an
 12 application, the decision-making process that follows,
 13 and then the review and appeal process, all of which we
 14 have touched on earlier, but I would now like to go to
 15 in a bit more detail, if I may.
 16 Can I start by asking if anyone has any data about
 17 accessibility, in terms of how many people who could
 18 apply do apply and how many people don't. Does anyone
 19 have an idea of those sorts of percentages? Stoney
 20 silence. That is something we can certainly try to
 21 investigate.
 22 MS BRANT: I can give you an overview just of the Essex
 23 area. Just thinking back on recent data that we have
 24 drawn down, I think around 76 per cent don't apply, and
 25 that may be due to eligibility reasons and

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<p>1 traumatisation reasons. In the last quarter, I think we 2 worked with 2,270 service users and 76 per cent hadn't 3 applied. 4 MR SKELTON: How significant is the problem that people are 5 simply unaware that they have this potential route to 6 getting awards? How many people these days are wholly 7 unaware of it? 8 MR BRIDGE: I would say that was very significant. The 9 majority of CICA claims we do are for people who contact 10 us about other things. They will ring and say, "I was 11 abused, I want to look at bringing a claim against the 12 Scouts or Social Services". We then alert them to the 13 existence of the scheme. They don't seem to know about 14 the scheme, it isn't well publicised. 15 MR SKELTON: Other organisations who may facilitate access 16 may be the police, albeit in a way which could at the 17 same time discourage for a period of time, at least, and 18 potentially victim support, for example? 19 MR CASTLE: We will offer to help them complete and also to 20 represent, depending on the circumstances of 21 the individual. 22 MR ENRIGHT: Just a small point that, sitting as 23 a magistrate, I never hear it mentioned in court, 24 I never hear it recommended -- it may be done by victim 25 support outside the courtroom, but never in the</p> <p style="text-align: center;">Page 109</p>	<p>1 don't pick it up or go back to victims to ensure they've 2 got them services -- you know, they're taking up on them 3 services, nobody really checks. 4 MR SKELTON: Can you explain in a bit more detail what the 5 Crime Commissioner's role might be? 6 BARONESS NEWLOVE: The Police and Crime Commissioners' role 7 is a new model, actually. I think they're in the second 8 term. They are in charge obviously of the police -- not 9 operation, but they are in charge. But they are also in 10 charge of Victim Services funding. That means it is 11 more of a localism agenda where they will give funding 12 to local organisations. They work within there, with 13 the victims. Some of the areas have Victims Hubs, as 14 they're called -- they are all named differently: 15 Victims First, Victims Hubs -- to ensure victims are 16 getting a service from beginning to middle to end. As 17 Victims Commissioner, I'm trying to see whether that's 18 delivered. They should be informed that there is 19 a criminal injuries compensation. That's one of 20 the questions I am going around to be asking, to see are 21 they delivering that. Most of the time I have to say 22 they never mention criminal injuries, it is more about 23 the criminal justice process more than the compensation. 24 For me, that's interesting in itself. 25 It's not something that comes up easily and it's</p> <p style="text-align: center;">Page 111</p>
<p>1 courtroom is a victim, after conviction, guided by 2 anyone in the courtroom that they are able to make 3 a CICA claim. 4 MR SKELTON: Is that something which you would actually 5 expect to happen? 6 MR ENRIGHT: In the courtroom, a great deal of other 7 guidance and guidance literature is handed out 8 routinely, but nothing about the CICS. 9 BARONESS NEWLOVE: We have also got to look at, we have the 10 Police and Crime Commissioners now who should be 11 working -- well, they are there for the Victim Services 12 funds. So they should be handing down any information 13 or checking. That's part of my role, when I am 14 travelling around the country for the next two and a 15 half years, to ensure that victims are receiving these 16 services. So it is something my office is going to pick 17 up. 18 But as to criminal injuries, I think my office 19 normally emails and we alert them to criminal injuries 20 or I meet victims face to face who have never heard of 21 it. So it isn't getting out there. The victims' 22 information website app, it should be on there. But it 23 is whether they have the energy to go on to a website. 24 To be fair, leaflets don't mean anything because, if you 25 are that traumatised, you just put them off. So if you</p> <p style="text-align: center;">Page 110</p>	<p>1 something that always comes up after the event. So it's 2 something that I think we really need to readdress and 3 the police force need to readdress that. But they could 4 actually tell the victims and the victims might not even 5 remember, to be fair to the police. There is so much 6 information given to them and so many questions asked of 7 them that I think criminal injuries is the last bit. 8 They just want justice within the courtroom. 9 MR SKELTON: Again, any data on this subject which is legal 10 representation -- 11 MR GOODIER: Before you go to legal representation, I know 12 that in 2003/2004 there were about 80,000 applications 13 a year, 70,000/80,000. I did look at the CICA website 14 yesterday, and I think it was about 34,000. So even 15 70,000 is a fairly low takeup of all people who have 16 been victims of crimes of violence. But 34,000, more or 17 less half of what it was 12, 13, 14 years ago, rather 18 suggests that the scheme is of less relevance to victims 19 of crimes of violence than it used to be. 20 MR SKELTON: Do you think people are being put off by the 21 changes in the regime because this is the era of mass 22 communication where many people now have access to 23 a variety of ways of getting communications -- via the 24 internet, email, Facebook, social media. So you would 25 expect quite the opposite to happen.</p> <p style="text-align: center;">Page 112</p>

1 MR GOODIER: I can only assume that the 2001 scheme makes
2 more people ineligible who would have been eligible
3 before the 2012 scheme. That's the only explanation.
4 MR SKELTON: Does anyone else have a point to make about the
5 general accessibility? Obviously we have already
6 touched upon the fact that maybe people who would want
7 to be accessing it may not have the means or wherewithal
8 to be able to do so.
9 MR GREENWOOD: Dare I say it, and people at the Treasury
10 listening to this will groan, but the police will have
11 in their data systems the names of victims who could be
12 eligible for compensation and eligible to apply. It
13 would simply be an administrative exercise for the
14 police to have to go around to people who have been
15 victims of crime and ask them whether they are aware of
16 it and would like to do it. Maybe not immediately after
17 the event, when people are still traumatised, but maybe
18 three months after the court case or three months after
19 a finalisation, to remind them.
20 MR SKELTON: Is there other follow-up? I will ask Mark this
21 question. Is there other follow-up for victims of crime
22 that this could be tied to? For example, do you
23 routinely follow up a victim of a violent crime a few
24 months afterwards just to see how they are doing and
25 whether they are accessing GP surgeries or counselling

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1 and the like?
2 MR CASTLE: Yes, we do. Generally, it is pretty rapid
3 resolution and then longer, deeper, depending on the
4 impact and harm to the individual. So we will be
5 maintaining a relationship with them. Some may go
6 through the criminal justice process, go to court and so
7 on. Others, that won't be the case because the
8 perpetrator won't be found and so on. But we will have
9 that relationship.
10 That idea of continuity -- the ability to develop
11 a relationship, the advocacy that Baroness Newlove
12 talked about earlier -- we think is a really important
13 part of this. It is a very alien environment for people
14 to find themselves in and the guidance and ensuring the
15 information flows is a really important part of having
16 confidence in the criminal justice system. I think one
17 of the statistics that we would have is that I think
18 74 per cent confidence in the police by the general
19 public, but for those who have gone through the criminal
20 justice system, it is around 40 per cent, or just over
21 40 per cent.
22 So there is something there we need to deal with and
23 much of it is about information and helping people to be
24 guided through this process.
25 MR SKELTON: Thank you. So the issue of legal

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1 representation, again, does anyone have an idea of how
2 many people going through the scheme will actually have
3 lawyers somewhere, either overtly or covertly, helping
4 them? Do you have any idea about that, Roger?
5 MR GOODIER: There was some -- I think it was about
6 54 per cent of applicants -- of appellants to the
7 tribunal were represented, this is going back a few
8 years, by somebody, not necessarily by lawyers. I have
9 got no information about whether they were
10 professionally represented. But around about
11 54 per cent of -- I think that's the figure, around
12 about right, of all appellants were represented at
13 tribunal hearings. Some of them, of course, may have
14 only involved a lawyer for the appeal process. They may
15 not have been involved -- involved a lawyer prior to
16 that.
17 MS BRANT: Across the Rape Crisis network, survivors are
18 routinely provided with options and information around
19 making criminal injuries compensation application. We
20 are quite lucky in the Essex area, our Police and Crime
21 Commissioner fund around 42 per cent of our Rape Crisis
22 Services and they have survivor pathways, aftercare
23 pathways, in place, so every report to the police does
24 come through to Rape Crisis Services, and then
25 independent sexual violence advisers will pick up, look

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1 at eligibility, provide information and make
2 applications on survivors' behalf. So that works really
3 well.
4 MR CASTLE: In terms of representation, we have criteria
5 that we apply and, depending upon the circumstances of
6 the individual, whether we will go on to do the
7 representative role, on the basis that we then assume
8 a responsibility to engage with the authority on behalf
9 of the individual.
10 So there's a lot involved in that. We have to think
11 carefully about how we go through that process. But we
12 will do that, if it's required.
13 MR SKELTON: Can I ask, what is the nature of
14 the relationship between you and that person at that
15 stage? Because obviously lawyers have a retainer, they
16 have a file open and they have professional obligations
17 and regulatory bodies and they have insurance to cover
18 making mistakes or acting negligently. How does it work
19 for you in your --
20 MR CASTLE: We have some of that in place. But what we are
21 doing is acting, as part of the Victim Services, as
22 their representative and helping them through the
23 process.
24 So in a similar way. What we don't have is the
25 training that the lawyers have, obviously, but the

