



Ministry  
of Justice

# **Triennial Review**

**Criminal Injuries Compensation  
Authority**

**Final report on stage one alone**

**July 2013**



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## Executive Summary

The Criminal Injuries Compensation Authority (CICA) was established in 1994 under prerogative powers. It delivers the government's various Criminal Injuries Compensation Schemes (CICS).

CICA is reviewed as part of the cross-government Triennial Review programme. Guidance from the Cabinet Office requires that all NDPBs be reviewed every three years. The reviews must not be overly bureaucratic, but appropriate for the size and nature of the body in question.

The review of CICA was announced on 30 November 2012. A proportionate consultation exercise with key stakeholders took place in January 2013 and received 17 responses.

### Functions

The first stage of the review identified and examined the key functions of CICA. We concluded as follows.

- CICA functions can be broken down into seven categories: casework, determining applications (a public function under the Criminal Injuries Compensation Act 1995), appeals to Tribunals, onward appeals to the higher courts, financial management, stakeholder relations, and customer services. The first five are steps in delivery of the CICS; the last two are support functions necessary for effective CICS delivery.
- There is a continuing need for criminal injuries compensation: it is an EU obligation, Parliament approved a new Scheme in October 2012, and consultees supported the principle of compensating blameless victims of violent crime. CICA functions must continue.

### Form

- CICA meets the coalition government's "three tests" for NDPB status – it must be:
  - Technical – the interpretation of various CICS by CICA claims officers is a technical function;
  - Impartial – CICA must be politically impartial, exercising a quasi-judicial function on determining claims and quantum;
  - Independent – in dealing with CICS claims, CICA Claims Officers act independently and transparently to establish facts.
- Although not officially designated as such, CICA is run, in almost all respects, as an Executive Agency of MoJ. Recent changes to its management and governance, linked with improved service, have brought it more closely in line with this model.

### Recommendations

- CICA should be reclassified as an Executive Agency managed as an Arm's Length Body (ALB), to better reflect its nature and operating model. This will protect the independence of claims officers when exercising public functions under the 1995 Act.
- Stage 2 is not therefore required; however, a governance review will be undertaken in the context of the MoJ's ongoing Services and Structures Review (SSR).
- These recommendations are subject to the SSR's findings on MoJ ALBs generally.

## Approach to this review

1. This report sets out the purpose of the Triennial Review, describes the process and methodology used to review CICA, analyses the functions of the body, and options for how to deliver the services it provides. It makes formal recommendations on the functions and appropriate forms.

### Context

2. The Triennial Review does not take place in isolation. Its context will inform any recommendations that are made for stage one.

### The Financial Context

3. Given the economic situation, we are radically changing the way we work, making sure that every penny of taxpayers' money counts. Our vision is a justice system that is more effective, less costly and more responsive to the public. In order to live within its Spending Review settlement (SR10), MoJ is required to deliver annual savings of well over £2.5 billion by March 2015.

4. The cost of providing compensation under the Criminal Injuries Compensation Schemes is significant, though the level of compensation for injuries sustained is, in effect, set by Parliament, through the Criminal Injuries Compensation Scheme 2012 tariff and its predecessors (see paragraphs 35-37). These issues are relevant to the Triennial Review.

5. A number of programmes feed into the Department's cost-saving efforts, including Transforming Justice and the Services and Structures Review.

### Transforming Justice

6. The Ministry of Justice (MoJ) is delivering a far reaching reform programme. We need a justice system in which the public has confidence. We are committed to making sure offenders are properly punished, to prioritising the needs of victims, and to showing that we are on the side of law-abiding citizens.
7. Our priorities are to deliver a rehabilitation revolution that punishes properly while reducing reoffending; make prison more cost effective; make sure youth justice gives the right support to young offenders while being cost effective; continue reforming courts and the wider criminal justice system to deliver a more efficient and effective service; and ensure Legal Aid is credible and targeted on those cases that require it.
8. Under Transforming Justice, we are re-examining the services we deliver and the way we deliver them, working with others to provide that which is really needed. We are also transforming our organisation, making sure that we have the right people in the right places, doing the right things, at the right time.

9. The aims of Transforming Justice should be kept in mind when making recommendations for the Triennial Review.

### Services and Structures Review

10. The MoJ Departmental Board has commissioned a review of MoJ's services and structures, to make savings required by HM Treasury, but also to create a better justice system that meets the needs of the public and victims. The review has the following key elements:
  - i. Consideration of what MoJ does and the services it delivers, to establish what kind of justice system is needed for the future. This means taking another, more fundamental look at everything done, and how it is done, to be able to live within anticipated budgets in the next Parliament.

- ii. A review of how MoJ is organised to deliver those services. This aims to identify areas where savings can be made by removing duplicate functions in Executive Agencies and MoJ HQ, and by looking again at how to streamline “middle-office” functions.

11. Any recommendations arising out of this report must be conditional on the findings of the MoJ Structures and Services Review.

#### Public Bodies Reform Agenda

12. The Public Bodies Reform Agenda is led by the Cabinet Office. The Secretary of State for Justice considered MoJ public bodies, applying the Coalition Government’s test on whether the function should be carried out by the state (see paragraph 21, below). It was decided in June 2010 that CICA would be retained, on the grounds that it performs a function which requires impartiality. This does not pre-determine the outcome of this Triennial Review, which is based on evidence, but is a relevant consideration.

#### The Legal Context

13. The UK is obliged under European law to provide a compensation scheme to victims of violent crime.<sup>1</sup> The Order which gives effect to a revised Criminal Injuries Compensation Scheme 2012 was approved by the Lords on 25 July 2012 and the Commons on 12 November 2012. CICA implemented the revised scheme on 27 November 2012.

14. Given this obligation on the UK, and Parliament’s recent approval of the 2012 scheme, the policy of paying compensation and the specific Criminal Injuries Compensation Schemes are excluded from the scope of this Review. All CICA functions will be reviewed, but delivery of core functions may be deemed necessary to keep the schemes running.

#### Equality and Diversity

15. Part 11 of the Equality Act 2010 imposes a duty on public authorities, and on those exercising public functions; CICA falls into the latter category. The Scheme includes six policy equality objectives,<sup>2</sup> which reflect the requirements under the 2010 Act.

### **Scope and Purpose of Triennial Reviews**

16. Triennial Reviews have two aims:
  - i. to provide **robust challenge to the continuing need for individual NDPBs** – both their **functions** and their **form** (stage one); and
  - ii. where it is agreed that a particular body should remain as an NDPB, to review the **control and governance arrangements** in place to ensure that the public body is complying with recognised principles of good corporate governance (stage two).

17. This report covers stage one of the review of CICA. The programme of departmental Triennial Reviews is agreed on a rolling basis with the Cabinet Office.

18. All reviews must be conducted in line with six principles. They must be:
  - i. **Proportionate**: not overly bureaucratic; appropriate for the size and nature of the NDPB.
  - ii. **Timely**: completed quickly to minimise disruption and reduce uncertainty.

<sup>1</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0080:EN:NOT>.

<sup>2</sup> See “About the Criminal Injuries Compensation Authority”, at <http://www.justice.gov.uk/about/criminal-injuries-compensation-authority>.

- iii. **Challenging**: robust and rigorous, evidencing the continuing need for functions and examining and evaluating a wide range of delivery options.
- iv. **Inclusive**: open and inclusive. Individual NDPBs must be engaged, key users and stakeholders should have the opportunity to contribute. Parliament should be informed about the commencement and conclusions.
- v. **Transparent**: all reviews should be announced and reports should be published.
- vi. **Value for Money**: conducted to ensure value for money for the taxpayer.

## Process and Methodologies

### Cabinet Office guidance

19. This information is taken from the Cabinet Office guidance<sup>3</sup>. The first stage of the review should identify and examine the key functions of the NDPB. It should assess how the functions contribute to the core business of the NDPB and the sponsor department and consider whether the functions are still needed. Where the department concludes that a particular function is still needed, the review should then examine how this function might best be delivered.
20. When assessing how functions should be delivered, the review should examine a wide range of delivery options. This should include whether the function can be delivered by local government or the voluntary or private sectors. It should also include an examination of different central government delivery models, including whether the function can be delivered by the sponsoring department, by a new or existing Executive Agency or by another existing central government body. It is Government policy that NDPBs should only be set up, and remain in existence, where the NDPB model can be clearly evidenced as the most appropriate and cost-effective model for delivering the function in question. Reviews must evidence that functions have been assessed against a wide range of delivery options.
21. In many cases, some delivery options can be quickly rejected. However, for each function under consideration, the review should identify all viable delivery options and undertake a fuller assessment of these options. Where appropriate, this should include a cost and benefits analysis. If one of the delivery options is the NDPB option, this must also include an assessment against the coalition government's "three tests":
- i. Is this a **technical** function (which needs external expertise to deliver)?
  - ii. Is this a function which needs to be, and be seen to be, delivered with absolute political **impartiality** (such as certain regulatory or funding functions)?
  - iii. Is this a function which needs to be delivered **independently** of Ministers to establish facts and/or figures with integrity?
22. Based on these fuller assessments, the department can then make an informed decision on how the function should be delivered in the future:
- Outright abolition (i.e. no longer deliver the function)
  - Move out of Central Government (to local authorities, voluntary or private sectors)
  - Bring in-house (e.g. to the MoJ or an existing Executive Agency)
  - Merge with another body
  - Delivery by a new Executive Agency
  - Continued delivery by an NDPB

<sup>3</sup> See also <http://www.cabinetoffice.gov.uk/sites/default/files/resources/Cabinet-Office-Guidance-on-Reviews-of-Non-Departmental-Public-Bodies.pdf>



### The Ministry of Justice approach

23. Triennial Reviews are consistent with the MoJ's commitment to review its ALBs, as set out in 5.3 of the MoJ Business Plan 2011-15.<sup>4</sup>
24. This review was governed by a project board and supported by a critical friends group. The project board comprises a Senior Responsible Officer (SRO) with responsibility for victims' policy, officials from the review team (based in the Arm's Length Bodies Governance Division, CICA's sponsors), as well as representatives from business support, legal and communications directorates of MoJ.
25. The critical friends group provides robust challenge to the review and includes the MoJ's Triennial Review Programme Manager and members from Cabinet Office and the National Audit Office. It is chaired by the MoJ Deputy Director responsible for Triennial Reviews.

