

Issues paper number 2

Criminal compensation

Background

The Accountability and Reparations investigation is one of 13 investigations announced in November 2015. In her update statement, the Chair of the Independent Inquiry into Child Sexual Abuse explained that the Inquiry would investigate the extent to which existing services and legal remedies available to victims and survivors of child sexual abuse effectively deliver reparations for the harm they have suffered; and the extent to which such mechanisms for support and compensation help or hinder the delivery of the right to truth, accountability, compensation, and guarantees of non-recurrence. It is important to note, that in accordance with the Inquiry's terms of reference, this issues paper only addresses sexual abuse claims where there has been institutional failure.

Financial compensation is one way in which reparation may be delivered to victims and survivors. Alongside civil litigation, claims to the Criminal Injuries Compensation Authority (the CICA, previously the Criminal Injuries Compensation Board (CICB)) are the main means by which victims and survivors can recover financial compensation. In addition, under the Powers of Criminal Courts Sentencing Act 2000 ('PCC(S)A'), a criminal court may make a compensation order in respect of a victim of crime. The Inquiry seeks to understand what victims and survivors consider adequate reparation, and the extent to which this can be delivered through these processes. The Inquiry acknowledges that many victims and survivors of child sexual abuse may seek broader outcomes from any reparations process than those that can be delivered through criminal compensation. Whilst the focus of this paper is on criminal compensation, the Inquiry hopes that the views provided will feed into any wider investigation into possible reforms and/or alternatives to the existing procedures for criminal compensation.

Criminal Injuries Compensation Scheme

The scheme was first established in 1964 by the Government and administered at that time by the CICB. Before 1996, awards were made according to what the victim would have received following a successful civil claim. Since April 1996, the level of compensation has been fixed according to a tariff set by Parliament. In 1996, the CICA was established to administer this scheme in England and Wales (and in Scotland). The scheme was revised in 2001, 2008 and 2012.¹

¹ The CICA website can be found at:

<https://www.gov.uk/government/organisations/criminal-injuries-compensation-authority>

Under the current scheme, a person may be eligible for an award under the tariff-based scheme if they have sustained a criminal injury which is directly attributable to their being a direct victim of a “crime of violence”. Such a crime may involve a sexual assault to which a person did not “in fact” consent. In cases of child sexual abuse, the issue of consent may therefore be raised. Subject to the additional eligibility criteria, a victim or survivor may make an application to the CICA. The general rule is that an application must be received by the CICA as soon as reasonably practicable after the incident giving rise to the criminal injury, and in any event within two years after the date of that incident. The CICA is able to extend this time-limit.

Awards may be withheld and/or reduced for a number of reasons, including where the incident has not been reported to the police as soon as reasonably practicable; or where the applicant has not cooperated as far as reasonably practicable in bringing the assailant to justice; or where the applicant’s character as shown by his or her unspent convictions, makes it inappropriate. Awards made may include injury payments determined in accordance with the tariff and other types of payment, including special expenses and loss of earnings. Some decisions may be challenged through a review and appeals process.

Criminal compensation orders

Under the PCC(S)A, a criminal court may make a compensation order against a convicted person requiring him/her to pay compensation for personal injury, loss or damage resulting from the offence, or any other offence, and which is taken into consideration by the court in determining sentence. A court must consider making a compensation order in any case where it is empowered to do so.

The Inquiry

The Inquiry seeks to understand what people with experience of criminal compensation in England and Wales, whether in a personal or professional capacity, consider to be the most important elements of an effective procedure for criminal compensation. The Inquiry also wishes to understand the reasons why victims and survivors may not have made an application for criminal compensation, either because they were unable to do so, or because they chose not to do so.

The Inquiry seeks views on whether existing means of delivering financial compensation to victims and survivors of child sexual abuse are effective, which may include whether:

- The process is accessible for all victims and survivors;
- An appropriate amount of compensation is awarded;

- Decisions are made in as timely a manner as possible;
- Claims are investigated fairly and applicants treated equally;
- Applicants are treated with sensitivity.

Submissions are sought on the effectiveness of the existing procedures for criminal compensation and possible reforms. The Inquiry would welcome your views on the following issues. You should not feel that you need to answer every section, only those that are relevant to your experience or expertise.