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<p>1 people who do the representation have been trained to do 2 that within our organisation. 3 MR SKELTON: Can you take it all the way through? If it 4 gets to the appeal stage -- Roger has already adverted 5 to the fact that sometimes you get into quite difficult 6 legal concepts. Does there come a point where you have 7 to say, "This is beyond our expertise"?</p> <p>8 MR CASTLE: Each case would have to be considered on its 9 merits when it comes to that, but we will try to do what 10 we can to support the individuals if they require the 11 support and that representation.</p> <p>12 MR SKELTON: Roger, from your perspective -- I will ask the 13 lawyers this as well -- what added value do you see, if 14 any, the lawyers or the other specialist assistant or 15 representatives bringing to the application process?</p> <p>16 MR GOODIER: Certainly they can short-circuit the work of 17 the tribunal by having everything well prepared and 18 researched so you get -- you may have a document they 19 will provide in advance of the hearing setting out what 20 the appellant's case is.</p> <p>21 If the appellant is not represented, just say it is 22 a compensation only case, the appellant may come in with 23 either no representation or lay representation with no 24 great experience, expertise, and we will have to tease 25 out the fact that there may be a loss of earnings to</p> <p style="text-align: center;">Page 117</p>	<p>1 comes to appeal and we see medical reports, medical 2 records, indicated the likelihood, anyway, of a mental 3 illness and then the case has to be adjourned with 4 directions issued by the tribunal to the authority to 5 get a psychiatric medical evidence probably on a jointly 6 instructed basis.</p> <p>7 MR SKELTON: Sarah, can I ask you, does this issue of added 8 value -- the obvious things are, does it make 9 a difference to the level of award to an applicant and 10 does it make a difference to the timing of that award 11 being provided?</p> <p>12 MS BRUMPTON: As to the level of the award, yes, it 13 certainly does, because, as Roger mentioned about loss 14 of earnings and care claims, I don't think there's any 15 way in the world that a layperson could put together 16 those kind of complicated calculations and we have 17 certainly had some directions where it's been suggested 18 by a panel that they go away and seek proper legal 19 advice in order to put together calculation of loss of 20 earnings. Because, often, it is only at the stage where 21 the appellant in person has reached the appeal, the 22 tribunal suddenly realise they haven't been able to put 23 their case together and they are not going to be 24 adequately compensated at the appeal because what they 25 are presenting with hasn't been recorded in the evidence</p> <p style="text-align: center;">Page 119</p>
<p>1 claim or a care claim, for example, special expenses 2 claim. In those circumstances, when there's no 3 appropriate or professional representation, the case may 4 have to be adjourned to get that information.</p> <p>5 I think also the appellant will be more satisfied 6 that they are having a fair decision made if they have 7 the benefit of representation, because the authority 8 will be represented by its senior decision maker at the 9 hearing, and it is the equality of arms issue which is 10 quite important, I would have thought, from the 11 perception of the appellant or the victim.</p> <p>12 MR SKELTON: If it gets to an appeal hearing, which is an 13 oral hearing in front of someone like yourself and 14 a panel, then the panel may intervene to try to get out 15 the evidence?</p> <p>16 MR GOODIER: Yes. We have an enabling function.</p> <p>17 MR SKELTON: Does that enabling function occur in the 18 earlier stages, which may be done in writing between the 19 authority and the --</p> <p>20 MR GOODIER: I don't know how the authority operates. There 21 are clearly times when the appellant is -- or the 22 applicant at that stage is -- there is a strong 23 suggestion the applicant has got a mental illness and 24 the authority will not -- or in the past, anyway, they 25 will not get a specialist medical report and then it</p> <p style="text-align: center;">Page 118</p>	<p>1 and the Criminal Injuries Compensation Authority hasn't 2 really spotted that, so they are coming in with an 3 ill-prepared case and the tribunal are being asked to 4 make a decision without proper evidence in front of 5 them. So then it ends up with directions and going back 6 and that person then has to seek legal advice and that 7 adds to the delay.</p> <p>8 So I think in terms of timescales, it's certainly 9 a help to have everything ready and the evidence 10 prepared early on in the case. Even if the decisions 11 being made are incorrect and you're having to review on 12 appeal, at least then you will have the correct evidence 13 so, when you get to the appeal, it can be done and dealt 14 with and they will have some outcome from it, a proper 15 outcome, rather than it getting to appeal where they 16 say, "You haven't got the right evidence", and so you 17 have to go back, back to the beginning. So it does help 18 in terms of timing and amounts of award.</p> <p>19 MR ENRIGHT: A couple of things. We don't have a French 20 inquisitorial system and tribunal chairs like Roger 21 should not be having to do that exploratory function and 22 step into the shoes of an advocate.</p> <p>23 Secondly, if it is appropriate that the government 24 is represented, the organisation is represented, to 25 resist the claim, then of course it must be fair that</p> <p style="text-align: center;">Page 120</p>

<p>1 the appellant, unrepresented appellant, is represented. 2 We know from the submissions you have that a person 3 unrepresented -- examples have been given to us of 4 achieving an award of GBP5,000, being able to re-open 5 that, and the award ending up at GBP138,000. So there 6 is no question. Insurance companies have been very, 7 very successful at excluding lawyers from the process, 8 supposedly to save us money, but we all know, if you are 9 represented in a personal injury claim, you get a far 10 better settlement. It's a given. 11 But we are talking about in the context of child 12 sexual abuse and we have heard this morning all the 13 complexity surrounding that, the legal types of issues. 14 I have harked back again and again to say that the 15 people we are talking about in this room, who have been 16 fortunate enough to be represented, represent a mere tip 17 of the iceberg. The overwhelming majority of people 18 have no access to the system because they don't know it 19 exists. Even if they knew it existed, if they opened up 20 the rules -- and even Roger and others of us have 21 difficulty interpreting the rules -- they are persons 22 who have been denied education while in care: no chance. 23 If society is really interested in doing what the 24 scheme was set up to do, which is to acknowledge harm 25 that has been caused, then there has to be equality of</p> <p style="text-align: center;">Page 121</p>	<p>1 claim and all the rules around that being very 2 restrictive. So, actually, when I started out, under 3 common law principles, even without Legal Aid to support 4 legal representation before the CICA, you were talking 5 about having a fair chance at decent compensation. 6 The problem comes when you're looking at low awards 7 and low compensation and the proportionality and wanting 8 to make sure that the victims and survivors benefit as 9 much as they can from the award. As a lawyer, you're in 10 a difficult position of wanting to make sure that they 11 keep the majority of their award, except they're not 12 being fully compensated, they're just getting a token of 13 the compensation. 14 I'm not sure if we have things in place in terms of 15 what level of award or level of claim we will look at, 16 but I think that sometimes survivors will be put off 17 getting legal representation, thinking that they can do 18 it themselves, because legal fees might bite into the 19 award significantly so that they don't take the 20 opportunity to have advice and then they're not 21 necessarily aware of all these hurdles and pitfalls that 22 might come about in the course of the application. 23 MR SKELTON: Sarah, can you pick up on that point? Can you 24 do it, if possible, by way of examples? For example, 25 will you take a case which is worth GBP10,000 as a CICA</p> <p style="text-align: center;">Page 123</p>
<p>1 arms. It cannot be right that, for example, victims 2 support and other groups like them, well meaning as they 3 are and as expert as they are in what they do, should be 4 expected to step into the role of a professional body, 5 because, of course, a client can sue a solicitor if they 6 are negligent, but they can't really sue Victim Support 7 if they were inept at representing. So there is 8 a protection lost there as well. Lawyers undoubtedly 9 add value in an adversarial process like this and a way 10 must be found to fund that. 11 MR SKELTON: Which brings me on to funding. As I understand 12 it, there is no Legal Aid available for this process at 13 all. Is that correct? 14 MS BRUMPTON: That's right. 15 MR SKELTON: Therefore, you have to enter a relationship 16 with a lawyer -- either you have private funds, although 17 most people do not, so you have to enter into 18 a conditional fee arrangement with your lawyer. What's 19 the sort of cut-off of level of injury or level of abuse 20 which makes that a viable relationship in terms of 21 recovery of fees. Tracey, do you have a view? 22 MS STOREY: Again, I think this is probably something that 23 Sarah can better answer. The difficulty we have under 24 the 2012 scheme is the restriction on a full loss of 25 earnings claim going through. The special expenses</p> <p style="text-align: center;">Page 122</p>	<p>1 award? 2 MS BRUMPTON: Because I do all CICA work, we have set up 3 a team so we try to have the staff trained to do this, 4 and so we make it viable. It has to be viable or else 5 we can't represent people. It has to be something we 6 want to continue to do, so it has to be something that 7 is a viable thing to do. We try and run them as low as 8 possible in terms of costs, but obviously cases can turn 9 quite difficult, even the lower-value ones, so we have 10 to be quite careful in what we take on and how we run 11 them. Difficult decisions to make about cases and what 12 we will do, if we feel we can't take it on, we give 13 people support and guidance to help them do it 14 themselves and they come back and get bits of advice 15 later on. But we do have to make quite difficult 16 decisions in terms of what we can really offer people 17 when we are sort of going to have to be paid for the 18 work that we do and it has to be viable for them so they 19 actually see something out of it and get a good outcome 20 of it. It is quite difficult at the lower end of 21 the scale. That's where some of these cases fall and 22 that's really a shame. 23 MR SKELTON: Is there a cut-off? 24 MS BRUMPTON: Not particularly, no. We just look at each 25 case individually, really, that has a cut-off and see</p> <p style="text-align: center;">Page 124</p>

1 whether we can help and what we can do and judge each
2 case individually.
3 MR SKELTON: Will you take a fixed fee or a percentage as
4 a matter of routine?
5 MS BRUMPTON: The way we work is not the way everybody else
6 works. We work on -- we do a no win, no fee agreement
7 with people on the basis that if they are not
8 successful, we don't charge them for anything we do, but
9 if it is, we charge for the work we have done and we
10 apply a success fee to reflect the risk we have taken on
11 and then we cap the fees at 25 per cent of any award.
12 We don't take a -- do it as a cut. I know some firms do
13 that, a direct sort of damages-based agreement where
14 they just take a percentage of the award, but we don't
15 do it that way. I think we are probably on our own in
16 that way. We try to do it so we can show people what
17 work we are doing and how that works.
18 MR SKELTON: Can I ask others who have to enter into these
19 relationships? Do you have similar funding structures?
20 David?
21 MR GREENWOOD: I have exactly the same as Sarah has just
22 explained, a cap of 25 per cent.
23 MR BRIDGE: We are similar. It depends on the case. I had
24 one recently, I think it was one of Mr Goodier's last
25 cases that settled for over GBP3 million. I wouldn't

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1 have charged the client 25 per cent on a case like that.
2 So you're quite subjective, you look at the cases, but
3 I think the majority of solicitors tend to charge
4 25 per cent of damages. If you look -- if you Google
5 "CICA claims", the majority of people at the top of
6 the Google list are all doing this work at a 25 per cent
7 charge.
8 MR SKELTON: How does it work if you have a CICA claim which
9 is successful, you get an award and you then carry on to
10 do some litigation and you're liable to pay back CICA
11 money. What happens to the legal costs which the client
12 has paid? How do they get dealt with?
13 MR BRIDGE: So you've recovered money from the Criminal
14 Injuries Compensation Scheme --
15 MR SKELTON: And then you go on to be successful against an
16 institution in the civil courts who are liable to pay
17 the legal fees and the damages associated with that
18 claim, but you've got -- you are then liable to pay back
19 the CICA award which includes legal fees that have been
20 paid to you.
21 MR BRIDGE: It is quite unusual it happens that way around.
22 It will normally stay a CICA claim until the civil claim
23 has settled, so that doesn't usually arise.
24 MS STOREY: I would suggest in those circumstances, which
25 I would agree with Jonathan are rare, you would try to