### *Call for Evidence*

26. The call for evidence on the Triennial Review was issued on 30 November 2012 and closed on 8 February 2013. It was published on the MoJ website<sup>5</sup> and publicised directly to interested stakeholders. A written ministerial statement was made in both Houses of Parliament confirming the start of the call for evidence and the process being used by the MoJ in the reviews.<sup>6</sup> The Justice Select Committee was informed, by ministerial letter, of the commencement of the review. Anyone could respond to the call for evidence. A list of respondents is included at the end of this report.

### *Workshops, meetings and other stakeholder engagement*

27. In addition to the call for evidence, workshops and face-to-face meetings were held with key stakeholders to explain the review, explore possibilities and begin to get some responses to the issues.

28. Evidence from stakeholders has informed this review throughout. Wherever appropriate, this report directly quotes from, or explicitly draws upon, the evidence gathered through stakeholder engagement.

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<sup>4</sup> Business plan available at <http://www.justice.gov.uk/publications/corporate-reports/moj/2012/ministry-of-justice-business-plan-2012-15>.

<sup>5</sup> <https://consult.justice.gov.uk/digital-communications/cica-triennial-review>.

<sup>6</sup> Official Report 30 Nov 2012 : Column 39WS.

# The Criminal Injuries Compensation Authority

## History of CICA

29. Under the *Criminal Injuries Compensation Act 1995* (the 1995 Act), the Secretary of State is bound to make arrangements for the payment of compensation to persons who have sustained criminal injuries. He has made various statutory schemes (as to which, see “Schemes currently run by CICA”, in the “Functions” part of this report, below). The latest applies to applications made on or after 27 November 2012. These schemes extend to England and Wales, and Scotland. (Northern Ireland has its own scheme.)



30. A Criminal Injuries Compensation Board was established in 1964 (under prerogative powers) to oversee a newly established *ex gratia* scheme for the compensation of victims of violent crime. This was supplanted by CICA, created administratively in 1994 (again under prerogative powers), to administer a new prerogative 1994 Scheme – the making of which was later quashed by the Judicial Committee of the House of Lords. It was retained to administer the scheme established under the 1995 Act, and remains responsible for administering a number of such schemes. The 1995 Act makes no reference to CICA, though the Schemes define it as the “Scheme administrator”.

## Work done by CICA

31. CICA administers or has administered a number of schemes, both tariff-based and not. To identify its functions correctly, it is first worth outlining the work it undertakes.

### Schemes currently run by CICA

#### *Domestic Schemes*

32. Under the *Criminal Injuries Compensation Act 1995*, the Secretary of State is bound to make arrangements for the payment of compensation to persons who have sustained criminal injuries. He has made various statutory schemes:

- the Criminal Injuries Compensation Scheme (CICS) 1996,
- CICS 2001,
- CICS 2008, and
- CICS 2012.

The latest applies to applications made on or after 27 November 2012. These schemes extend to England and Wales, and Scotland. (Northern Ireland has its own scheme.)

33. CICA administers two further compensation mechanisms, in addition to the schemes made under the 1995 Act.

- CICA administers a small number of ‘pre-tariff’ cases relating to claims made before the statutory scheme was introduced in 1996. Outstanding claims, in the main, relate to children who suffered injuries as babies and who are now reaching adulthood when the long term prognosis can be assessed.
- As of 27 November 2012, it also administers a non-statutory hardship fund for victims of violent crime who are low paid and are not eligible to claim under the 2012 compensation scheme. This fund extends to England and Wales only.

#### *Schemes applying to those injured abroad*

34. In addition to the schemes above, CICA operates two schemes, and an advisory mechanism, in respect of victims of terrorism or crime abroad.

- The *ex gratia* Victims of Overseas Terrorism Scheme for those injured overseas in a designated terrorist incident between 1 January 2002 and 26 November 2012, inclusive, and who have an ongoing disability as a direct result of the injuries they sustained. All applications must have been received by 26 May 2013.
- The statutory Victims of Overseas Terrorism Compensation Scheme 2012.
- CICA also acts in an advisory capacity for those who have suffered injuries abroad, through the EU Compensation Assistance Team (EUCAT, since 4 January 2006) which helps them gain access to information about compensation in the country in which they were injured.<sup>7</sup>

### Schemes formerly run by CICA

35. CICA has run a number of other government compensation schemes.

- In 2008-09, it ran the Pitcairn Compensation Scheme, “a mechanism to compensate the victims of past child sex abuse on Pitcairn identified during Operation Unique”.<sup>8</sup> This scheme awarded just over £160,000 to eight women who suffered sexual abuse on the Pitcairn Islands, and who cooperated with the authorities in bringing the assailants to justice.
- In 2010-11, CICA also ran the Pleural Plaques Compensation Scheme. This was established following the judgment of the Judicial Committee of the House of Lords in *Johnston v. NEI International Combustion Ltd* [2007] UKHL 39 decided that compensation for pleural plaques would no longer be paid. Applicants were awarded a flat sum of £5,000, under certain specified conditions.

### **Funding and staff**

36. The amount of compensation due under the Scheme is demand-led. CICA works closely with MoJ to predict likely demand, and set its budget accordingly. Estimated liability in respect of all applications received under the Schemes is £334m.<sup>9</sup> The following table lays out the resource allocations for 2011-12, 2012-13, and 2013-14, with a high-level breakdown into costs and compensation. The new 2012 Scheme is expected to save £50m in annual compensation.

Figure 1: CICA resource allocation & breakdown, 2011-14<sup>10</sup> (Table)

	Total costs of delivering CICA functions			Depreciation & Capital costs	Compensation	TOTAL CICA BUDGET (TARIFF)	Income from Scottish Government
	Administration costs	Case-handling costs <sup>11</sup>	TOTAL				
2011-12	– n/a – <sup>12</sup>		£19.20m	£2.00m	£204.05m	<b>£225.25m</b>	-£25.05m
2012-13	£14.99m	£3.92m	£18.91m	£2.72m	£199.60m	<b>£221.23m</b>	-£18.60m
2013-14	£14.75m	£2.30m	£17.05m	£2.60m	£174.10m	<b>£193.75m</b>	-£20.15m

37. This table excludes liability for outstanding pre-tariff claims (see paragraph 33, above). In 2010, this stood at £392m. In recent years, HM Treasury has made provision from the reserve in

<sup>7</sup> This helps fulfil the UK’s duties under the *Council Directive 2004/80/EC on compensation to crime victims*, as transposed into domestic law through the *Victims of Violent Intentional Crime (Arrangements for Compensation) (European Communities) Regulations 2005*.

<sup>8</sup> From the WMS announcing the closure of the scheme, at <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmfaif/memo/overseas/m39202.htm>.

<sup>9</sup> Figure provided by CICA, correct as at 20 May 2013.

<sup>10</sup> Figures provided by MoJ Corporate Finance.

<sup>11</sup> Casehandling costs are driven by evidence required for making case decisions, notably legal disbursements (including for judicial review), and medical evidence (specialist medical reports, or hospital or GP records). In CICA annual reports, in line with revised Treasury Guidelines (Clear Line of Sight), these are classified as Programme costs, as they are driven directly by the demand for compensation.

<sup>12</sup> Administration costs were not split out in the same way for the 2011-12 resource allocation.

respect of pre-tariff liability, in the sums of £265m (2011/12, of which £237m was spent) and £90m (2012/13); MoJ has also directed underspends across the department to clearing this liability, in the sum of £23m in the financial year 2012/13. At end May 2013, £43m of this liability remained to be discharged.<sup>13</sup> This represents a considerable unfunded pressure, and a reputational risk to CICA and MoJ.

38. CICA is based in Tay House, Glasgow, and has 353 staff (FTE, including 1 agency staff); all non-agency staff are civil servants employed directly by MoJ. CICA staff were transferred from the Scottish Government to the MoJ on 1 November 2010.

Figure 2: Functions of CICA (Diagram)

## Functions

39. CICA is primarily a casework organisation. In operating the various schemes it administers, it carries out a number of associated functions. The diagram in Figure 2 (right) lays out key high-level functions; the detail is provided in the table at Figure 3, below.

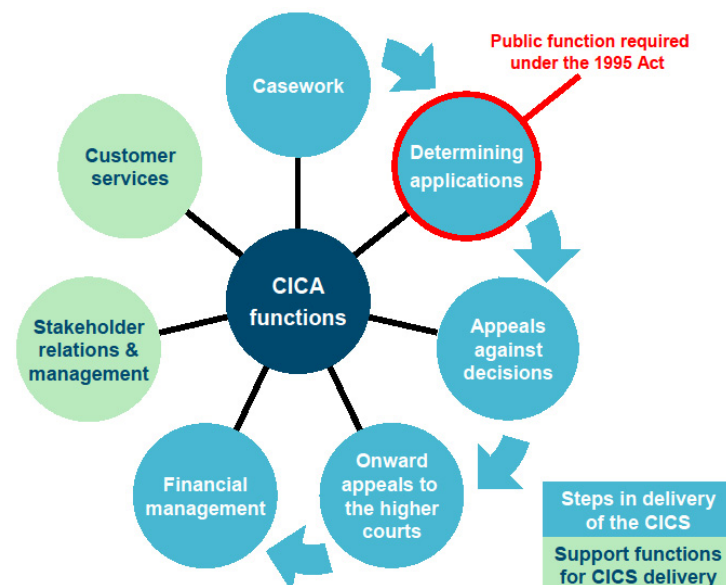


Figure 3: Functions of CICA (Table)

