

0020014

**Believe in children**

**Barnardo's**

### **Criminal compensation and the civil justice system**

Barnardo's is one of the UK's leading children's charities, working directly with over 248,000 children, young people, parents and carers in 2015 – 16 in 996 vital projects across the UK. These services include counselling for children who have been abused, fostering and adoption services, vocational training and disability inclusion groups. Particularly relevant to this consultation is our experience of working with victims of sexual exploitation, who often find themselves vulnerable to abuse as they are unable to identify when they are in an abusive relationship. Barnardo's has been tackling sexual exploitation since 1994, and now delivers specialist services in over 40 locations across the UK. In 2015 - 16, we supported 2,486 children who had suffered, or were at risk of, sexual exploitation.

Barnardo's would like to thank the Independent Inquiry into Child Sexual Abuse for the opportunity to respond on the issue of criminal compensation. As an organisation that provides support to victims of child sexual abuse and exploitation we are concerned about a number of issues that affect whether a child receives compensation for their abuse. These concerns apply particularly to Question 9 of the Issues paper regarding Criminal Injuries Compensation Authority (CICA) and the obstruction of the delivery of reparation to victims and survivors.

### **Consent**

The issue of consent is often difficult to ascertain as it can be hard to prove whether a person has consented. In the case of sexual abuse and exploitation this can be particularly difficult as children may be groomed or coerced by the perpetrator. However, under the Sexual Offences Act 2003, it is a crime for adults to engage in sexual activity with those under the

age of 16 and their consent, or lack thereof, is irrelevant as children cannot consent to sexual activity at this young age. We therefore believe that anyone under the age of 16<sup>1</sup> who has been found to be a victim of sexual abuse or exploitation by the high standards of proof required in courts should be eligible for compensation.

The policy of the Criminal Injuries Compensation Authority (CICA) differentiates between consent 'in fact' and consent as stated by the law. In response to a claim submitted by Barnardo's on behalf a service user, CICA stated that it *"considers consent in relation to sexual offences as a question of fact, and this determines eligibility for compensation. A victim can consent in fact even though in law they may be deemed not to have consented (e.g because they were below the age of being able to provide legal consent to the act in question)."* It further states that *"compensation will not be paid unless the applicant was a non consenting victim of the offence."* In the case of the young person that applied for compensation, compensation was denied because CICA stated that *"In 'claimant' case it appears she willingly entered into a sexual relationship with alleged offender. As 'claimant' consented to the sexual activity in question she is not, eligible for any award of compensation under the terms of the scheme'.* We are very worried that CICA's policy goes against consideration of consent in law and recommend that this is rectified.

Additionally, CICA's view on consent appears to lack understanding about sexually abusive and exploitative relationships. In such relationships, the victim may appear to 'consent', due to their apparent relationship with the abuser, yet in such situations the abuser will have carefully groomed and manipulated the young person into believing their relationship and abuse is normal. This grooming process is often so carefully carried out that the young person is unaware they are a victim. This does not mean that the young person is not in fact a victim and we know from our extensive experience of working with victims of sexual exploitation, that this is common in exploitative 'relationships'.

<sup>1</sup> It is of interest to note that CICA's guidelines for tariffs state that a child applies to those under 18 years for sexual offences. Barnardo's welcomes this as child sexual exploitation is applicable to young people up to the age of 18 years.



We are also concerned that CICA's apparent lack of understanding on the issue of sexual abuse and exploitation can cause distress to young people who have been victims of these crimes. A recent case of a Barnardo's service user who had been a victim of abuse highlighted this when they received a letter of refusal for compensation (as stated above). In this case, the young person was under the age of consent and the offender was nearly 20 years older. The letter stated that she was in a relationship and had consented to sexual activity, therefore inadvertently blaming the victim for the abuse they had suffered. The process of recovery for victims of abuse can often take months and sometimes years as support workers help the young person to understand that they were exploited and not to blame for their own abuse. Receiving an official letter stating that they had in fact consented to their abuse can therefore be very distressing and can undo some of this work. It is clear to us that receiving a letter that explains that victims cannot get compensation due to their apparent consent can have serious consequences for the recovery of victims. It is important that CICA's responses to victims should be written far more sensitively and ensure that they do not inadvertently blame them for the abuse they have suffered.

### **Criminal convictions**

Compensation for victims who have a criminal record can either be denied or reduced. While Barnardo's understands why this might be the case, consideration should be given to claimants who have a criminal record due to either being forced to commit a criminal act by someone controlling the young person or as a result of the abuse the claimant has endured. Barnardo's is aware that some young people who have been sexually exploited may become aggressive as a means to seek attention or self-harm or may be forced to carry drugs, for example, as part of their exploitation. Rather than refusing to award compensation, CICA should grant compensation in circumstances where it can be shown that the offences were carried out as a result of their exploitation. This would be particularly relevant in cases where the claimant was a victim of sexual offences.

### **Online abuse**

The issue of online abuse is not currently addressed by CICA – perhaps due to the fact that it is not seen as a ‘violent’ crime - yet this is a crime that is becoming more common with the increasing use of technology and smartphones by children, young people and perpetrators. In 2015 Barnardo’s produced the report ‘Digital Dangers’, which indicated that more young people are being sexually abused and exploited due to technology. There are now crimes, such as non-contact sexual abuse, where a child may become a victim of violence after being coerced via a webcam. These types of offences did not exist before the advent of the internet, and are currently not referred to within CICA’s guidelines – a situation that should be rectified.