

**0020010**

**BLM Responses to Issue Paper 2**

**Preamble**

Issues paper 2 focuses on the availability and effectiveness of compensation via the Criminal Injuries Compensation Authority (CICA) and other compensatory powers of the criminal courts.

BLM are instructed to act in civil claims and do not have any direct involvement in CICA or other forms of criminal compensation. However the application for and payment of compensation via the CICA can be of relevance in subsequent civil claims. We comment below on this inter-action and not on the other questions asked in this paper.

**Reparation Generally**

We do not answer each of the questions individually, however many of the points which we have made in the associated Issues Paper 1 regarding civil justice apply equally to the criminal justice system and how it does or does not meet the needs of victims and survivors.

- One area where there is an overlap is in that of investigation of allegations of abuse. A fully independent and impartial investigation is not always possible as part of the civil claims process. Ultimately this is something which the criminal justice system is best placed to deliver. As the burden of proof in civil cases is lower i.e. on the balance of probabilities a criminal conviction provides confirmation sufficient for a civil claim that abuse did occur. An organisation being pursued for damages can then focus on how it may be liable rather than whether or not abuse occurred. For the victim/survivor this eliminates one more occasion where they need to give evidence of the abuse.

However we appreciate that limited resources and death of the Accused are just some of the reasons why a criminal investigation is not always possible.

- The criminal system is also better placed to achieve truth and accountability. Very often in civil cases an institution will be deemed vicariously liable for the acts of the Accused who was an employee or a person who was in a relationship akin to employment with organisation. The Accused more often than not will not have any significant involvement in the civil claims process at all. If this is the case there can be no real accountability from the perspective of the victim/survivor. Only the criminal process can achieve that.

#### **The Criminal Injuries Compensation Scheme (administered by CICA)**

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

**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:**

**The relationship between the criminal injuries compensation scheme and other compensation processes (civil or criminal);**

- Where there is an ongoing criminal investigation or prosecution of an Accused, this tends to inhibit the progression of the civil claims process. A Defendant organisation will need to see evidence regarding the allegations against the Accused, but that will not be made available by the police or Court until the end of the criminal process.
- In addition, the victim/survivor will be under considerable stress while assisting with the criminal process. Having to deal with a civil claim adds additional stress, particularly if medico-legal evidence is required and they have to attend appointments to go through the history of their abuse, again.

- If the Accused denies the abuse, the Defendant organisation faces the challenge of how to proceed in a manner which ensures fairness and justice for all, bearing in mind the need to respond supportively to disclosure of abuse and the fundamental premise of 'innocent until proven guilty'.
- There is not enough interaction between the criminal & civil process. All the evidence used for the criminal trial is relevant to the civil claim but it is rare for this evidence to be used (or be permitted for use) in the civil claims. This leads to much duplication, particularly of witnesses reliving their experience in both forums, and duplicated statement taking ultimately leading to duplicated cost.
- The civil process takes longer however higher awards of damages are achievable.
- Criminal compensation is usually only paid in situations where there is a criminal conviction in place. There are many instances where victims make their disclosure years after the events and years after the Accused died, in these cases a civil claim is the most likely means to recover compensation.
- Currently there is limited linking between the two systems and for Defendant organisations they can only rely on the Claimant providing details of a CICA application and payment. The obligation rests with the Claimant to repay the CICA if any civil claim makes payment for the same losses. A system akin to that of repayment of benefits would assist, with the automatic provision of information given in any CICA application to a Defendant organisation which will assist in avoiding delay and the need for the Claimant to be duplicating evidence. The Defendant organisation can then offset and repay direct any payments already made by the CICA.