Casework	Determining Applications	Appeals to Tribunals against decisions	Onward appeals to the higher courts
<ul style="list-style-type: none"> <li>Gathering and processing data</li> <li>Applying understanding of the criminal justice model</li> <li>Issuing and processing requests in a timely manner</li> <li>Ensuring consistent throughput</li> </ul>	<ul style="list-style-type: none"> <li>Applying scheme appropriately and consistently</li> <li>Undertaking reviews of cases</li> <li>Allowing scope for case-by-case treatment</li> <li>Managing discretion</li> <li>Using judgment in complex cases</li> <li>Using experience</li> <li>Taking legal advice</li> <li>Ensuring government policy is applied in practice</li> <li>Developing policy on schemes</li> </ul>	<ul style="list-style-type: none"> <li>Presenting cases and appeals in Tribunals</li> <li>Preparing responses to tribunal appeals</li> <li>Attending tribunal hearings</li> <li>Complying with Tribunal directions and requests</li> <li>Building a body of training and guidance</li> </ul>	<ul style="list-style-type: none"> <li>Running all JRs on the Scheme &amp; its application</li> <li>Running appeals against decisions of claims officers, to the Court of Appeal and Supreme Court</li> <li>Through MoJ, providing Ministers with information on decisions, the schemes, and their application</li> <li>Providing assurance on closed and ongoing cases</li> </ul>
Financial management	Stakeholder relations and management	Customer services	
<ul style="list-style-type: none"> <li>Making payment in respect of successful claims</li> <li>Financial management</li> <li>Working with MoJ to assure funding</li> <li>Forward planning</li> <li>Ensuring awards are paid for the benefit of victims</li> <li>Supporting applications to the Court of Protection</li> <li>Management of retained awards (fund management)</li> </ul>	<ul style="list-style-type: none"> <li>Facilitating data gathering</li> <li>Recording "corporate memory"</li> <li>Building key stakeholder relationships</li> <li>Ensuring that victims may access the scheme with equality</li> <li>Working in collaboration with victim services organisations to make guidance clear</li> <li>Providing advice to overseas national compensation bodies</li> <li>Working with victim services organisations to raise awareness of the scheme for potential applicants</li> </ul>	<ul style="list-style-type: none"> <li>Dealing with claimant enquiries</li> <li>Providing information</li> <li>Facilitating data gathering</li> <li>Putting victims in touch with charitable organisations that may be able to help them (whether they are eligible for compensation or not)</li> <li>Directing victims of crimes suffered elsewhere in the EU to the schemes in the relevant jurisdiction, where appropriate</li> </ul>	

<sup>13</sup> There can be an under- or overvaluation when cases are finally determined, which explains £1m discrepancy in these figures.

## Analysis of evidence received on CICA's functions

40. To gather a solid evidence base for the Triennial Review, we put out a Call for Evidence on the MoJ consultations website, laid a Written Ministerial Statement in both houses of Parliament, flagged it to stakeholders by email, and held workshops for key stakeholders. The questions drew on Cabinet Office guidance, covering functions (does CICA do what it should, what more could it do) and form (each of the delivery models to be considered). The questions are at Annex A. We received 17 responses to the Call for Evidence. A full list of respondents can be found in Annex B.
41. A majority of respondents expressed support for the work done by CICA. Some respondents specifically recommended maintaining CICA, as it holds expertise necessary to the proper administration of its functions, or because of costs associated with change.

### Evidence received on the continuing need for CICA

*"This scheme is at the core of "Criminal Justice" and is recompense for both the crime, and the involvement within the Criminal Justice process."* Safety Net Advice and Support Centre, Carlisle

*"The authority has the independence, skills and experience to administer the compensation scheme."* Ian Harkness, individual with experience of victims' services<sup>14</sup>

*"CICA should continue to administer the Criminal Injuries Compensation Scheme. [It] has acquired the necessary technical expertise to process applications. If [it] did not administer the scheme another body would have to do so, with the consequent cost of setting up an entire, new infrastructure."* Association of Personal Injury Lawyers (APIL)

*"Unless a more efficient organisation, whose costs are demonstrably not prohibitive, can deliver the Schemes the CICA should continue to carry out its principal function."* Non Executive Advisors to CICA

42. The majority of respondents did not support extending CICA's remit. A few including CICA and their non-executive board members were more favourable, subject to adequate resourcing.

### Evidence received on CICA's remit

*"Taking on other functions would detract from its core function of administering the schemes, which can involve highly technical and complex issues."* The Bar Council

*"Requiring the Authority to undertake further functions would interfere with its primary role of compensating victims of violence."* APIL

*"[CICA] needs to remain focussed on its core objectives and not become embroiled in other schemes."* Safety Net Advice and Support Centre, Carlisle

*"[We] would be concerned if CICA performing additional functions led to a reduction in the quality of its decision-making..."* HMCTS

*"The staff of the CICA have particular skills in determining compensation claims which could be applied to other Government compensation schemes."* Public and Commercial Services Union (PCS)

*"...providing this can be achieved within resource constraints and does not compromise the primary function of the organisation."* Non Executive Advisors to CICA

43. As we have seen above, CICA operates nine schemes (paras 32-34), and has operated two more non-criminal injury schemes in the past (para. 35). This may account for negative

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<sup>14</sup> Ian Harkness is a volunteer who has worked with Victim Support Scotland for some 17 years, largely on CICA representations up to Tribunal level. His comments do not represent the views of Victim Support Scotland.

responses to the question of whether it should be allowed to deliver other schemes, or perform other functions.

44. Two key Victims Services partners of CICA – Victim Support and Victim Support Scotland – both proposed alternative means of delivering CICA’s functions which would transfer part of the work undertaken by CICA to them or similar groups.

**Evidence received from VS organisations on suggested alternatives to CICA**

*“... not convinced that the current Criminal Injuries Compensation Authority is the most appropriate body with the capacity to administer an effective scheme for victims of crime in Scotland.”* Victim Support Scotland

*“...there are alternative models that could be delivered all or in part through the third sector which could provide real benefits to victims, better value for money and increased effectiveness.”* Victim Support

*“Preferably the CICA fund should cease. If kept the system could be dealt with through the health system by individual doctors referring their patients for counselling/mental health support.”* False Allegations Support Organisation (FASO)

45. Alternative delivery models are considered in the analysis of alternative forms, below.
46. Responses relating to how CICA delivers its functions were both positive and negative. However, respondents did not suggest there were insurmountable problems, and recommendations on how CICA could improve its delivery focused on transparency, and closer working with key stakeholders.

**Evidence received on how CICA can improve**

*“It is evident at the present time that the CICA’s resources are stretched. The pressure of numbers can already have a detrimental effect on the functions that the CICA carries out. There have, for example, been instances of applicants having been told that they are not entitled to a claim when actually they should be.”* APIL

*“The present scheme works reasonably satisfactorily, and while capable of improvement by discussion [between] practitioners of the scheme, does not require a root and branch complete reorganisation.”* Ian Harkness, individual with experience of victims’ services

*“We would be keen to see further improvement in relation to transparency ... the internal guidance to decision-makers should be available to the public.”* Victim Support

*“There are difficulties with the current performance of the CICA and these need to be addressed on an ongoing basis, to strive for improvement and efficiency.”* APIL

47. Among respondents to the call for evidence, there is general (though not unqualified) support for the work undertaken by CICA. Respondents made a number of suggestions on how CICA might improve delivery of its functions. Some responses suggested more fundamental changes to the structure of CICA, but the majority favoured retention of the current body and, in particular, the expertise held therein.

**Conclusion on CICA functions**

48. It is agreed that delivery of the schemes administered by CICA must continue. The five functions marked as “steps in the delivery of the CICS” in Figure 3, above, must therefore be retained.
49. Stakeholder relations and management and customer services functions are key support functions for delivery of the Schemes. Evidence received on how CICA can improve requires ongoing discussions between stakeholders and CICA – delivered by the “stakeholder relations and management” function. Delivering the Schemes to often vulnerable, blameless victims of violent crime requires strong customer services.



50. The seven functions identified at paragraph 39 and Figures 4 and 5, above, are necessary to the proper administration of the Scheme, and must be retained, whatever form CICA takes.

51. Following consideration of the functions of CICA, this report moves to consider alternative forms of delivery that might be appropriate.

## Form

### Current form of CICA

52. It is helpful to consider the nature of CICA as an organisation; its internal structure; and the governance arrangements in place.

#### Nature of CICA

53. CICA does not hold Crown status, nor does it have any separate legal identity. For national accounts purposes, it is assigned to the central government sector. It operates on “Next Steps” (i.e. Executive Agency) lines.<sup>15</sup>

54. While CICA is not founded in statute, decisions about claims made under the *Criminal Injuries Compensation Act 1995* schemes are made by CICA Claims Officers appointed, under the Act, by the Secretary of State. When determining claims under the schemes, CICA claims officers exercise a public function under s.3 of the 1995 Act, and do not act for or on behalf of the Secretary of State. It is for this reason that CICA has always been classified, for policy and administrative purposes, as an “executive non-departmental public body” (NDPB). However, it does not have the features normally seen of an NDPB – such as an independent Board led by a non-executive Chair.

55. CICA’s functions under statutory compensation schemes are therefore not functions of the Justice Secretary, but its administrative functions are.

56. CICA also has functions in respect of pre-Tariff applications, but its claims officers are not decision-makers – the decisions on awards are made, in the first instance, by the First-tier Tribunal (FTT). CICA receives the application, gathers relevant evidence, and pays the compensation. Though not a party to the decision of the FTT-CIC, CICA may instruct counsel to present the case to the FTT.

57. The decision that CICA should not be founded in statute was informed by a wish to retain flexibility in determining the means by which government could administer the statutory CICS. Lack of legal status had prevented CICA from directly employing staff, and the Chief Executive from being designated in statute as Accounting Officer. However, since November 2010, following a transfer from Scottish Government, CICA staff have enjoyed the status of Civil Servants employed by MoJ. A Framework Document,<sup>16</sup> published in 2012, outlines the responsibilities of the Chief Executive as Accounting Officer. There are no fundamental reforms to CICA underway at the time of this Triennial Review.