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1 claim the legal costs as a head of special damage in
2 a civil claim. But it would be a novel claim. It would
3 be one of making sure that your client isn't out of
4 pocket for having protected themselves by making the
5 CICA claim in advance of the civil claim.
6 MR CASTLE: I was just going to add, one thing on the
7 Victim Services environment there which may be relevant
8 for the inquiry is that Victim Support no longer
9 provides support throughout England and Wales. It is
10 now commissioned by -- Victim Services is commissioned
11 by individual Police and Crime Commissioners and the
12 service varies from commissioner to commissioner. Some
13 may have an element that is about supporting criminal
14 injuries compensation but others might not. So there is
15 an issue there that is new since the -- I don't know if
16 the Police and Crime Commissioners wasn't there before,
17 and I can't speak for others, but we don't recover any
18 costs from those we have helped with a claim.
19 MR SKELTON: What about the issue of expert reports? We
20 have heard a number of people around the table have
21 spoken about the need to provide evidence and Helen
22 mentioned the problems with getting clinical
23 psychological reports and the like. To what degree does
24 assistance need to be provided to applicants getting
25 that evidence prepared in the right form?

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1 MR BRIDGE: I think there is a real skill to sending that
2 letter to a psychiatrist or a GP. We have got it,
3 because we do it all the time, but it is very, very
4 difficult for a client to write to their own GP to try
5 to get a letter back to explain why there has been
6 a delay in bringing the claim or -- the rules on
7 psychiatric injury are very complicated, you have got to
8 jump through hoops to show whether your injury is
9 moderately disabling or severely disabling with certain
10 factors that we are all aware of because we do these
11 claims all the time, but a layperson won't be aware of.
12 Again, if you are instructing an expert, you need to be
13 asking, has it affected certain aspects of
14 the claimant's life, which is what the CICA are looking
15 for: sexual dysfunction or ability to work. We have
16 that knowledge from knowing the scheme inside-out.
17 A layperson just wouldn't have that, wouldn't know how
18 to direct the questions to an expert.
19 MR SKELTON: That presumably is similar for others?
20 MS STOREY: I think also it is fair to say that when you are
21 somebody who does a lot of civil cases and then do some
22 CICA work, the way you instruct the experts is very
23 different than in civil work, because you have to bear
24 in mind the scheme all the time and the wording, and so,
25 for example, if you are obtaining evidence on care

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<p>1 needs, it depends what scheme you are under. You have 2 to constantly remind yourself of the rules and 3 regulations. It is not straightforward. 4 Lawyers make mistakes on this, you know, so to 5 expect a layperson to be able to navigate through it is 6 really difficult. 7 So the test for care and what kind of care will be 8 paid for will vary from scheme to scheme and so you have 9 to go back to, what scheme am I under? 10 So legal representation is really crucial on these 11 areas, getting evidence of special expenses, for 12 example. 13 MS BRUMPTON: Another point: the CICA do instruct their own 14 medical experts and if you get somebody in a case who 15 has an enlightened view and understands the issues, they 16 will take that step and instruct -- they use an agency 17 to get reports. So they will take that step and they 18 will get care reports sometimes. It is just it's very 19 patchy. It depends on the individual case officer 20 looking at the case. 21 MR SKELTON: Staying with you, Sarah, if I may, just the 22 application process itself. I think in Roger's 23 submissions he describes a sort of nightmarish, 24 Kafka-like position, where you are going through various 25 iterations -- I think at one point he described it as</p> <p style="text-align: center;">Page 129</p>	<p>1 end up back at appeal twice. We have had that 2 situation. It is occurring more and more. Several 3 appeals. 4 MR SKELTON: Do you go in with an expectation of needing to 5 appeal? Is that the routine position now? 6 MS BRUMPTON: Yes, it is. We have been left a bit -- we are 7 just trying to get through the hoops. Occasionally, we 8 get quite good decisions, but most of the time, it's 9 kind of, "Let's get to appeal and at least we'll know 10 where we are going, and we can make some better 11 representations and get better outcomes". 12 MR SKELTON: David, is that your experience as well? 13 MR GREENWOOD: I agree, yes. We set off with an expectation 14 that we will get no award on most of these cases. We 15 expect to be able to go to review and we've used all 16 our -- but we expect to end up at appeal. That's really 17 the routine of these cases. Where there are cases that 18 are worth really sticking our necks out for. It has to 19 be said that some clients, even when they receive fairly 20 low awards -- I suppose just anecdotally, I would say 21 less than 50 per cent of our cases get an award at first 22 instance. We are now having to go to review or appeal. 23 Some do come through. In some cases, they are 24 acceptable to the client who just wants the thing out of 25 the way. They just want to get on with it. If they</p> <p style="text-align: center;">Page 131</p>
<p>1 Snakes and Ladders, where you are clearly rising up 2 through the system, you slide down on a procedural 3 problem back to a different position and then back up 4 again. Sometimes iterations can take several -- I think 5 16, 17, 18 goes before you get to your final award. How 6 common is it to have that degree of problem compared to 7 people who go relatively smoothly through -- 8 MS BRUMPTON: That's getting more common because of 9 the Barrett ruling. You can have an appeal going 10 through on eligibility, say, for example, on a time 11 limit. So if you have got that issue coming up, you can 12 take that issue to appeal and then the panel will decide 13 on the time limit, whether you're out of time or you're 14 in time. If the panel decide you're in time, you then 15 go back to the beginning, back to the CICA, to get them 16 to assess the award. 17 MR SKELTON: To clarify, that ruling determines that the 18 appellant panel can't determine the actual award, it can 19 just determine whatever point has been heard on appeal. 20 It has to go back to have the award determined by the 21 original body? 22 MS BRUMPTON: Yes. We end up in a situation then where we 23 get -- maybe they refuse the award because they don't 24 think somebody has suffered an injury, and then -- so we 25 have to go through the whole process again. So you can</p> <p style="text-align: center;">Page 130</p>	<p>1 want to pursue the civil case, then they will pursue the 2 civil case. But some of those cases that are rejected 3 at the outset are really quite valuable cases that need 4 to go through and be challenged and looked at properly, 5 in which case we expect them to go to appeal. 6 MR SKELTON: What is the blockage? How does an organisation 7 offer GBP5,000 and then convert that at some point, 8 after a convoluted procedure, to GBP100,000? 9 MR GREENWOOD: I don't know how the CICA organise their 10 staff or train their staff. But it seems to me that the 11 interpretation of the various schemes rests on good 12 training and good objective assessment of the case 13 that's coming in before them. I suppose, from our point 14 of view, the criminal injuries compensation may say, 15 "Well, we don't get enough information from you guys. 16 You need to give us more information at the outset so we 17 can make good decisions". That might be a criticism of 18 us. But I think it feels like the staff at the CICA are 19 not specialists in this type of work in child abuse. 20 MR SKELTON: There are nods around the two tables. Is that 21 others' experience from -- anecdotally or from personal? 22 BARONESS NEWLOVE: Mine is more anecdotally, but also I do 23 know they are trialling -- Criminal Injuries are 24 employing child psychologists -- clinical psychologists 25 to see if they can help on the work so it's a bit more</p> <p style="text-align: center;">Page 132</p>

1 smoothline. But that's a pilot, so how long that will
2 take, in the meantime, there's still applications. But
3 I do think there needs to be more expertise making these
4 decisions when you're asking victims to justify actions,
5 especially on the consent. I don't think this is going
6 to go away. I think it's escalating, this area, and
7 I do wonder whether it does need to be a department on
8 its own dealing with this specialism. We see it with
9 victims of terrorism. If you put an application in for
10 criminal injuries, it's fast tracked. But actually --
11 so if you're looking at victims of terrorism, why
12 can't -- child sexual abuse is huge. Why can't you do
13 that as well?
14 MR SKELTON: That fast track, is that something that is
15 written into the explicit policies now or is that just
16 how it seems to work?
17 BARONESS NEWLOVE: Within the criminal injuries compensation
18 system there is a fast track. It's been there --
19 I can't remember the specific year. It's been there
20 placed and it's never really been used -- sadly, just
21 recently, seeing victims of terrorism in Tunisia, and
22 it's come alive. I can honestly say the victims didn't
23 feel they were fast tracked. There was quite a lot of
24 blockage again. What happened with them -- I know it is
25 still a live case today, as we're speaking, at the

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1 inquest -- that's where the criminal and the civil was
2 kind of clashing, because they put an application in and
3 these people were going around with shrapnel in their
4 bodies, couldn't work and were going to lose their
5 homes. They weren't even getting the interim payments
6 as promised. But at that stage, there wasn't a civil
7 claim. Now there is a civil claim. So some people were
8 being paid interim and then decided to go for a civil,
9 but because the civil claim popped up, Criminal Injuries
10 then were asking, "Are you going for a civil claim?"
11 And, of course, if you put "Yes", they wouldn't get an
12 interim. So it caused this two-tier approach within the
13 group. So I can't see the fast tracking really couldn't
14 benefit them.
15 But there is that clause within the policy for fast
16 tracking victims of terrorism to make a better judgment
17 and I think with the child sexual abuse, I do think
18 there needs to be a specialism here making judgments on
19 an area people don't understand.
20 MR SKELTON: Thank you.
21 MS STOREY: Peter, I remember after the London bombings in
22 2007 there were letters sent out to all our clients
23 saying that they have to wait and hang on a bit because
24 the London bombings were going to take priority for
25 a while and that we were bringing in more staff to deal

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1 with it. But for our clients, some of them had been
2 waiting years to be acknowledged and compensated. So it
3 was a hard letter to explain to our clients.
4 In fact, I had victims of previous terrorist
5 attacks, like the Soho pub bombings, who still hadn't
6 been compensated eight years later. But the London
7 bombings were being fast tracked. So there is a little
8 bit of politics that comes into this as well. But so
9 far, victims of child abuse haven't benefited from that
10 intervention.
11 MR SKELTON: Thank you. We talked earlier about the timing.
12 I think, Sarah, you mentioned the timing of the process
13 in the first session we had.
14 From putting in that first application, what
15 communication do you get or what access do you get to
16 what's actually going on in relation to it?
17 MS BRUMPTON: The application goes in online and then you
18 receive a consent form to sign and, after that, then you
19 don't hear anything until the decision is made, but it's
20 not really a decision because they never actually
21 formally say -- this is one of the issues that I put in
22 my paper about an acknowledgement that you have been the
23 victim of crime and something awful has happened to you.
24 You just -- you don't really get an acknowledgement
25 letter saying, "We have accepted your claim and you have