Reparation generally

1. What outcomes should a criminal compensation scheme aim to deliver for victims and survivors of child sexual abuse?
2. In your experience, how far do the two existing procedures for criminal compensation, i.e. the CICA scheme and the courts' criminal compensation orders, deliver these outcomes for victims and survivors?
3. How important are the following: the right to independent legal representation; the right to an independent and impartial investigation; the right to truth and accountability; compensation; guarantees of non-recurrence; and support services?
4. Which of the above have the existing procedures for criminal compensation successfully delivered?
5. If there are elements you have identified as not always successfully delivered, then what, in your experience, have been the reasons for this?
6. In your experience, why have some victims and survivors chosen not to apply for criminal compensation?
7. In your experience, why are some victims and survivors unable to apply for criminal compensation despite wanting to do so?
8. What are the advantages and disadvantages of the existing procedures for criminal compensation as a means of delivering reparation, when compared to the civil claims process?

The Criminal Injuries Compensation Scheme (administered by CICA)

The following section deals explicitly with some of the legal issues relevant to the CICA process.

9. Are there elements of the CICA process which may obstruct the delivery of reparation to victims and survivors, and if so in what way? In particular, submissions are welcome on the following issues:
- a. The right to independent legal advice and representation;
 - b. Eligibility provisions, including:
 - i. The definition of ‘crime of violence’ and ‘consent’;
 - ii. The eligibility criteria for persons who were present at, and witnessed, the sexual abuse of another person or its immediate aftermath;
 - iii. The non-applicability to injuries before 1 August 1964, the date on which the first scheme was introduced;
 - iv. The ‘same roof rules’ precluding awards of compensation to victims who were living with their assailants at the time as members of the same family.
 - c. The application process, including:
 - i. The role of the police;
 - ii. Time limits;
 - iii. Costs of making the application, for example instructing lawyers or obtaining expert evidence;
 - iv. Reviews and appeals.
 - d. The circumstances in which an award may be withheld or reduced;
 - e. The relationship between the criminal injuries compensation scheme and other compensation processes (civil or criminal);
 - f. Quantification of awards;
 - g. The responsibility of local authorities to make applications on behalf of children.
10. Are there other elements of the CICA process which may obstruct the delivery of accountability and reparation to victims and survivors? If so what are they?

Criminal compensation orders

11. To what extent do criminal compensation orders made by the criminal courts provide adequate reparation for victims and survivors?
12. What are the advantages and disadvantages when compared to the civil claims process and/or the CICA process?

Changes, alternatives or additional routes for redress

13. In your experience, is there anything that has made it more difficult for victims and survivors to achieve accountability and reparation through the existing procedures for criminal compensation? If so what? What could be done to help people overcome these barriers?
14. What changes could be made to the existing procedures for criminal compensation in order to make it easier for victims and survivors to achieve accountability and reparation?
15. Are there any alternatives to the existing procedures for criminal compensation that could better deliver reparation to victims and survivors, either on their own or in conjunction with the existing procedures for criminal compensation? If so, what are they?

Support

16. What information, support and resources are you aware of to help victims and survivors (and/or their families) access reparation through the existing procedures for criminal compensation?
17. In your experience, have people who needed these services and support been able to access them? If not, why not?
18. How do you think the current provision of support could be improved?

In addition to the issues set out above, submissions are encouraged on any aspects of the existing procedures for criminal compensation, insofar as they relate to accountability and reparations for victims and survivors.

In making your submission you do not need to address every question. We encourage you to address those specifically relevant to your experience or expertise, both personal and professional. In your submission, please separate out responses to different questions, and indicate clearly which question(s) you are responding to.

Please include the following information on the attached questionnaire as part of your submission:

- Your age and gender;
- Whether you are responding on behalf of an organisation or as an individual;
- Which, if any, organisation do you represent;
- What is your job title and how long have you held this position;
- Whether you would like your response or personal details to be treated as confidential, and the reason for this.

Submissions will be publicly available on the Inquiry's website. The Inquiry will also publish a report summarising the key themes from the submissions received. This report will help inform seminars which will take place when the submission process has closed. A range of contributors will be invited to these seminars to consider in detail the themes identified from the submissions received.

The submission process will close at **noon on the 29th September 2016.**

Submissions should be made in English or Welsh and submitted either:

- Electronically to crimcomp@iicsa.org.uk, or
- In writing: **Criminal Compensation Issues Paper, PO Box 72289, London, SW1P 9LF**

Please contact the Inquiry if you require this information in any other format, such as Braille, large font or an alternative language. The Inquiry is able to receive MP3 files should you wish to make an audio submission. Please send your audio file to the email address above.

Please note the Inquiry intends to publish all relevant submissions. Please state on the attached questionnaire if you do not wish your name to appear in any Inquiry publication. We will consider any request for anonymity in accordance with our statutory obligations.

If you have any queries regarding the issues paper or your proposed response, please contact the Inquiry at the e-mail address above.