#### Management Structure of CICA

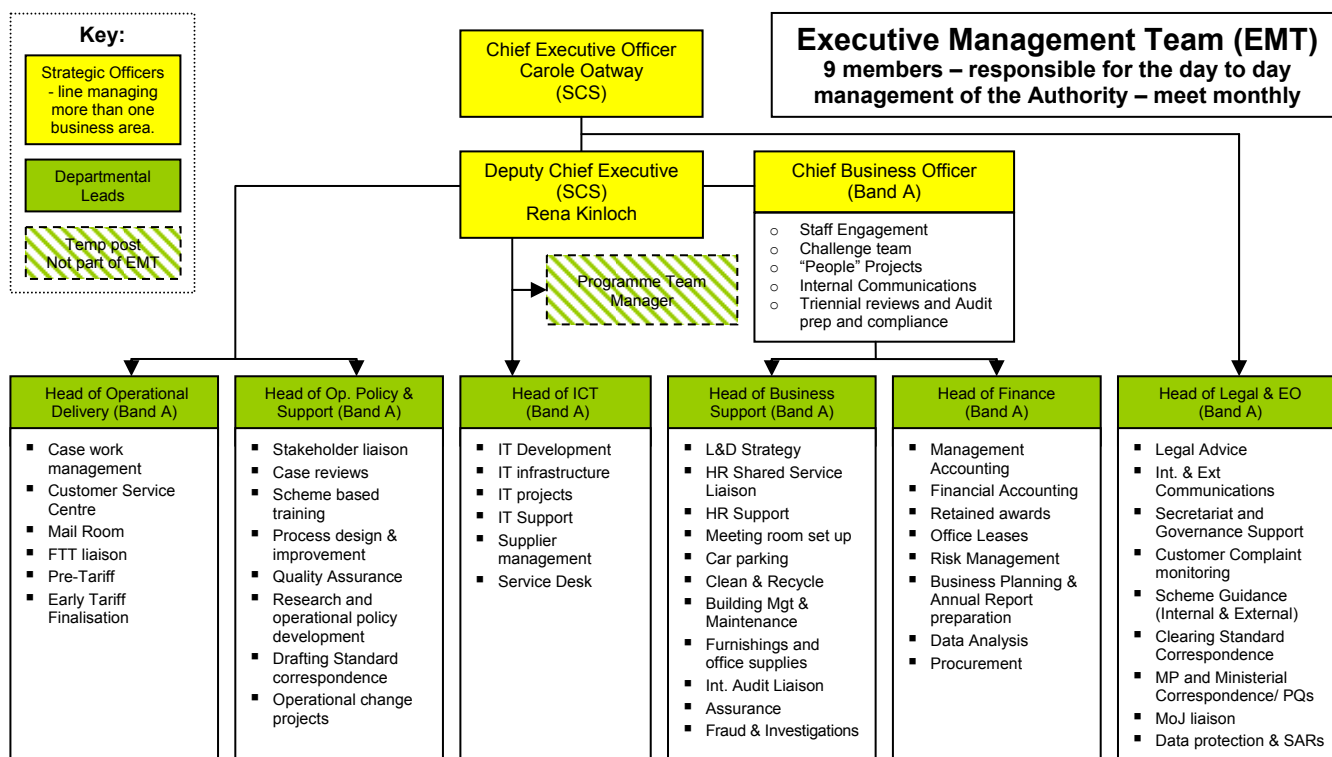
58. In early 2012, CICA revised its management structure, moving from a Board of Directors to an Executive Management Team (EMT), as outlined in Figure 4. This has flattened CICA’s management structure, enabling greater involvement of senior managers in CICA’s day-to-day operation. CICA’s Policy and Performance Board has commented that the new structure will support continuing commitment to staff engagement, and will inform improved succession planning.

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<sup>15</sup> Delivery by an Executive Agency is examined at length in this document; the nature of such Agencies is outlined at paragraph 168, below.

<sup>16</sup> See paragraph 59, below.

Figure 4: Organisation diagram of the CICA Executive Management Team



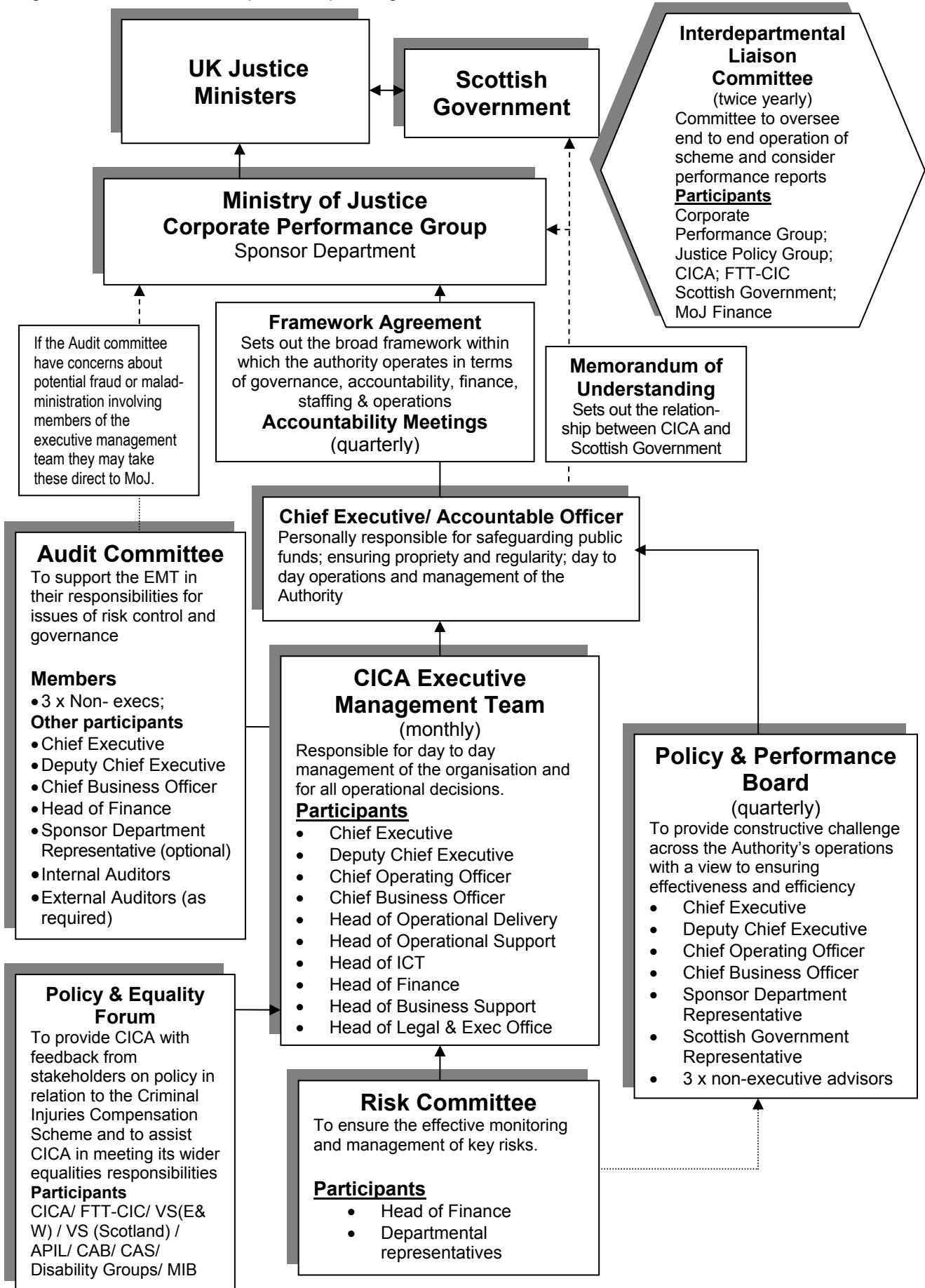
## Governance Arrangements

59. The MoJ sponsors CICA, which operates as an arm's length body. This sponsorship relationship, which is managed by officials in the Arm's Length Bodies Governance Division, is set out in a Framework Document,<sup>17</sup> published in 2012. The practical governance and sponsorship arrangements are depicted in Figure 5. A Memorandum of Understanding (MoU) sets out the working arrangements on liaison between the Scottish Government and CICA on matters relating to the Criminal Injuries Compensation Scheme, including arrangements for the Scottish Government to make an appropriate contribution towards the funding of the scheme.
60. CICA's governance arrangements are strengthened by provision for three non-executive advisers who, as well as providing a challenge function, inform policy considerations and oversee CICA's performance. The non-executive advisers also form CICA's audit committee and attend CICA's Policy and Performance Board, which meets quarterly to consider any proposed operational policy changes and to receive and consider performance reports. This board also includes representation from Scottish Government.

<sup>17</sup> The CICA-MoJ framework document is at <http://www.justice.gov.uk/downloads/publications/corporate-reports/cica/framework-moj-cica.pdf>.



Figure 5: Governance and sponsorship arrangements between CICA and MoJ



## Alternative means of delivery of CICA functions

61. It is clear that CICA’s functions should be retained: the payment of criminal injuries compensation must continue. The next question to answer is how those functions should be delivered in future. The evidence gathered has led us to consider a number of alternative delivery options for analysis, namely:
- (a) Delivery of criminal injuries compensation at a local – rather than national – level;
  - (b) Outsourcing CICA’s full portfolio of work, as a block, to a national provider in the private or voluntary sectors;
  - (c) Carving out and outsourcing some of the compensation schemes administered by CICA (either locally or nationally);
  - (d) Carving out and outsourcing some of the functions of CICA carried out across various compensation schemes; or
  - (e) Retention of CICA within Government, either as an Arm’s Length Body (ALB) or as a part of the core of MoJ.
62. Cabinet Office guidance on Triennial Reviews sets out a number of specific alternative delivery models that must be considered by all Triennial Reviews (reflected in the call for evidence). These fall variously under the five alternative delivery options, above.
63. The table below sets out an overview of the alternative delivery options, and relevant models whose consideration is mandated by Cabinet Office. Each of the five broad options ((a)-(e) above) is highlighted in pale blue below, and analysed in the paragraphs referred to in the table. A number of specific models, highlighted in mid blue below, is then analysed in further detail at the specified paragraphs.