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1 been the victim of crime". All you really get is
2 a letter asking for some medical details, which is an
3 illustration that eligibility has been accepted. So
4 from a victim's point of view, they don't really
5 understand how that process works because there is no
6 actual acknowledgement that you have been successful
7 until they actually pay out the claim later and then
8 you're waiting a long time.
9 MR SKELTON: Are you, as a lawyer, saying to your client,
10 "It looks like they are accepting it, they are not
11 actually saying that, and at some point it looks like
12 they are going to pay you some money, I know it doesn't
13 look like that".
14 MS BRUMPTON: It is a bit woolly, but we have to say that
15 because there is never actually a direct acceptance.
16 I think that's something victims would quite like.
17 MS BRANT: I think, going back to the application process,
18 the online form firstly looks very much like it is
19 designed for someone who is experienced in assault.
20 There is not much area to put in details about sexual
21 assault and sexual offences. The form is very clunky.
22 It doesn't give you enough space to write in the details
23 of the sexual assault that's been experienced.
24 Also, just recently, Criminal Injuries have changed
25 the application process whereby you don't receive

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<p>1 a consent form in the post, you sign an online consent 2 as part of the application process. That's just 3 recently been introduced. So you don't even get 4 a consent form letter through now, you just get 5 a reference number and, often, when you call back, they 6 can't find that reference number on the system. But 7 they have also recently introduced that you cannot 8 telephone to make a telephone enquiry anymore. So if 9 you ring the Criminal Injuries helpline now, as 10 a specialist service or a layperson, you will receive 11 a message to say, "We cannot take telephone enquiries. 12 Please make all enquiries in writing". 13 Survivors that we have worked with have written in 14 in writing to make an enquiry about their application 15 and then told that they don't know anything about the 16 application. So it seems like a process of gatekeeping 17 processes to stop people from applying. So some of 18 the recent changes is a disadvantage for those who can't 19 read and write, for those who don't have representation, 20 for those that have learning disabilities, for those 21 that have a child or where English isn't the first 22 language. So there are recent changes that happened. 23 MR SKELTON: The issue Sarah raised, which is the 24 acknowledgement of the crime, how important is that to 25 the people that you help?</p> <p style="text-align: center;">Page 137</p>	<p>1 to giving someone a sense that they were being 2 understood rather than they were having to go through 3 a whole series of hoops to justify it in the first 4 place. 5 MR SKELTON: Helen, again, this is the issue of 6 communication which seems to have come through many of 7 the submissions both today and in writing, it actually 8 makes a big difference to people to get acknowledgement, 9 to be able to speak to a human being, to feel like 10 things are moving forward, et cetera. Is that your 11 experience? 12 BARONESS NEWLOVE: It is the same. You want to know that 13 your application has gone in and somebody is 14 acknowledging it. You don't want to be acknowledged by 15 saying "Can you provide further proof?". I think it is 16 very insulting to anybody, whether it is a legal 17 representative who is doing it for you or another 18 victim. Because a lot of victims help victims to do it 19 online. I think the creation of online meant you have 20 got the panacea, "We have done everything now, we have 21 seen the light, because it is all online". Actually, 22 that is not the way forward at all. 23 I remember when we received letters -- which is not 24 related to child sexual abuse, but it just makes me 25 wonder, where we are talking of abuse many, many years</p> <p style="text-align: center;">Page 139</p>
<p>1 MS BRANT: I think it is extremely important and I think 2 Sarah was saying we don't receive anything to say that 3 the claim has been accepted and, like Sarah says as 4 well, we only know that they have reached eligibility 5 when we receive the letter asking for us to submit 6 further medical records. But that's the only reason 7 that we know the eligibility has been accepted. So 8 I think very early on there needs to be something in 9 place to say eligibility has been accepted, and this is 10 the next part of the process, to keep survivors informed 11 of the process. 12 MR SKELTON: Can I ask you, Mark, just about the 13 correspondence that you are helping people to write and 14 to consider? What is the tone of the correspondence 15 that comes from the organisation? And how does that 16 affect the victim? 17 MR CASTLE: I think, as has been described, it is 18 a bureaucratic correspondence that is going on, and 19 I think what my concern is, is what we are trying to 20 represent here is a sense that society of the state has 21 some concern for the well-being of this individual. And 22 yet, the engagement that is going on has a completely 23 different tone. I understand why there is a need to do 24 that. But I think it could be -- the engagement could 25 be done in a different way that would be more conducive</p> <p style="text-align: center;">Page 138</p>	<p>1 ago, is the fact that my daughters -- Molly was put into 2 trust because, actually, it protected -- it was adults 3 using the money and it goes into trust until they are 4 18. You don't have any choice of where that money goes. 5 You have no say where that money goes. It is put in, 6 you don't know where. If you want to release money 7 every year on their birthday, you have to prove it in 8 a sense -- this is 2008. But the fact is, what I didn't 9 like, was when they reached 18 -- and I chose not to 10 tell them for personal reasons, because of trauma -- 11 before they reached their 18th birthday, a couple of 12 weeks before, a letter would land on the doorstep in 13 their name, and of course they would open it. On that 14 name is, you know, "monies for" -- and they said, 15 "Garry Newlove (deceased)". Well, that is quite 16 upsetting. So if you are going to do communication, 17 make sure you get the language right, but also not 18 retraumatise, which makes me worry, if we're looking at 19 forums, looking at compensation, how they are doing this 20 to traumatised victims. But they are not acknowledged 21 in that way. They just think they have created an 22 online form and then, you know, "We are moving with 23 you". But to have no acknowledgement and having to keep 24 justifying everything, the barriers are horrendous and 25 the communication is the worst thing for any victim of</p> <p style="text-align: center;">Page 140</p>

<p>1 crime, not to understand what is happening with them. 2 MR SKELTON: The decision-making process, we have already 3 touched upon that to some extent and the expectation, 4 I think, from some of the legal side that you have to go 5 through the appeal process. How much is that early 6 decision making almost deliberately blocking the 7 progression by sending it back to the bottom, down the 8 ladder again, in order just to slow down the process so 9 the organisation is saving money. Is that too cynical 10 a view or is that realistically your experience of what 11 is going on? 12 MR GREENWOOD: It is really hard to know whether that's 13 a policy decision that's been made, if that's part of 14 the training that's provided to decision makers or 15 whether it's just an effect of the rules. I don't want 16 to accuse anyone of wrongdoing in this forum, but it 17 feels -- it just feels as though there are arbitrary 18 decisions being made and that training needs to be 19 tightened up, for child abuse at least. 20 MR SKELTON: Any other views on that subject? 21 MS STOREY: There's a complete lack of transparency. So 22 there might be extremely good reasons why they haven't 23 made a decision or why we haven't heard from them, but 24 often it's -- if there are letters in the process 25 saying, "We are waiting for information from the police</p> <p style="text-align: center;">Page 141</p>	<p>1 civil justice system. 2 You get a lump sum for the event and its 3 consequences on you, so the actual abuse and its 4 psychiatric consequences or physical consequences. 5 A loss of earnings claim, but a loss of earnings claim 6 which is very limited. Can you explain that limitation? 7 MR GOODIER: Until the 2008 scheme, the loss of earnings was 8 based on a maximum of 1 and a half years' average 9 earnings. So if you were involved in an accident and 10 you couldn't work or you had a substantially reduced 11 income, you could claim loss of earnings for the full 12 amount with the appropriate multiplier. 13 Now, under the 2008 scheme, despite the Green Paper 14 or the Consultation Paper saying the government will 15 determine to look after the interests of the most 16 seriously injured, the loss of earnings is capped at 17 a maximum of the award for statutory sick pay, which is 18 currently, I think, GBP88.55 a week -- GBP4,800 per 19 annum. So the most you are going to get is 20 a multiplicand of GBP4,800, no matter even if you are on 21 GBP50,000 a year, GBP45,000 a year. That's under the 22 2008 scheme. 23 Also, you only get that if you can do no work or 24 hardly any work, or something like that. So the 25 criteria for the eligibility for an award for loss of</p> <p style="text-align: center;">Page 143</p>
<p>1 and when we have that information we are then going to 2 make a decision on eligibility, and then, once we have 3 made a decision on eligibility, we will do this thing", 4 we don't know what they are waiting for, we don't know 5 why it is taking so long and we don't know until we hear 6 from them. Then, when we do appeal, we have to say, 7 "Excuse me, can you tell me what you have based your 8 decision on and please can we have the paperwork and the 9 evidence that you have based this decision on?", and we 10 have to pay for it. Is that still the case? We have to 11 pay a Data Protection fee to get the information that 12 they have actually made the decision on. So it is not 13 very transparent at all. 14 MS BRUMPTON: Another point about that. There might be 15 a resourcing issue. I think we might be being unfair to 16 them. I don't think they have enough staff, qualified 17 staff, trained staff, to make the decisions. I think 18 there really is a resourcing issue. They don't have 19 enough staff higher up to make the very complicated 20 decisions on complex cases. 21 MR SKELTON: Can I get back to the damages themselves or the 22 award itself. Roger, you mentioned earlier, and I think 23 others made this point, that actually it is very low and 24 it's now been very low for a long time as inflation has 25 taken other areas of damages up, particularly in the</p> <p style="text-align: center;">Page 142</p>	<p>1 earnings is markedly reduced, to the extent that it's, 2 I would suggest, totally unfair and inappropriate, 3 certainly not compensation, anyway. 4 So that's the problem on loss of earnings. Loss of 5 earnings used to be reasonably generous. You had to get 6 all the information. I think it's one of the problems 7 that the authority had, it comes down to resource and 8 staffing issues. Somebody had to provide them with the 9 information of pre-incident earnings. Also, as far as 10 sexual abuse victims are concerned, they may never have 11 earned at all, clearly before the abuse took place, and 12 you are able to make an award for loss of earning 13 capacity under the old scheme. I think that is now 14 extremely difficult to do, if not impossible. So loss 15 of earnings is a serious downturn. 16 Insofar as the awards are concerned, the 2012 scheme 17 knocked out the first five levels of tariff injury 18 awards and reduced some of those existing awards down to 19 the minimum. So this was all part of a cost-saving 20 exercise to reduce the scheme's output altogether. 21 MR SKELTON: Sarah, can I ask you about other awards? We 22 have heard about the general award and the loss of 23 earnings. What about treatment? 24 MR GOODIER: Treatment used to be an important part of 25 the award for a sexually abused victim. The thing, in</p> <p style="text-align: center;">Page 144</p>