Delivery model	Analysis	Comments
Abolition	No further analysis required	<ul style="list-style-type: none"> <li>• EU law requires that the UK provide a mechanism for compensating victims of violent crime (see para.10, above).</li> <li>• The current Scheme is excluded from consideration in this Triennial Review (see para. 14, above).</li> <li>• No concrete evidence has been received to suggest that this is a viable option.</li> </ul>
<b>(a) Delivery of criminal injuries compensation at a local – rather than national – level</b>	Paras 65-86	<ul style="list-style-type: none"> <li>• All schemes delivered by CICA are national schemes.</li> <li>• This would duplicate administration, increasing costs considerably.</li> <li>• Local variations in awards could lead to expensive legal challenges, and a growth in total compensation.</li> <li>• There are also concerns about local funding.</li> <li>• No concrete evidence has been received to suggest that this is a viable option.</li> </ul>
Delivery by local government, or Policing and Crime Commissioners	No further analysis required	<ul style="list-style-type: none"> <li>• It would be possible for local government to process applications arising within their local authorities.</li> <li>• Delivery by the Commissioners would align with government policy to deliver victims’ services locally.</li> <li>• However, analysis of option (a) rules out this approach.</li> </ul>

Delivery model	Analysis	Comments
<b>(b) Outsource CICA's full portfolio of work, as a block, to a national provider in the private or voluntary sectors</b>	Paras 87-116	<ul style="list-style-type: none"> <li>• A number of voluntary victims' organisations deliver services to victims of crime; and there are various private sector providers who may be able to deliver CICA functions.</li> <li>• A single delivery body could provide victims of crime with a joined-up service.</li> <li>• This approach raises significant concerns around funding, conflicts of interest, and perverse incentives.</li> <li>• CICA's 2013-14 resource allocation for administration costs is of c. £17m (see Figure 1, above), which is relatively small, and limits possible profits from efficiency savings.</li> <li>• There would be a loss of expertise in CICA.</li> <li>• There are significant risks around outsourcing responsibility for awarding compensation, while retaining financial liability.</li> <li>• There is little evidence to suggest that it is a viable option.</li> </ul>
<b>(c) Carve out and outsource some of the compensation schemes administered by CICA (either locally or nationally)</b>	Paras 117-119	<ul style="list-style-type: none"> <li>• It may be easier to outsource delivery of the current (2012) scheme alone.</li> <li>• May generate savings in administering 2012 scheme.</li> <li>• This would duplicate administration, increasing costs.</li> <li>• All legal and financial risks associated with option (b) also apply to this option, in respect of the outsourced scheme.</li> <li>• No concrete evidence has been received to suggest that this is a viable option.</li> </ul>
<b>(d) Carve out and outsource some of the functions of CICA carried out across various compensation schemes</b>	Paras 120-127	<ul style="list-style-type: none"> <li>• Voluntary sector delivery of victim-facing functions may mean that victims deal with only one provider.</li> <li>• Any arrangement which interposes a second organisation between CICA and the victim would slow up the process of making awards.</li> <li>• Some functions would still have to be duplicated.</li> <li>• The fragmentation of CICA functions would raise the risk of mismanagement of cases.</li> <li>• Many of the legal and financial risks associated with options (b) and (c) also apply to this option.</li> </ul>
Delivery by the private sector	No further analysis required	<ul style="list-style-type: none"> <li>• It may be possible to contract with the private sector to deliver most or all of CICA's current functions.</li> <li>• Stakeholders were universally opposed to such an approach (see para. 98).</li> <li>• No evidence has been received to suggest that this is a suitable model at present.</li> </ul>
Delivery by a mutual, Community Interest Company or social enterprise	No further analysis required	<ul style="list-style-type: none"> <li>• Given the nature of CICA's work, the organisation would have only liabilities and not assets. In almost any event, it would remain wholly government-funded.</li> <li>• The financial risk (even excluding the pre-tariff liability) could be prohibitive for any such body to bear.</li> <li>• There is no evidence that this is a viable option.</li> </ul>
Create a public corporation	No further analysis required	<ul style="list-style-type: none"> <li>• A public corporation is defined as a body that derives more than 50% of its production cost from the sale of goods or services at economically significant prices.</li> <li>• CICA does not provide any "product" that could be sold on an open market.</li> <li>• No evidence has been received to suggest that this is a viable option.</li> </ul>

Delivery model	Analysis	Comments
<b>(e) Retain CICA within Government, either as an Arm's Length Body (ALB) or as a part of the core of MoJ</b>	Paras 128-129	<ul style="list-style-type: none"> <li>• The costs and risks associated with each of options (a)-(d) outweigh any benefits that might accrue.</li> <li>• CICA's functions should be retained: the payment of criminal injuries compensation must continue.</li> <li>• There was considerable support for retaining these functions in Government.</li> </ul>
Bring inside a Government department (MoJ)	Detailed analysis at paras 130-134	<ul style="list-style-type: none"> <li>• This option was considered feasible by stakeholders and respondents.</li> <li>• There was little enthusiasm for this approach. However, it is explored in more detail below.</li> </ul>
Create a non-ministerial department	No further analysis required	<ul style="list-style-type: none"> <li>• A non-ministerial department is headed by a permanent office holder rather than a Minister, and a Minister in another department is accountable for it to Parliament (e.g. Her Majesty's Revenue and Customs).</li> <li>• As compared to establishing a new NDPB, this option would create greater bureaucracy, but no more independence, around delivery of CICA's functions.</li> <li>• No evidence has been received to suggest that this is a viable option.</li> </ul>
Merge with another body (including to an existing executive agency)	Detailed analysis at paras 135-141	<ul style="list-style-type: none"> <li>• CICA performs casework functions; these are also undertaken elsewhere in government.</li> <li>• Respondents recognised that CICA's expertise and experience of delivering a high volume complex criminal injuries compensation scheme could read across to other compensation schemes.</li> <li>• Other bodies, including National Savings and Investment (NS&amp;I), an Executive Agency of the Treasury, currently deliver other schemes that pay out government money.</li> <li>• There was little appetite for this approach, but it is explored in more detail below.</li> </ul>
Maintain the <i>status quo</i> (government ALB)	Detailed analysis at paras 142-154	<ul style="list-style-type: none"> <li>• There is evidence to support the maintenance of the <i>status quo</i>, as CICA is viewed as meeting the three tests by delivering an impartial service requiring technical expertise independent of Ministers.</li> <li>• This option is explored in more detail below.</li> </ul>
Delivery by a new NDPB	Detailed analysis at paras 155-167	<ul style="list-style-type: none"> <li>• The NDPB model is appropriate for CICA, as it maintains the required level of independence from Government and is set up with the specific Government aim of impartially delivering criminal injuries compensation to the blameless victims of violent crime.</li> <li>• Establishing CICA in statute would provide assurance of it being the independent NDPB responsible for the impartial delivery of criminal injuries compensation.</li> <li>• Little evidence has been received in favour of moving to this model at present, but it is explored in more detail below.</li> </ul>
Delivery as an executive agency	Detailed analysis at paras 168-183	<ul style="list-style-type: none"> <li>• It would be possible to deliver CICA's functions through a new Executive agency of the MoJ.</li> <li>• This would better reflect the current operation of CICA.</li> <li>• This approach is explored in more detail below.</li> </ul>

64. Many issues relating to institutional change are common to all approaches. These are first dealt with under option (a), but are referred to in the analysis of other options. Option (a) is therefore treated at greater length, in laying out these broader themes.

#### Option (a): Local delivery of CICA functions

65. It would, in theory, be possible to deliver CICA functions at a local level. This could be done by Local Authorities, or by Policing and Crime Commissioners (PCCs). This would have the advantage of bringing provision of compensation closer to victims. CICA's casework function is already administered in four 'regions' which align to groups of police forces across England, Wales and Scotland. Each is run by a specific team in CICA's Glasgow office. The purpose is to better enable relationships between CICA and forces, who already work closely together when CICA is determining an application.

#### *Perceived advantages of local delivery*

66. The role of PCCs is to aim to cut crime and deliver an effective and efficient police service within their force area. This will include commissioning a number of victims' services locally, in a shift from delivery by the national organisation, Victim Support. As such, delivery by PCCs would align with the policy of delivering victims' services locally.

67. Moving CICA functions to PCCs would bring together the prevention of harm (through the Police) and compensation for that harm. If the administration of, and funding for, criminal injuries compensation were given directly to PCCs, it is conceivable that this would give PCCs a further incentive to drive down crime and therefore cut the amount they would have to pay out in compensation – clearly a desirable end.

#### *Duplication of functions & consequential increases in cost*

68. The key argument against local delivery is that economies of scale are reversed. CICA has made considerable savings by centralising its delivery through one office, in Glasgow. If delivery of CICA functions were localised, for example, in line with PCCs, this would potentially lead to 43 separate bodies administering the Schemes. Each of these bodies would have to carry a staffing load for this work. A reasoned allocation mechanism for funding would have to be developed. Various functions would have to be duplicated across each authority, with a loss of efficiencies. Were any function to be retained centrally, this would again multiply the bodies and people involved in delivering CICA functions.

#### **Evidence received on centralisation and duplication of functions**

*"HMCTS believes it makes sense for one body to administer the Criminal Injuries Compensation Schemes to avoid possible duplication of work or processes, ensure economies of scale and avoid possible inconsistent application [or] interpretation of the Schemes."* HMCTS

*"CICA has already demonstrated that it is significantly less expensive to administer the Scheme by centralising the operation."* CICA Executive Management Team

*"CICA administers a large amount of public money; to split it up between Local Authorities would be costly and risk lack of consistency and duplication of management structures."* PCS

69. Every application made to CICA is checked to ensure applicants have not already claimed in respect of that harm. Every year, a number of fraudulent applications are identified, which can result in prosecution.<sup>18</sup> Without a central authority, such checking would have to be undertaken in close cooperation with other local authorities, and with the Police. Multiple, fraudulent applications in different Local Authorities would be harder to track, and may well increase. It would be expensive to retain this work to prevent double claims centrally; and such retention would undermine the case for delivery of CICA's functions through local authorities.

<sup>18</sup> CICA receives c. 750 applications that are ineligible as a result of previous applications. As the majority of these are captured at an early stage, and fewer than 10 cases *per annum* result in fraud.

70. There would be additional complexities if an incident started in one local authority area and ended in another. CICA retains capacity for a “major incidents team,” spread across their regional teams. Where such events occur, the ability to process claims swiftly helps support victims in these particularly difficult circumstances. It would be difficult to retain this capacity if criminal injuries compensation were administered locally.

#### *Local inconsistency & consequential costs*

71. The CICS is a national scheme. It does not currently provide for local variations in cover, though this might be permitted, were the Scheme amended. However, Stakeholders were universally opposed to local delivery for this reason: ensuring consistency of approach, by local authorities, in interpreting the scheme would be difficult.

#### **Evidence received on local delivery and the risk of inconsistency**

*“Moving the CICA function to local government would open up the possibility of substantive differences in interpretation or practice between areas. This could be seen as unfair by victims and is contrary to the original intention of the Scheme. In the same way as the criminal law is designed to apply across England and Wales, the interpretation of a Scheme designed to compensate victims of crime should not vary by locality.”* Victim Support

*“[Local delivery carries] an inherent risk in the consistency of applying a national scheme at a local level.”* Non-Executive Advisers to CICA

*“Consistency in application of the schemes is enhanced by having the same body run them, with recourse to highly experienced external experts.”* The Bar Council

72. There would be a risk that variations between decisions in different areas might be challenged in court. This would prove expensive.