1 my view, they often needed was therapy, either cognitive
 2 behaviour therapy or something else called EMDR, which
 3 I have forgotten what it means, but it's a therapy
 4 process.
 5 By the time people came to us several years after
 6 the claim was made, there may well have been chronicity.
 7 But at least the award could include or you could add to
 8 the award an amount of compensation for what's called
 9 special expenses, namely, therapy from a clinical
 10 psychologist, possibly a psychiatrist.
 11 The government said in its paper that the mental
 12 health facilities in this country were so good that it
 13 could all be done under the National Health Service.
 14 Well, it can't, because I have seen countless medical
 15 reports from clinical psychologists who say there is no
 16 appropriate facility in their region. Maybe in some
 17 regions there are, but in a lot of regions there are
 18 not.
 19 Furthermore, if you do go under the National Health
 20 and there is the therapy available, you will not see the
 21 same therapist all the same, or you're certainly not
 22 guaranteed to see the same therapist all the time. What
 23 is needed is speedy access to the therapy services to
 24 try to avoid, or at least ameliorate, the chronicity of
 25 the condition. That can't be done now -- or it could be

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1 done, but it would come out of the tariff award. So you
 2 may get an award of, say, GBP20,000 for the injury, the
 3 tariff, for the sexually abused person -- I forget what
 4 the actual tariff awards are. But out of that now, if
 5 you want to have the therapy, you have to pay for that
 6 therapy out of the injury award.
 7 MR SKELTON: Helen, you were, I think, agreeing with most of
 8 that?
 9 BARONESS NEWLOVE: Therapy is a difficult area to fulfil
 10 because mental health now is kind of the pendulum
 11 swinging and there aren't enough people out there with
 12 services to give the support. This is my concern in
 13 this whole area. Because the government keeps saying
 14 there is, and I am independent to the government, but
 15 the whole point is, there aren't enough specialists.
 16 Even -- you know, I've observed a lot of hearings and
 17 heard that prisoners are waiting 18 months. I know that
 18 isn't the ball game, but if they are waiting 18 months
 19 in there, Joe Bloggs on the street is going to be
 20 waiting a lot longer. It is a specialism that is not
 21 right -- there is a shortage of clinical psychologists.
 22 It is a huge area that cannot be filled. I have known
 23 victims to pay privately for this. You offer a six- to
 24 eight-week block, which is nothing, that is just
 25 breaking it. Personally, my family have gone through

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1 this. There are different levels to this therapy. So
 2 you may gain one tier, but struggle to get tier 2. This
 3 is a huge area that needs looking into as well.
 4 MS BRANT: I think that survivors have told Rape Crisis
 5 Services over many years they want to access specialist
 6 sexual violence therapeutic services. They don't go for
 7 the medical model of therapy. They feel safe and they
 8 trust in specialist services that provide specialist
 9 therapeutic services.
 10 With regard to NHS treatments, they may be referred
 11 to an IAPT service, which is via their GP, that's six
 12 sessions and out. They're better after six sessions.
 13 There is no choice of gender within those therapeutic
 14 settings. Again, six sessions is often not enough for
 15 those who have experienced sexual violence over many
 16 years.
 17 MR SKELTON: Sarah, did you have a point to make about that
 18 and also a point whether there are any other areas of
 19 significant injury or award which we haven't considered?
 20 MS BRUMPTON: Just the other aspects of special expenses.
 21 We talked about loss of earnings and the private medical
 22 treatment, but also there is a claim for care or
 23 support. But that also was restricted in the 2012
 24 scheme, so that, before that, you were able to claim for
 25 care with support and in a much more wide way. Now it

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1 is restricted to only help that you get with meal
 2 preparation and to avoid danger to yourself or others.
 3 So it is really restricted back to the care claim, so
 4 much more restricted now as well, which is another
 5 reason why specialist representation is needed in order
 6 to try to get into those care claims, if you possibly
 7 can. A lot of the victims we work with are being cared
 8 for by somebody very regularly and they are quite hard
 9 to pursue.
 10 In addition to that, the care and loss of earnings
 11 and the tariff, if a person lacks capacity, you can also
 12 make a claim for the cost of appointing a deputy to
 13 represent them as well.
 14 MR SKELTON: I think Rebekah mentioned in one of the earlier
 15 sessions that some sufferers of child sexual abuse have
 16 effectively been denied an education because of that
 17 abuse or as part of that abuse. Is there any way that
 18 can actually translate into damages beyond the existing
 19 so-called general damages for the event and then loss of
 20 earnings?
 21 MS BRUMPTON: It is very difficult under the 2012 scheme.
 22 Roger might correct me if I am wrong, but I think you
 23 have to have worked for a certain period before and you
 24 have to have limited or no capacity for work. It is so
 25 restrictive that it would be difficult to pursue a loss

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1 of earnings claim -- not to say that we wouldn't if we
 2 felt we could do it, but, also, you've lost the award
 3 for loss of earning capacity as well. We used to get
 4 those for abuse victims.
 5 MR SKELTON: The last thing I wanted to ask about was, we
 6 talked about the experience of those in the early stages
 7 going through with their lawyers and the communications
 8 and the problems with the tone of the communication as
 9 well as the lack of response. What about when it gets
 10 to the appeal stage and there is an order of hearing?
 11 How does that compare for those who represent people in
 12 those circumstances to the civil justice system in terms
 13 of the experience of going through that process as
 14 a victim and survivor?
 15 MS BRUMPTON: Could I answer that? It is absolutely
 16 horrific, basically. I have recently had a hearing with
 17 a lady who was a victim of sexual abuse and she resisted
 18 an appeal hearing because something had been raised
 19 about her claiming a benefit. The whole day was
 20 absolutely horrific for her. It was a terrible
 21 experience. We had it at a hearing centre where there
 22 wasn't really enough room for us. She found it all very
 23 difficult. It was a very brutalising experience for
 24 her.
 25 MR SKELTON: Can you describe in a bit more detail, what was

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1 it that was so unpleasant?
 2 MS BRUMPTON: It is very unpleasant for anybody to turn up
 3 at a hearing, having a barrister to represent them, who
 4 they had only just met that day, because we were limited
 5 on costs and we have to get the representation that day.
 6 The thought of going to sit before a panel while they
 7 questioned her about certain claims she's made for
 8 certain benefits, and being cross-examined on that. The
 9 whole thing was really horrific for her.
 10 I'm not sure that, now we have been through that,
 11 whether she will pursue it any further. I think the
 12 thought of going through another one, which isn't
 13 outside the realms of possibility, would be too much.
 14 MR ENRIGHT: One thing I wanted to highlight on this issue
 15 that's often raised with people, my clients, core
 16 participants, is when you go through, for example, the
 17 CICS scheme, you have to again and again tell strangers
 18 about the facts of these most appalling events.
 19 First of all, you have to tell the lawyer, who is
 20 a stranger, and go into complete detail with them about
 21 that. Then you may have to see a medical expert, and
 22 tell another stranger about the same thing. Then you
 23 may appear in front of the tribunal and tell a panel of
 24 strangers all about your most intimate history.
 25 That is a thing that is forgotten in these processes

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1 that puts a lot of people off, is having to tell again
 2 and again and again your story of abuse.
 3 MR BRIDGE: Again, a real life example of how difficult it
 4 is, we had a client who had been sexually abused by
 5 her father as a child and she went to the police. He
 6 was prosecute and acquitted. We had a CICA claim that
 7 we ran. It was rejected at first instance. It was
 8 rejected on review. So it went to an appeal hearing.
 9 It was potentially a big case, because this lady
 10 hadn't worked and it was under the old scheme, so it was
 11 a big loss of earnings claim.
 12 We went to three separate barristers' chambers that
 13 we use regularly and said, "Look, these are the facts of
 14 the case. There has been an acquittal, but we think she
 15 will come across well. It is a big claim. Will you
 16 take this on on the same basis that we are funding the
 17 claim?", so it was effectively no win, no fee. All
 18 three barristers' chambers refused to take the claim on,
 19 and that included junior barristers who might have been
 20 wanting to make a name for themselves and possibly get
 21 more work from us in the future. We couldn't find
 22 a barrister to represent her.
 23 Luckily, we had a young solicitor who went along,
 24 and also the lady came across fantastically well. She
 25 was very eloquent. She won the appeal and she was

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1 awarded over £300,000 in November in damages.
 2 But that just shows how difficult it is. There is
 3 no equality of arms. You're up against an advocate on
 4 the part of CICA. I know it is not an adversarial
 5 forum, but it is still very, very difficult for clients
 6 to get adequate representation.
 7 MR SKELTON: Madam, do you and the panel have any questions?
 8 MS SHARPLING: Just a general question, whether anybody is
 9 aware of whether CICA undertake any promotional
 10 activities to promote their services to the wider
 11 public? We have heard about the website.
 12 MR FRANK: I'm not sure the question was directed at me,
 13 but, again, referring, if I may, to their annual report,
 14 they speak very highly of the stakeholder engagement
 15 exercise that they have been conducting in the last
 16 year.
 17 MR GOODIER: Could I just make one or two points about the
 18 appeal process?
 19 When I was the chairman, we were seriously very
 20 concerned about the problems facing applicants,
 21 appellants, who have to come and prove their case on the
 22 balance of probabilities. One point I should stress is
 23 that, under the rules, the hearings are held in private.
 24 Subject to the agreement of various parties, it can be
 25 made public, but the presumption is a private hearing.

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<p>1 It is a bit unusual in the criminal justice system, 2 but I think the idea -- it is in the rules, it is not 3 something I have dreamt up. I think it is really to try 4 to make sure that victims don't get publicised in the 5 papers about their cases. 6 Secondly, we did introduce a DVD. I don't know 7 whether anybody has seen it. In about 2004, we produced 8 a DVD. We were asked to do so because I think SENDIS, 9 another tribunal, produced a DVD. So we thought it was 10 a good idea, and we sent it out to all appellants, or 11 their representatives. It cost 50p, which I thought was 12 a pretty good deal. I think that's stopped now, 13 unfortunately. But that was at least a way of showing 14 victims/appellants what is likely to happen at oral 15 hearings. I think it was quite well received. 16 But I entirely agree, coming to an oral hearing or 17 a panel, a bit like today, can be a daunting experience, 18 particularly when people are not used to appearing in 19 this sort of forum. 20 I don't know what the answer is, quite frankly. 21 I think under tribunal reform proposals there is 22 a proposal that there should be oral hearings only as 23 a last resort -- this is for all cases -- and that they 24 should be Skyped but there should only be one judge. 25 Now, it is not for me to say whether people would</p> <p style="text-align: center;">Page 153</p>	<p>1 good. 2 My clients, the sexual abuse clients, tend to 3 relate -- I don't know why this happened -- to and speak 4 to the medical member of the panel, rather than anyone 5 else on the panel. Although it is generally the chair 6 that speaks, my recollection is that medical officers or 7 medical members of panels tended to take a lead on 8 opening up questions with the clients. So I did get 9 some positive experiences from the actual panels, 10 because they were pretty civilised experiences in terms 11 of how clients were treated by the panel. 12 CICA legal members could be aggressive at times, but 13 could also be pretty understanding and pretty good. It 14 depends who you get, I suppose. 15 MS STOREY: I think my experience is similar to David's, in 16 the sense that, after some difficult and bureaucratic 17 delay from CICA, the panels themselves were an 18 opportunity for our clients to tell their account of 19 what's happened. 20 I remember very early on in my career a woman who as 21 a child had been raped. Her abuser was acquitted, and 22 he also happened to be a police officer and a family 23 friend who had raped her. For her, she went to CICA 24 appeal and they found that, on the balance of 25 probabilities, it had happened and she was eligible for</p> <p style="text-align: center;">Page 155</p>
<p>1 prefer there to be one judge or three, but from my point 2 of view, as the chairman, a panel of three might 3 initially appear to be more daunting, but especially 4 abuse victims may be able to engage more with one person 5 than the other two, and we always try to get a balance, 6 certainly a gender balance, on the tribunals because we 7 recognise that this could happen. 8 Now I'm not saying we are always perfect about this, 9 but there was usually one doctor, one lawyer and one 10 "lay" member, ie, not medically/not legally qualified. 11 I would be interested to know what legal 12 representatives think of the idea that there should only 13 be one judge. To my mind, it would not be as successful 14 as having three people on the panel with all different 15 views. 16 I think it's essentially a cost-saving device, in my 17 view. 18 MR GREENWOOD: Can I just add my experience to this input. 19 It's more than five years now since I have conducted 20 a panel, but my experience was that, although the 21 buildings that they had us go to were a bit tatty and 22 the rooms were a bit tatty and there was very little 23 privacy, the actual hearings -- apart from the CICA's 24 advocates often being a bit aggressive, apart from that, 25 we found or I certainly found the panels to be quite</p> <p style="text-align: center;">Page 154</p>	<p>1 an award. That hearing was so important to her and so 2 valuable because she was believed, and so there was 3 a really important process there and the hearing meant 4 an awful lot to that person beyond the money that she 5 was awarded. 6 But she had to go a long way to get that 7 accountability, and she had a long bureaucratic journey 8 through the CICA scheme before she got to that hearing. 9 But it was a massively positive outcome for her and 10 I think was a real help to her. 11 MR EVANS: Just one question, if someone can help me. This 12 is going back to the question of the costs. Perhaps 13 understandably, people were a little reluctant to 14 perhaps pin a figure on the minimum value of a case that 15 they felt it was possible to take forward. We won't 16 return to that. But I think it was said that, as 17 a result, there were a number that you felt unable to 18 help with. 19 I'm just wondering whether perhaps you could say 20 a little bit more about what those numbers that you feel 21 you were unable to help with might be and whether that 22 has increased or diminished with the 2012 scheme? 23 MS STOREY: I think it would be fair to say that it's 24 increased significantly because of the loss of earnings 25 difficulties and because of no compensation for therapy.</p> <p style="text-align: center;">Page 156</p>

1 There are many cases where you would say to
 2 somebody, "It wouldn't be proportionate for you to
 3 employ a lawyer to help you with this and you may be
 4 able to get" -- we are pushing back on the specialist
 5 services, and Rebekah and Mark probably know this,
 6 because we would then say, "We want you to keep the
 7 compensation you actually get, so talk to your local
 8 Rape Crisis, talk to your CAB, talk to your victim
 9 support person".
 10 So we are trying to signpost people, or suggesting
 11 that they come back to us if they have any questions or
 12 queries. But it wouldn't work for the victim/survivor
 13 to have a lawyer involved in the smaller cases.
 14 MR GREENWOOD: I personally don't put a bottom line on them.
 15 If they walk through the door and they have deserving
 16 cases and we think they have got some chance, then
 17 I would take it on, even if the 25 per cent of their
 18 damages equated to a few hundred pounds. We have staff
 19 that will be able to deal with it. Why not help them?
 20 MR ENRIGHT: The difference is that your firm has
 21 specialised for very many years in this and has a range
 22 of staff. But you are where you are geographically.
 23 The thing is that there are wide deserts where
 24 people cannot -- they cannot go into a high street firm
 25 and get assistance around this kind of thing. There are

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1 very few firms in this country -- I think it was
 2 estimated on the last occasion there are somewhere
 3 around 17 firms in the whole country who specialise in
 4 child abuse type work.
 5 So if you were to go to a run-of-the-mill solicitor,
 6 the wide majority of solicitors, they probably would
 7 take a view like this and say "We can't do it", or, "We
 8 will have to take a large proportion of your damages".
 9 So you make a very good point. People find it difficult
 10 to answer, it is very difficult to answer, but there are
 11 huge deserts where you will not get representation.
 12 MR SKELTON: As before, may I ask if those sitting in the
 13 room have anything they would like to say?
 14 CORE PARTICIPANT - MR O'MARA: Nigel O'Mara, East Midlands
 15 Survivors.
 16 The amount of time that we have spent talking about
 17 the interruption of the education of child sexual abuse
 18 survivors I think has been minimal. This affects every
 19 single child sexual abuse survivor; absolutely every one
 20 has their education affected in some way or other. It
 21 not being part of the system of redress and reparation,
 22 I think it is absolutely important and something we
 23 really need to recognise.
 24 CORE PARTICIPANT - MR ROBSON: Peter Robson. Stanhope
 25 Castle Survivors. With the victims and the

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1 perpetrators, I think it's about time the law was turned
 2 around.
 3 If I commit an offence, I can get Legal Aid, no
 4 problem. Now I have got money, I've got sterling in my
 5 pocket here -- a bloke has been awarded GBP3 million in
 6 Legal Aid. At the same time, again, that year
 7 (inaudible) I'm told in that meeting that because he's
 8 got a criminal offence, he can get Legal Aid.
 9 People like me, earning GBP200 or GPB300 if we're
 10 lucky, you can't because you're GBP2 or GBP20 over the
 11 limit. Yet the man earning 2 and quarter million can
 12 get 3 million in Legal Aid. So there's that thing.
 13 What I'm trying to point out there is, the criminals
 14 are being given everything they want. The victims are
 15 being kicked in the teeth again.
 16 MS COATES: Sheila Coates, Victims and Survivors
 17 Consultative Panel to the Inquiry.
 18 I just want to make some overarching type comments,
 19 really, about something that you said about firms going
 20 to the specialist sector. If that continues at this
 21 rate, the whole system is going to break. It can't keep
 22 up with that number of referrals.
 23 Referrals that go to the non-specialist sector, what
 24 actually transpires, there is individuals who are
 25 employed, and people who really want to help, and then

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1 when it goes to the Criminal Injury Compensation
 2 Authority, it is either turned down or the payouts are
 3 less because the person trying to help doesn't know what
 4 they are doing, even though they are doing it with the
 5 best possible intentions.
 6 Specialist providers, as we said, are being referred
 7 to more and more, so that's a problem I think we need to
 8 look at.
 9 In the conversation today, we have spoken a lot
 10 about the legal profession, but I don't think we know
 11 enough about what's happening in the specialist sector
 12 or the voluntary sector into compensation. We have no
 13 idea of what numbers, what numbers of people go through,
 14 who is doing what, what training they have, what
 15 specialisms they have. It is a whole unknown area.
 16 I think one of the elephants in the room is, there
 17 are a lot of victims and survivors who are angry at
 18 lawyers taking money on the back of their abuse. That's
 19 how it's seen.
 20 So anything that we suggest further on or changes
 21 that happen further on, we need to be aware of that. It
 22 hasn't been said really today, but that is something
 23 that is of great concern.
 24 Lawyers: is there a cap on what they can take from
 25 individuals' payouts? Do they all charge the same fees?

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1 Do they charge different amounts? That's another area
 2 that I think we need to look at.
 3 MR SKELTON: Madam, I think that concludes the first of
 4 the afternoon sessions. We will reconvene in 15 minutes
 5 at 3.30 pm.
 6 (3.17 pm)
 7 (A short break)
 8 (3.35 pm)
 9 Discussion re reform
 10 MR SKELTON: This is the final session of the day, and the
 11 subject is reform. We have discussed in the earlier
 12 sessions the criminal injuries scheme, the award scheme,
 13 and we have also discussed the awards the court can make
 14 in the first session.
 15 I would like now to hear the views of those around
 16 the tables as to potential areas of reform.
 17 Could you also address, perhaps in a basic sense,
 18 whether or not you think the schemes are worth keeping
 19 as well as reforming.
 20 I will go around the table, because it might be
 21 easier, rather than having a thematic discussion. We
 22 have dealt with so many of the issues already today that
 23 it didn't seem worthwhile having a thematic
 24 conversation.
 25 But can I also emphasise that, obviously, as you are

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1 well aware, we don't have around the table the CICA or
 2 other stakeholders -- the Ministry of Justice or,
 3 indeed, the Treasury -- to answer some of your proposals
 4 or answer some of your criticisms, implicit or explicit.
 5 So we can't take the debate obviously to its
 6 ultimate conclusion about practicality and viability of
 7 funding, et cetera, so we will be interested in your
 8 ideas.
 9 Can I start with you, Sarah? The compensation
 10 awards in the criminal justice system first and then we
 11 will turn afterwards to the CICA?
 12 MS BRUMPTON: I do see a system there for people working
 13 together. My concern about that, the criminal
 14 compensation awards, is that it just ties the victim in
 15 to the perpetrator for a while. In my practice,
 16 I haven't come across many situations where that's
 17 actually worked for the victim in terms of recovering
 18 money from the perpetrator. So I don't personally have
 19 a view on how that could work better. I think that's
 20 probably for the criminal justice people to look at
 21 that.
 22 In terms of the Criminal Injuries Compensation
 23 Scheme, it is a good scheme. It has a lot of benefits
 24 and it has a lot going for it. But I think, in terms of
 25 what's provided for victims of sexual abuse, it needs to

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1 be reformed in terms of how they are dealt with
 2 throughout the process from the start to the end, and
 3 also reformed in terms of the awards made to victims.
 4 I understand there are funding issues, but at the
 5 moment the awards are so low that it does put people
 6 off; a lot of the procedures put people off as well.
 7 MR SKELTON: So you would keep the CICA as an institution
 8 for the government to award damages for victims of child
 9 sexual abuse?
 10 MS BRUMPTON: Yes. I do think it has a lot of advantages.
 11 I just think that, at the moment, the way the system is
 12 administered by the CICA it's got some difficulties and
 13 some problems and it's not helping victims and
 14 survivors. I think that does need reform.
 15 One of the things that's come out today, I think, is
 16 that when cases do get to appeal, outcomes are quite
 17 good and they do get justice and they do get the
 18 outcomes at the end. So it is just the whole process
 19 that is causing a bit of a problem, putting people off
 20 and making it very difficult.
 21 MR SKELTON: Just to push you on the specifics of those, we
 22 have obviously discussed things like the issue of
 23 consent, we have discussed the Same Roof Rule, the time
 24 limits. Would you advocate reform of all or a bulk
 25 abolition of all of those things?