#### *Increases in legal costs*

73. Where claimants challenge CICA’s first decision, the Authority will run that case through internal review, to the First Tier Tribunal and, eventually, the higher courts. In their response to the call for evidence, CICA estimated that the administration cost of a case going to review and then appeal can be between 5 and 10 times higher than the norm. This is a cost local authorities would have difficulty bearing – and which, with greater challenges arising out of rising differences in awards made locally, would be more common. However, were it retained centrally, local authorities may be encouraged to give ever smaller awards, thereby saving the expense to themselves – but increasing appeals and consequential costs to MoJ.
74. CICA run all Judicial Reviews relating to the Scheme, with the MoJ involved where appropriate. The Authority resists robustly any Judicial Reviews which could have an impact of future interpretation of the Scheme. On occasion, this is expensive; however, not resisting these claims adequately may allow interpretation of the Scheme to be widened through new case law, leading to an increase, over time, in the cost of running the Scheme. This is a function which local authorities would find it difficult to fund; and the possible financial impact suggests it should in any case be retained centrally.

#### *Cost of transfer*

75. As with any transfer of staff, there would be costs relating to TUPE arrangements and meeting pension commitments. These would be of concern to CICA staff, most of whom have recently transferred from Scottish Government to MoJ.

#### *Loss of expertise, and cost of training*

76. CICA staff are unlikely to move to 43 new local authorities. Their expertise would be lost, and the training of local authorities’ staff would be a significant and costly task. Stakeholders’ responses to the call for evidence raised this concern.

### **Evidence received on loss of skill and cost of training**

*“Any other organisation taking over the administration of the scheme would require a considerable period to acquaint itself with the complexities of injuries, their healing times, the emotional distress, exacerbation of existing conditions, where to source authoritative expert opinion etc.”* Ian Harkness, individual with experience of victims' services

*“To facilitate fairness and public confidence, the scheme must be delivered by a skilled workforce that can provide a quality service to victims. Personnel must therefore have appropriate training and sufficient professional knowledge and understanding of the impact of crime and the role that compensation plays in supporting and assisting victims to rebuild their lives.”* Victim Support Scotland

*“The risk of moving it out of central government is primarily the loss of skilled staff and undermining the integrity of the decision making process.”* PCS

77. CICA's stakeholder relations team has built up strong relationships with key bodies that provide them with information central to delivery of its functions – police authorities, medical practitioners' bodies, the Department for Work and Pensions, MoJ and other government departments. Were CICA disbanded, these relationships would be lost. The number of people and organisations that would have to re-establish them would be multiplied considerably. The period of re-building these links, and the greater difficulty in maintaining such a number of relationships, would lead to delays in processing claims, and a drop in the quality of service to victims.

### *Funding risk*

78. Were delivery of CICA's functions localised, funding would likely have to be provided through local authorities. Respondents recognised this risk, and focused in particular on difficulties around local variations, and variations over time, in the demand for criminal injuries compensation.

### **Evidence received on local delivery and funding risks**

*“Local government already faces enormous economic pressures and the delivery of services to victims through local government has recently undergone drastic change so that it is far too early to measure the effectiveness of those changes before imposing additional challenges.”* APIL

*“In these times of financial constraints, funding by local government would be a major concern.”* The Bar Council

*“Given that the Scheme is demand led, there could be challenges in ensuring that the Scheme remained adequately funded as well as dealing with peaks and troughs in demand at a local level.”* CICA Executive Management Team

79. Under the current Scheme, the MoJ is liable for payment of awards. Without a centralised authority, financial risks to the department would be much harder to manage. Were this liability moved to local authorities, it would pose a considerable strain on their resources, and may lead to inconsistencies in provision for victims of similar crimes in different localities.

### *Legislative and political risk*

80. Under the 2012 Scheme, CICA is designated as “Scheme administrator”. Any change that would split CICA functions between local authorities would require further changes to the Scheme. This would require legislative time, which is in short supply. Given the difficulties in gaining approval of the 2012 Scheme, it may be difficult to get any amendments approved. In opening the Scheme up again, government would also risk changes which would raise the overall spend on criminal injuries compensation.
81. Local variation in awards, in the time taken to process them, and in the quality of service to blameless victims of violent crime, would present a reputational risk to MoJ over which it would



no longer have control. This is particularly acute, given possible variations in local funding (see paragraphs 71-72, above).

82. Retaining CICA functions centrally allows the government to retain greater control over the administration of the Scheme, and to intervene more effectively and swiftly where problems arise.

#### *CICA and Scotland*

83. CICA, based in Glasgow, is also responsible for delivering the Scheme in Scotland; this is separately funded by the Scottish Government. In response to the call for evidence, Scottish Government expressed support for both the functions of CICA, and the organisation itself. Were provision to be localised, this may complicate provision for Scotland.

#### **Paraphrased evidence received on Scotland and CICA**

Kenny MacAskill MSP, Cabinet Secretary for Justice at the Scottish Government, flagged their intention to consult in 2014 on options for a separate Scottish criminal injuries compensation scheme. Given the investment already made in Glasgow, and the expertise of CICA staff, he said it was likely that Scottish Government would wish CICA to continue handling Scottish claims under any new arrangements. He therefore saw a need not just for CICA functions, but for the organisation itself.

84. CICA and the Scottish Government have entered into a Memorandum of Understanding governing CICA's administration of the Scheme in respect of Scotland, and the Scottish Government's funding of that scheme, and of a proportion of CICA's administrative spend.
85. This matter may have to be reconsidered in 2015-16, in light of any decision made by the Scottish Government in respect of the Scheme – and the result of the forthcoming 2014 Scottish referendum. The Justice system is already devolved, and CICA's working arrangements reflect this. For the time being, the relationship with Scotland, through CICA and the Scheme, militate against devolving CICA functions to local authorities.

#### **Conclusion on local delivery of CICA**

86. Local delivery of CICA functions is not recommended. The advantages of localising delivery of CICA's functions are limited, theoretical, and hard to quantify. The duplication of CICA functions across, potentially, 43 authorities would entail significant financial, legal, legislative, political, reputational and quality risks. These outweigh any benefits to such a move.

#### **Option (b): Outsourcing CICA's full portfolio of work, as a block, to the private or voluntary sectors**

87. A second broad approach to provision of CICA functions would be to move the full portfolio of schemes administered into the private or voluntary sectors. Such an approach may generate some savings to the public purse. A private sector provider may have greater incentives to drive down the cost of delivery, especially where synergies can be found with their existing portfolio. A voluntary sector provider may do so by the use of volunteers.
88. In addition, were CICA functions delivered alongside other services to victims, this may mean that victims deal with only one provider – which they may find preferable. However, this would run counter to current moves to localise procurement of many victims' services under PCCs.
89. A wholesale outsourcing would face the difficulties outlined above in respect of: costs of transferring staff; loss of expertise; legislative and political risk; and delivery of the Scheme for Scotland. There are further specific risks attached to voluntary or private sector delivery.

#### ***Risks of voluntary sector delivery***

90. Victim Support, in its submission, proposed three alternative models, with more or less participation of a voluntary sector provider such as themselves in delivery of CICA functions; the



third proposed delivering all CICA functions through a voluntary sector organisation. They offered to work up a full plan, with costs. They suggested a number of benefits to such a model.

**Evidence received from Victim Support on benefits of voluntary sector delivery**

*“[Where a] Third sector organisation such as VS delivers all [CICA functions, this would] result in an end to end CIC service. It would also enable the victim to receive other forms of support concurrently or immediately afterwards, even if they had not already been referred for this prior to the application. Use of a third sector organisation with strong links to the police could also assist in sourcing evidence.” “... added value could be given to victims through face to face contact with volunteers [which] could result in reductions in file builders’ time.”* Victim Support

91. However, the financial risk of administering a demand-led service which costs around £200m *per annum*. (with outstanding liabilities running into hundreds of millions of pounds) may mean that service provision needs to be split to enable a voluntary organisation to take on some duties without a wholesale transfer of risk. Particular concerns relate to the ability of such organisations to fund and defend claimant appeals at the First Tier Tribunal, the Upper Tribunal, and the higher courts. However, were such costs to remain with MoJ, this would engage the risks outlined for local delivery models (see paragraphs 73-74, above).
92. Furthermore, were victims’ organisations to bid successfully for the work previously administered by CICA, the fit with their campaigning and advocacy roles would be uncomfortable and, at worst, lead to direct conflict. Where a victims’ organisation has referred an applicant for compensation, it would be perverse for that organisation also to be determining the application.
93. Various stakeholders expressed concerns around such an approach.

**Evidence received of concerns raised by voluntary sector delivery**

*“The independence, expertise and transparency of the function might be compromised by moving it out of central government to the voluntary or private sector”* The Bar Council

*“Voluntary organisations with experience in delivering victim services might face a number of conflicts in trying to administer the scheme.”* APIL

*“Although solicitors and voluntary agencies such as Victim Support and Citizens Advice assist with claims as part of their wide portfolio of help, to actually run the whole scheme would be outwith their capability in terms of manpower and budget.”* Ian Harkness, individual with experience of victims’ services

94. Each perceived benefit outlined above can be obtained without running the risks associated with full voluntary sector delivery. CICA already directs applicants to relevant support services; it is desirable that such links be strengthened. CICA has built and maintains strong links with the various police forces in the UK, which is necessary to delivering their functions. A number of applicants get help from Victim Support and similar bodies in preparing their applications; where helpful, such support should be encouraged. The time taken to build files has been lowered through the use of better IT systems; further involvement of Victim Support volunteers may not in fact reduce file builders’ time.

*Risks of private sector delivery*

95. CICA functions could be delivered by a company with casework expertise, or by an insurer. However, evidence suggests that CICA is relatively efficient – for example, as given in CICA’s response to the call for evidence, the cost per case resolved for CICA (£289) compares very favourably with the equivalent public body that administers a similar Scheme in Northern Ireland (£453). A strong business case – that demonstrated that significant savings could be made – would need to be made to justify such an approach.

96. Given the total spend on CICA (c. £200m *per annum*) and the relatively small administrative costs (for which the 2013-14 resource allocation is c. £17m) – and that any organisation wishing to take on all of CICA’s functions could only make savings from the latter figure – there would be a relatively small prize for any such organisation, and the small savings in cost do not outweigh losses in quality service to victims.
97. Significantly, outsourcing determination of awards would also give up control of a considerable risk to the public purse. As this is a public function under the *Criminal Injuries Compensation Act 1995*, there may be complexities around its outsourcing.
98. Stakeholders had particular concerns with the prospect of such a model.

**Evidence received in opposition to private sector delivery**

*“... caution should be taken to move this function out of central government management. The use of private suppliers in other areas should have been more effective, however in some areas ... it appears to have been costly, ineffective and insensitive. Victims of crime require a particular type of care and great care should be taken when deciding next steps should this not remain within the [Criminal Justice System] remit.”* Safety Net Advice and Support Centre, Carlisle

*“It would not be appropriate for the private sector to administer the scheme in view of the fact that public confidence in it and its impartiality is largely as a result of the fact that it is governmentally controlled.”* APIL

*“We would also have concerns about the functions being passed to a private sector organisation given the potential incompatibility between impartial decision-making and the profit motive.”* Victim Support

*“Dealing with the victims of crime is a sensitive matter and is not something that should be a source of profit for a private company.”* PCS

*“There is no financial argument for removing it from central government, only a rather weak ideological one.”* Matthew Dyson, Cambridge University

99. There is also a risk that private companies would have “perverse incentives” that, over time, would inflate the payments made on claims. In their response to the call for evidence, CICA estimated that the administration cost of a case going to review and then appeal can be between 5 and 10 times that of one accepted outright. If Scheme administrators had an imperative to realise a profit, then there could be a temptation to avoid taking tough decisions, as these are more likely to result in a case progressing beyond first decision. While the extent of discretion available within the Scheme has been limited by the 2012 reforms, there remains a degree of judgement involved in interpreting the Scheme. If contentious decisions were avoided, the compensation bill would increase and, crucially, Parliament’s will would be subverted.

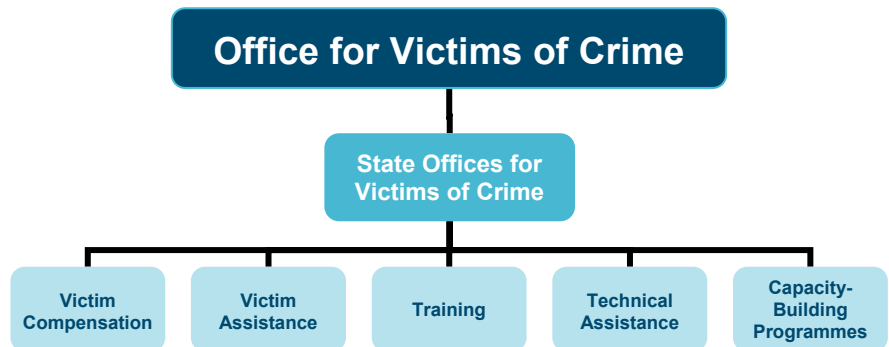
*Create a “Victims’ Trust”, to provide all centralised victims’ services*

100. A number of other jurisdictions offer a further third-sector model for consideration. They provide all victims’ services – support, guidance and compensation – through a single body. If created as a trust, such a body would have greater independence, and could be funded directly, or partly, from proceeds of crime, fines, and the like.
101. These organisations’ functions typically include support – such as that currently offered by national organisations such as Victim Support, Victim Support Scotland, or Rape Crisis. They also provide compensation to blameless victims of crime. They typically also provide training and capacity-building – particularly where they also work alongside local or regional victims’ services organisations – and central funding for smaller victims’ services providers.
102. Establishing a separate trust or similar organisation to provide all centrally commissioned victims’ services is out of step with the move to local provision, but it has some advantages. These are illustrated particularly well by international comparators.

103. Two examples are examined below: the American Federal Office for Victims of Crime (OVC), and the Swedish Crime Victim Compensation and Support Authority (CVCSA).

104. The OVC was established in 1988 through an amendment to the Victims of Crime Act (VOCA) 1984. It supplements state funds, supporting programmes and services to help victims in the immediate aftermath of crime, and to provide support thereafter.

Figure 6: Functions of the US OVC



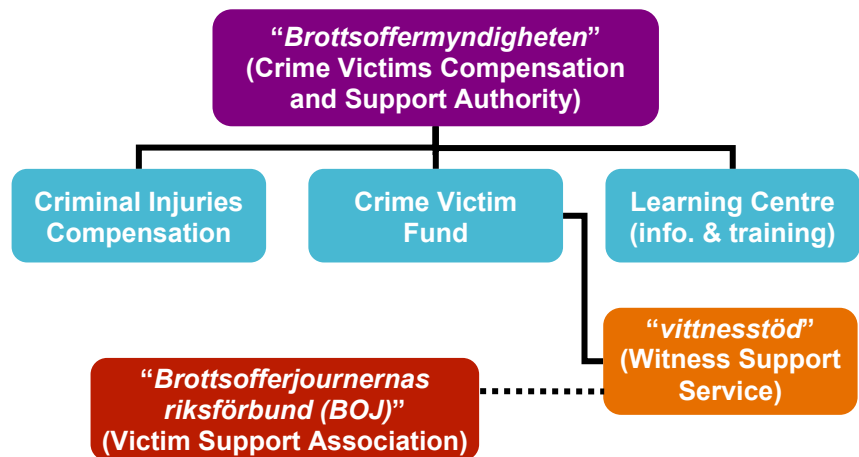
105. The OVC is fully funded from:

- criminal fines (except for environmental, railroad, unemployment insurance, and postal service offences);
- forfeited appearance bonds (upon failure to attend a court hearing);
- forfeited proceeds of federal crimes (“collateral profits from crime”);
- “special assessments”, a mechanism similar to the UK victim surcharge (ranging from US\$25 on individuals convicted of lesser offences; and from US\$400 on corporations convicted of serious crimes); and
- philanthropic gifts, donations, and bequests by private parties.

106. Such a funding model has obvious attractions: it is a “closed loop,” where offenders pay for the reparations made to victims; it does not draw on central government funds; and it gives the central victims’ services provider true independence from Government.

107. Another alternative is offered by the Swedish Crime Victim Compensation and Support Authority (CVCSA, or “*Brottsoffermyndigheten*”). This body receives about 11,000 applications<sup>19</sup> for criminal injuries compensation a year. By contrast to the OVC, only about a third of that total is raised through compensation and proceeds of crime paid over by offenders.

Figure 7: Functions of the Swedish CVCSA



108. The CVCSA also runs a Crime Victims Fund of 30-35m kr (c. £3.0-£3.5 m) a year,<sup>20</sup> raised from fees paid by offenders, and used to fund victim support projects, research and organisations. It is also responsible for the Witness Support Service (*vittnesstöd*), run by volunteers provided by the Victim Support Association (BOJ). In some respects, then, it provides a combination of the functions carried out in the UK by Victim Support and CICA.

<sup>19</sup> See CVCSA, “The Authority in Numbers”: <http://www.brottsoffermyndigheten.se/eng/about-us/the-authority-in-numbers>.

<sup>20</sup> *ibid.*

109. The Swedish CVCSA has a staff of 50, mainly lawyers. As legal specialists, such staff would be graded considerably higher than CICA staff – so, despite the lower case-load, they are likely to have greater costs per claim determined.
110. Due to differences in the service provided and the time periods used, we cannot directly compare between these three organisations; however, the table below gives an indicative look at the different organisations, and the amounts of compensation disbursed by each in criminal injuries compensation, *per capita*.

Figure 8: Indicative overview of CICA, OVC and CVCSA funding (Table)

	Accounting period used	Victim services provided	Total resource allocation / cap		Compensation budget allocation		Population served	£ <i>per capita</i>
			Local currency	GBP	Local currency	GBP		
CICA <sup>21</sup>	May 2013-Apr 2014	Compensation	£193.75 m		£174.10 m		61.4 m <sup>22</sup>	£2.84
OVC	Oct 2010-Sep 2011 <sup>23</sup>	Compensation, assistance, training	\$705.00m <sup>24</sup>	£439.85 m <sup>25</sup>	\$180.89 m <sup>26</sup>	£112.86 m	312.9 m <sup>27</sup>	£0.36
CVCSA <sup>28</sup>	Jan 2013-Dec 2013	Compensation, assistance, training	– n/a –		122.47 m kr	£12.21 m <sup>29</sup>	9.4 m <sup>30</sup>	£1.29

111. Although the type of organisation and time periods are not directly comparable, it appears that the level of compensation paid in the US is minimal compared to the UK Scheme (about one eighth that awarded *per capita* by CICA). It provides about £60m less compensation, to a population more than five times larger. Indeed, the total spend *per capita* on the OVC is just under half that paid out by CICA on compensation alone.
112. Even were UK victims' services cut to US levels, some of the sources of funding equivalent to those that pay for the OVC (see paragraph 105, above) are already used to pay for other services in the UK; such figures would have to be replaced from central Government funds, merely transferring the cost of provision from one source to another.
113. The US "closed loop" funding model is not viable for the UK, without significantly curtailing the amount paid out to victims by amending the Scheme. Such a move would face very significant opposition, and may be subject to legal challenge.

<sup>21</sup> These are the figures for the current financial year, 2013-14.

<sup>22</sup> 2011 UK Census population data for England, Scotland and Wales, but excluding Northern Ireland.

<sup>23</sup> These are the latest figures available in full, for the US financial year 2011.

<sup>24</sup> This is the OVC spending cap for financial year 2011: <http://www.ojp.usdoj.gov/ovc/about/victimsfund.html>.

<sup>25</sup> All conversions from US dollars use the mean of the monthly HMRC "Rates of Exchange for Customs and VAT purposes" for the period October 2010 to September 2011.

<sup>26</sup> OVC, "2011 Crime Victims Fund Compensation and Assistance Allocation":

<http://www.ojp.usdoj.gov/ovc/grants/cvfa2011.html>.

<sup>27</sup> *ibid.*: this is the population figure used to calculate the OVC compensation budget for 2011 – the 2010 figure, including the US territories of American Samoa, Guam, New Mariana Is., Puerto Rico, and the U.S. Virgin Is.