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1 MS BRUMPTON: As we have discussed today, and everybody else
 2 has submitted, the "same household" rule is too
 3 arbitrary and should be scrapped, and the consent issue
 4 as well, I agree with all that.
 5 MR SKELTON: Thank you. Roger?
 6 MR GOODIER: I think the awards ought to be brought more
 7 into line with the civil personal injury claims.
 8 I think there is a scope for joining up the various
 9 threads from the criminal compensation orders, Criminal
 10 Injuries Compensation Scheme awards and civil claims.
 11 How that would work, I don't know, but there may be some
 12 scope for joining them together so that applicants don't
 13 have to go through three processes.
 14 I think the pre-2012 loss of earnings rules ought to
 15 be re-introduced. I think they are presently unfair.
 16 The special expenses, especially regarding therapy,
 17 ought to be re-introduced.
 18 The compensation cap of GBP500,000 has remained the
 19 same since 1995, and that would now be worth about
 20 GBP850,000 had it kept pace with inflation.
 21 The criminal convictions rules whereby people can
 22 have no award at all are cruel in many respects and
 23 ought to be changed.
 24 Generally speaking, we are looking for fairness and
 25 compensation, in the true sense of the word. I think

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<p>1 those are areas that ought to be addressed. 2 One final point: whereas the Armed Forces Victims 3 Scheme always had a spokesperson, particularly in the 4 House of Lords -- I think it was Lord Morris of 5 Wythenshawe, he was always putting the point of view of 6 the armed forces, and it worked. 7 There doesn't seem to be anybody in parliament who's 8 known to be speaking passionately on behalf of victims 9 of crimes of violence, particularly child sexual abuse. 10 I may be wrong about that, but it certainly didn't come 11 out resulting in 2012 scheme. It would be helpful to 12 have some political clout when it comes to reform. 13 MS STOREY: I would echo what Sarah and Roger have said. 14 I think also it's really not about replacing the scheme, 15 but reforming it. 16 I think the CICA needs to raise its profile so that 17 more people are aware of the scheme. 18 I echo the comments about proper compensation being 19 paid to victims of sexual violence. I think that the 20 scheme ought to be more flexible to offer all heads of 21 loss, like lost education, like putting back in place 22 loss of earnings. 23 But I think the therapy thing is very, very 24 important. I think with other redress schemes in 25 different jurisdictions where they have support and</p> <p style="text-align: center;">Page 165</p>	<p>1 MR SKELTON: The other point I would like to raise with you 2 is funding. The last person to comment in the last 3 session said that some victims and survivors find it 4 difficult, the fact that they have to pay their lawyers, 5 or their lawyers take money out of their compensation. 6 Obviously, we are all keenly aware that that is not 7 an ideal situation. There isn't public funding 8 available for legal services, and the relationship has 9 to be funded somehow. What reforms might be made? 10 MS STOREY: There is the possibility of Legal Aid. 11 Legal Aid has been cut back significantly, so there is 12 no Legal Aid for this kind of work. 13 In other jurisdictions, redress boards have provided 14 for the payment of proper compensation plus the payment 15 of legal costs in addition. I think that would be 16 a more comfortable position for us all to be in, because 17 the last thing we want to do is to reduce the limited 18 amount of compensation that's going to survivors. So 19 I think there should be reform in that area. 20 When we advise people, either as part of a formal 21 advice or whether we are providing pro bono advice to 22 people, saying, "Well, this is where you have got to 23 with the scheme, this is the kind of evidence you are 24 going to need to make your case work properly, and it is 25 going to cost X amount of pounds".</p> <p style="text-align: center;">Page 167</p>
<p>1 therapy in place whilst people are reporting, so that 2 there is support for people who are going through this 3 process. 4 But, equally, I think that the process needs to be 5 properly resourced so that you don't get delays or 6 bureaucratic sort of hurdles to get over. 7 So the whole process has to be resourced properly. 8 That includes training of staff and panel members 9 properly as well. 10 MR SKELTON: Would you advocate the authority directly 11 funding the provision of support and therapy, as opposed 12 to giving funds or allocating funds within the award for 13 that purpose? 14 MS STOREY: I think so. I think that, as the process is 15 going on, it would be very helpful for that to be 16 delivered. But it has to be the claimant's choice. 17 We are talking about a vulnerable group of people 18 who are going to be suspicious of something that is 19 being imposed upon them and they want to take back 20 control. Part of the healing process is taking back 21 control of one's own life, having had the control taken 22 away in the first place. 23 So I think, in certain cases, that would work. But 24 for other people, they would want to make sure that they 25 were in charge of their own rehabilitation.</p> <p style="text-align: center;">Page 166</p>	<p>1 We are talking about the cost of getting medical 2 evidence, we are talking about the cost benefit analysis 3 that has to be done. It is very difficult for people, 4 because there are no guarantees that, even if they were 5 to obtain that evidence, it would improve their chances 6 of getting proper and full compensation for what they 7 have been through. 8 MS BROWN: I agree with all the points that have been 9 mentioned so far. 10 Perhaps, in addition, however, just following on, 11 something that the Baroness is quite passionate about is 12 the importance of a victim's advocate that could be 13 there from the start of the process to assist the victim 14 throughout and assist with things such as applications 15 for compensation and guidance on the best measure, and 16 explain the options and avenues into compensation that 17 the court system -- the civil process as well as the 18 CICA scheme - and also just take them through the 19 technical forms that perhaps the victim would not be 20 familiar with. 21 This advocate may be someone who is fully trained, 22 they may not be legally qualified, but they're fully 23 abreast in terms of the forms and they have had 24 experience and knowledge of what's required so that they 25 can assist with the application process, and also just</p> <p style="text-align: center;">Page 168</p>

<p>1 give general advice to the victim about what to expect 2 and their expectations as well when they are going 3 through these applications, that there is the 4 eligibility criteria, explain the procedure to them so 5 that they're not disappointed at any outcome. 6 So I think a victim's advocate would be a key 7 priority that the Victims' Commissioner would be 8 advocating. 9 We also heard earlier from the Victims' Commissioner 10 the option of upfront compensation payments. So if the 11 court were to pay that to the victim, rather than the 12 victim having to rely on the defendant and their 13 financial status or willingness to pay the compensation, 14 where it's court-placed compensation, if that were made 15 available upfront through the court, and then it's the 16 court's duty then to recoup that from the offender, it 17 means the victim is not having to wait for unlimited 18 amount of time to get that compensation. 19 Also, in terms of the funding aspect, we touched 20 earlier on victim surcharge and how that goes towards 21 funding Victim Services. Perhaps consideration could be 22 given to increasing the tariffs. At present, I think it 23 is something like 10 per cent of the fine goes towards 24 the victim surcharge, or GBP20, or something to that 25 effect. But perhaps if the tariffs could be increased,</p> <p style="text-align: center;">Page 169</p>	<p>1 asking the inquiry to consider making such 2 recommendations at a very early stage. 3 We don't need to fix the whole CICS system this 4 afternoon, but there are certain things none of us 5 disagree with, or there would be very little 6 disagreement over. 7 They are, obviously, that the CICA approach to 8 consent be changed immediately, to be consistent with 9 the legal definition that everyone else understands. 10 Secondly, to remove, first of all, this 1964 11 cut-off. It is unfair. The pool of people affected is 12 small and ever-shrinking. 13 Thirdly, to remove the 1 October 1979 "under one 14 roof" or "under same roof" rule. Again, it is wholly 15 unfair and unjustifiable. 16 Fourthly, to amend paragraph 87 of the rules, which 17 is in relation to the two-year time limit; that in cases 18 of child sexual abuse, there should be a presumption in 19 favour of waiving the time limit. 20 Fifthly, and a very simple thing to do with widening 21 knowledge of the CICS, that; the police officer or CPS 22 person charged with the conduct of a case provide 23 a leaflet to the victim with key information regarding 24 the CICS scheme, but also with the key information 25 required by the CICS already completed, ie, crime</p> <p style="text-align: center;">Page 171</p>
<p>1 then the extra funding from that could go towards 2 providing assistance, maybe some kind of assistance for 3 legal representation or another assistance that the 4 victim could benefit from, going into the compensation 5 pot as well. 6 I think those are some of the concerns or things 7 that I would raise. 8 MR SKELTON: Roger mentioned political advocacy. Obviously, 9 the Baroness has a place in the House of Lords. 10 Presumably, she has a mandate across the whole range of 11 victims' interests, but one of the issues will be, going 12 forward, this issue, one would hope. 13 MS BROWN: Indeed. The Baroness is constantly raising these 14 issues and listening to victims that contact the office 15 with these concerns. 16 You have heard from her that she is keen to see 17 access to compensation made more easily and readily 18 available, and not so complicated for victims to access. 19 So that is something that's continuously been raised 20 by the Baroness, and hence her attendance here today and 21 to other similar meetings and reviews that she carries 22 out to highlight some of these concerns. 23 MR ENRIGHT: Once again, we have had a very good discussion, 24 as we did with the civil seminar. There are a number of 25 items or suggestions, and my clients and I would join in</p> <p style="text-align: center;">Page 170</p>	<p>1 number, et cetera, so that can move that forward 2 quickly. 3 Sixthly, something I think that Tracey talked about 4 was to establish a specialist department within the CICS 5 that has been specifically trained in the complex issues 6 around child sexual abuse. Again, I think that's 7 a no-brainer. It is a complex specialist area. There 8 is no reason why there shouldn't be a specially trained 9 department. 10 Two last points in relation to criminal compensation 11 orders. Where they are made by the court, they should 12 be paid out of public funds and the state should seek to 13 recover those monies from the perpetrator plus 14 interest -- plus interest. 15 Finally, that Legal Aid be made available for at 16 least appeals to the tribunal. 17 I think that all of those things, Madam Chair, are 18 things that the panel could recommend pretty much now. 19 They're not very costly, not very difficult, and they 20 would enjoy near universal support. 21 MR CASTLE: I suppose I have to agree with what everyone 22 else has said so far. 23 I think consent I agree with. I understand why 24 there is a difference between fact and law. Of course 25 we wouldn't want to be paying compensation to two</p> <p style="text-align: center;">Page 172</p>

<p>1 15-year-olds who were engaged in consensual sexual 2 activity, but there is a big difference between that and 3 a 13-year-old being groomed by a gang, and we need to 4 address this issue of consent.</p> <p>5 Unspent convictions. Again, I think it's really 6 important that we understand the environment we are in 7 and what impact that has. The idea that someone who 8 doesn't pay their TV licence fee should not be eligible 9 for compensation as a result of that just doesn't make 10 any sense. So I think linking that to the Code of 11 Practice for Victims of Crime, which clearly states 12 which crimes would have an impact, is important.</p> <p>13 The 1979 rule, again, I would agree 100 per cent 14 with what has been said.</p> <p>15 In terms of compensation, again, I agree that what 16 we are looking for here is something that prevents the 17 revictimisation of the victim, and the state should take 18 a role in this in order to minimise the impact on the 19 victim.</p> <p>20 I think in the Netherlands there's a good case of 21 where the government does have a scheme in place. They 22 will deal with up to a maximum of 5,000 euros and they 23 will pay it. I think there is a good example there of 24 where it works.</p> <p>25 My final point would be a recognition of the role of</p> <p style="text-align: center;">Page 173</p>	<p>1 mistrustful of authorities, who have been treated badly 2 by authorities, who don't want to come forward now, to 3 come forward. It would be an integrated approach.</p> <p>4 On my wish list, I would like this institution to be 5 able to allocate investigators and case workers, and be 6 able to make decisions on cases on balance of 7 probabilities as to, you know, whether abuse had 8 happened.</p> <p>9 It would have these investigators and case workers 10 dedicated to looking after individuals. It would make 11 sure that cases were referred to the police. It would 12 check that the police were doing their job, 13 investigating crimes and looking after victims of abuse 14 properly. It would carry out these investigations.</p> <p>15 It would have the power to award compensation. It 16 would be able to claw back funds from either 17 perpetrators or institutions or their insurers, if that 18 money had been paid out.</p> <p>19 So whilst it is going to come at a cost, some of 20 that cost can be clawed back from different bodies.</p> <p>21 So that's my certainly preferred approach.</p> <p>22 MR SKELTON: Would you remove the criminal compensation 23 orders system as well? Would that be replaced, 24 effectively, by your separate body or would that still 25 be maintained within the criminal justice system?</p> <p style="text-align: center;">Page 175</p>
<p>1 the specialist services and what they do in this space 2 to try to help people to navigate the system and the 3 Criminal Injuries Compensation Authority, in particular. 4 I think there would be benefit derived by the authority 5 that maybe should be looked at in terms of some sort of 6 funding to help us to do that.</p> <p>7 MR GREENWOOD: My view is slightly different, and I am 8 informed by the discussions we had in the reparations 9 and accountability seminar.</p> <p>10 My view, really, is that Criminal Injuries 11 Compensation Authority as it deals with child abuse 12 cases should no longer be allowed to deal with child 13 abuse cases, and that they should be brought out and be 14 looked after by a completely independent body which 15 would be the first point of call for victims of child 16 abuse.</p> <p>17 That would not only mean a redrafting of the rules 18 on compensating victims of child abuse from public 19 funds, but it would also enable them to come forward to 20 a new body, which is independent of government, which 21 would have the trust of survivors, which would be 22 staffed by specialists and would create a go-to body.</p> <p>23 It would not only deal with redress -- and I'm 24 a strong advocate of the Irish redress model -- but it 25 would also build trust, it would enable people who feel</p> <p style="text-align: center;">Page 174</p>	<p>1 MR GREENWOOD: I would use or amend the powers that the law 2 gives us at the moment to enforce orders such as those 3 against perpetrators and to feed that money into the 4 funding of this system.</p> <p>5 MR SKELTON: Thank you.</p> <p>6 MR BRIDGE: Starting with the criminal compensation orders, 7 I think that's straightforward from my perspective. 8 I would get rid of those straight away. I think the 9 criminal system is there to punish. The civil system 10 and the CICA system is there to compensate. I think 11 blurring those lines is dangerous.</p> <p>12 The orders aren't subjective. They aren't based on 13 what the client has suffered. So I would leave that 14 side of things to the civil courts and the CICA.</p> <p>15 I'm not as radical as David. I wouldn't get rid of 16 the CICA, I think they do have a role, but they 17 certainly aren't fulfilling that role at the moment.</p> <p>18 Abuse victims really face a lottery at the minute. 19 If you were abused as a child by a priest or a teacher 20 or a Scout leader, you have a claim that will be 21 properly compensated. You can claim from their 22 employers or insurers. In most cases, you will end up 23 fully compensated: you will get all of your loss of 24 earnings, all of your treatment costs, a proper award 25 for the pain and suffering you have been through.</p> <p style="text-align: center;">Page 176</p>

1 If that abuser was a next-door neighbour, you would
2 be forced to go to the CICA and your award will probably
3 be probably GBP16,000, or in that region. It will be
4 possibly a tenth of what you would get if that abuser
5 was actually somebody who had insurance backing on a
6 vicarious liability basis.

7 It can't be fair that these people are being treated
8 so differently by the system just because the abuser had
9 a slightly different entity when the abuse took place.
10 So I think the CICA scheme needs fairly serious
11 amendment.

12 It did used to work. Many years ago when we had the
13 CICB, the case I mentioned earlier, it was a very
14 valuable one, that was a CICB case, and under those
15 schemes there were limits, but you were compensated in
16 a similar way to what you would have been in a civil
17 court. So the victim of the next-door neighbour got
18 a very similar award to the victim of the priest or the
19 teacher.

20 I think we need to move back to that. I think Roger
21 was right, the 2008 scheme was much better because the
22 loss of earnings were much more generous, but even the
23 2008 scheme was quite limited, and I would like to see
24 the CICA go back to the old 1995 CICB, where the damages
25 were much more akin to civil damages. I know there are

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1 funding issues about that.

2 But as an example, the Motor Insurance Bureau. If
3 you are involved in an accident and the person who
4 caused that accident is uninsured, there is a bureau
5 that will deal with the claim. In the same way we have
6 been talking today about making sure that the
7 perpetrator compensates, they make sure that the
8 uninsured driver ultimately compensates the damages that
9 they have to pay out to the victim. But in the first
10 instance, the victim does get proper compensation from
11 the bureau. There is no reason why the same thing
12 couldn't happen with an amended Criminal Injuries
13 Compensation Scheme.

14 MS BRANT: I advocate the keeping of a single scheme,
15 whether that be a new scheme or the existing scheme that
16 is looked at and amended.

17 The removal of the two-year time limits, and if
18 there is to be a time limit in place, then that may be
19 two years from the conclusion of the criminal
20 proceedings.

21 An immediate stop to under 16s receiving letters
22 stating that they consented.

23 Online grooming and abuse being classed as a crime
24 under "crime of violence" within the scheme.

25 Introduction of specialist, trained criminal

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1 injuries compensation assessors or teams, specifically
2 work around sexual violence.

3 The reintroduction of the interruption to education
4 or capacity to work with immediate effect.

5 Legal Aid being available for appeal processes.

6 And a focus -- again, which is what Mark said -- in
7 terms of what is happening in the specialist and
8 voluntary sectors.

9 Just to pick up on what Michelle said, in terms of
10 victim advocates, obviously in terms of independent
11 domestic violence advisers and sexual violence
12 advisers/advocates, there are already advocates or
13 advisers that are specially trained in place carrying
14 out that function, but that may be something that could
15 be expanded on.

16 MR SKELTON: Thank you very much.

17 THE CHAIR: At this point, would you like me to make my
18 concluding remarks or do you wish to comment?

19 MR SKELTON: It was really to see if the panel had any
20 questions arising from those? It is quite a lot to take
21 in, I do appreciate.

22 THE CHAIR: It is. Just one point, to pick up Mr Enright's
23 point about timing, we will take into account what he
24 said about the timing of any conclusions the inquiry
25 reaches.

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1 MR SKELTON: Thank you. As before, do those who are not sat
2 at the table but sat elsewhere in the room have anything
3 they would like to add to comment on reform? There is
4 a microphone available.

5 CORE PARTICIPANT - MR HARDING: My name is Tom Harding,
6 Stanhope Survivors Group. I would like to thank the
7 inquiry for allowing survivors to participate directly
8 in the seminar. Thank you so much. And also you,
9 David.

10 CORE PARTICIPANT - MR ROBSON: One thing about getting
11 specialists trained up to help people, that could take
12 years. We have specialists here. All of you know
13 what's going on. Why can't we use these people?

14 MR SKELTON: Thank you. Madam, that concludes the seminar
15 from my perspective.

16 Concluding remarks by THE CHAIR

17 THE CHAIR: Thank you very much to everyone here for your
18 attendance and participation; not just at the table, of
19 course, but from the audience. It's been extremely
20 helpful. Thank you for all of these contributions.

21 It's certainly given us a wealth of issues which
22 could, and may, form the basis of further inquiries with
23 other agencies not present today. So that's been also
24 very helpful.

25 The theme, and that of the last seminar, formed

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1 a very important, cross-cutting strand to the inquiry's
 2 work. We will certainly be making reference to our
 3 thinking on this when we publish the report next year.
 4 But as I said earlier, we will take into account
 5 Mr Enright's comments about timing.
 6 There is little else that I think I need to say, but
 7 thank you very much for your attendance today and I wish
 8 you all a safe journey home. Thank you.

9 (4.05 pm)

10 (The hearing concluded)

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