<sup>28</sup> Swedish Justice Department, "Regleringsbrev för budgetåret 2013 avseende Brottsoffermyndigheten"

("Appropriation for the year 2013 for the CVCSA"): <http://www.esv.se/sv/Verktyg--stod/Statsliggaren/Regleringsbrev/?RBID=15110>. Note that this is the highest level of criminal injuries compensation disbursed in Sweden over the decade 2003-2013.

<sup>29</sup> This conversion is made using the mean of the monthly HMRC "Rates of Exchange for Customs and VAT purposes" for the period January 2013 to May 2013 (the latest figures available for the period at issue).

<sup>30</sup> World Bank, "Population, total": <http://data.worldbank.org/indicator/SP.POP.TOTL>, figure for Sweden, 2011.

114. In Sweden, the amount of criminal injuries compensation awarded *per capita* by the CVCSA is about just under half that paid out by CICA. Furthermore, unlike CICA, the CVCSA acts rather like an insurer: it pays out awards due to victims, then attempts to claim this money back from offenders. This approach places a considerable amount of debt (owed by offenders) on the government's books. Though this may have the effect of incentivising the CVCSA to pursue these funds, this liability makes the Swedish model somewhat unattractive.
115. Though each has its attractions, neither of these models is viable in the UK context. To realise the full benefits of a joined-up service to victims of crime, the current trend towards local delivery of most victims' services would have to be reversed. To be self-funding, the amount spent on compensation and victims' services would have to be cut considerably, or charges to offenders increased significantly – with the recognised difficulties attaching to enforcing such payments. Neither model mitigates the various risks – particularly financial – raised in respect of this option; and a Swedish-style substantial transfer of financial risk to the public purse is undesirable.

**Conclusion on outsourcing CICA's portfolio as a block**

116. Private or voluntary sector delivery of all CICA functions is not recommended. It carries considerably greater risk than is justified by the benefits it may deliver. As the schemes generate only liabilities, it is not clear that wholesale outsourcing of CICA functions along with liabilities would be a good business proposition. Though establishing a "victims' trust" or similar organisation may have some benefits, both practical and presentational, it is out of step with the move to local provision through PCCs, and does not mitigate the general risks associated with this model.

**Option (c): Carving out and outsourcing some of the schemes delivered by CICA**

117. It may be easier to outsource delivery of the current (2012) scheme alone. Most work under older schemes is likely to be cases of complex or long-term harm. It would also be more viable, financially, to take on the broader risk profile of a current scheme. Such an approach may generate savings in administering 2012 scheme.
118. However, as with local delivery, this would multiply the bodies responsible for delivery of criminal injury compensation, raising the administration cost overall, and leaving a more expensive "rump" organisation in the public sector. It would also carry many of the risks of both options (a) and (b), above.

119. Outsourcing specific schemes separately is therefore not recommended.

**Option (d): Carving out and outsourcing some of the functions of CICA carried out across various compensations schemes**

120. There is scope for the private sector or voluntary victims' organisations to deliver part of the functions of CICA. Functions that might be outsourced include interface with victims, casework and evidence-gathering, determining awards, working with tribunals, financial management, or any combination thereof. This was reflected in the evidence gathered.

**Evidence received on outsourcing some CICA functions**

*"A differential must, however, be drawn [between case management and] the legal and policy elements of the CICA who advise on the operation of the Schemes and respond to legal challenges; a role which should be conducted from within government, not an outsourced party. This would, in effect, split the functionality of the CICA with the case management elements sitting outside of the MoJ and the policy and legal elements remaining inside."* Non-Executive Advisors to CICA

*"... a voluntary organisation could exclusively take on some of the functions pertaining to the early stages of an application, i.e. raising awareness of the Scheme, responding to enquiries,*

*pre-submission checking and informal evidence gathering, form completion and submission and representation. In other words, there could be a distinction between what EU law designates as the Assisting Authority and the Deciding Authority, with a voluntary sector organisation as the former.” Victim Support*

121. There is some interest in such an approach, from Victim Support in particular (as alluded to in paragraph 90, above); other voluntary or private sector organisations may also be interested. Victim Support outlined two “partial outsourcing” approaches.

**Evidence received from Victim Support on partial voluntary sector delivery**

*“Option 1:*

*A third sector organisation such as VS provides 100% of CIC fund awareness, eligibility and signposting. Benefits would include: CICA call handling function would no longer be required. This would allow a more efficient and effective use of resource. Submissions could potentially be made through a mix of volunteers and staff.*

*Option 2:*

*A third sector organisation such as VS would provide 100% of quality checking, pre-submission evidence gathering, form completion/submission and representation services. Additional added value could be given to victims through face to face contact with volunteers. All of this could result in reductions in file builders’ time.” Victim Support*

122. As with option (b) (see paragraph 88), if a single provider delivered all victim-facing functions, victims may only have to deal with only one local or national provider.
123. However, were only the initial information-gathering to be outsourced, CICA would still have to contact claimants directly to fill gaps in documentation – and would therefore have to retain some of this capacity. This would raise administration costs, means victims still deal with multiple organisations, and may confuse claimants about who is responsible for their claim. On the other hand, any arrangement which interposes a second organisation between CICA and the victim would slow up the process of making awards, despite any reduction in file builders’ time due to improved form completion, as requests for further information were held up as the designated victim-facing individual or organisation passed them on to the claimant. This is clearly undesirable.
124. The fragmentation of CICA functions would raise the risk of mismanagement of cases, and therefore of negative media coverage. At present, file builders and decision makers work in close cooperation, on two sides of a single room. This relationship would be much more complex, if it spanned separate organisations. Where decision makers need further information, they would either have to go back to the file-building organisation, leading to delays, or have to contact the claimants directly, with the same risks as outlined above.
125. In addition, this partial outsourcing approach would face the difficulties outlined above in respect of: costs associated with, and staff resistance to, a TUPE transfer; loss of expertise; legislative and political risk; and the relationship with Scotland.

126. Outsourcing some of CICA’s functions is therefore not recommended. It would reverse the gains made in recent years from improved case management, increase administration costs, and lower quality of service, with little tangible benefit.

127. Certain specific tasks undertaken by CICA may, however, be provided more efficiently by the private sector. For example, it may be possible to outsource financial management of retained awards.<sup>31</sup> As part of the ongoing work in the MoJ to identify efficiencies, a further piece of

<sup>31</sup> These are awards which are subject to special arrangements, made, for example, to children or people who lack legal capacity, and typically held, temporarily or permanently, in an interest-bearing bank account, often with provision for interim payments. CICA manages a number of such awards.



work should be undertaken, supported by a robust business case, to establish whether any savings and improvements in service may be made in this way.

Option (e): Retention of CICA within Government, either as an Arm's Length Body (ALB) or as a part of the core of MoJ

128. The four broad alternatives to public sector delivery of CICA functions have been rejected, as the costs and risks associated with each outweigh any benefits that might accrue. However, it is clear that CICA's functions should be retained: the payment of criminal injuries compensation must continue.

129. Retention of CICA functions within government – but at arm's length – is therefore recommended.

## Detailed analysis of options

### Bring inside a Government department (MoJ)

130. Respondents were roundly critical of a straight amalgamation of CICA with the MoJ. They were particularly concerned that this would undermine the need for independence and impartiality in discharging the Scheme.

#### **Evidence received on independence and impartiality**

*“Working at arms length from Ministers is important to ensure impartiality of operation and maintenance of the Scheme. Ministers should appropriately be distanced from key decisions in the interpretation and delivery of the Schemes.”* Non-Executive Advisors to CICA

*“CICA needs to be at arms length from Ministers to maintain its independence and impartiality.”* The Bar Council

*“... making decisions under the CICS must be an impartial, quasi-judicial function that cannot be affected by political considerations.”* Victim Support

131. HMCTS raised concerns around conflicts of interest for tribunals deciding against appeals from decisions taken by MoJ, its parent department.

#### **Evidence received from HMCTS on difficulties around adjudication of claims**

*“MoJ should consider the risk of allegations of conflict of interest of an HMCTS administered tribunal adjudicating on appeals against decisions of its parent department or sister agency.”* HMCTS

132. This is a particular risk for bringing CICA fully in-house, but must also be considered in the context of making it an Executive Agency (see paragraph 182, below).

133. Victim Support Scotland also raised the importance to victims of an identifiable body administering the Schemes.

#### **Evidence received on the importance of an identifiable CICA**

*“It is important that stakeholders, in particular victims, have a clearly identified body to engage with, and are able to challenge the decisions of that body.”* Victim Support Scotland

134. Bringing CICA functions fully in-house is not recommended. There is clearly value attached to having a clearly identifiable body impartially delivering criminal injuries compensation, working at arm's length from the MoJ; and stakeholders are opposed to the MoJ delivering CICA functions in-house.

Merge with another body (including an existing executive agency)

135. Respondents were roundly critical of this option. Some saw no body delivering similar functions.

**Evidence received on a lack of other bodies that could merge with CICA**

*“There is no parallel body coming close to the functions CICA does.”* Matthew Dyson, Cambridge University

*“Victim Support is not aware of any central government body delivering duplicating or suitably similar functions, and believes that a merger would risk diluting the expertise needed to understand victims’ needs appropriately.”* Victim Support

136. Where they did see other agencies delivering similar functions – as did APIL – they raised specific concerns around such a merger, resourcing, and the possibility of undermining ongoing programmes of change.

**Evidence received on the risks of a merger with DWP functions**

*“The only comparable area of central government delivering similar functions which result in the award of money to applicants, and is susceptible to challenge through the Tribunal Service is in relation to the benefits system. The DWP is already stretched in its own resources and at a time when it has been tasked to deliver fundamental change it would not be appropriate to merge functions.”* APIL

137. Others – such as the Bar Council – saw risks around loss of expertise.

**Evidence received on loss of expertise in a merger**

*“CICA performs a unique function which for many years mirrored the common law, with compensation payments under the older schemes running into millions of pounds for some victims. The expertise (including external expertise) and skill that has been built up over the years might be put at risk by merger with another public body that is tasked with applying wholly distinct rules and criteria.”* Bar Council

138. Rather than suggesting a merger with another body, some respondents suggested that CICA could undertake delivery of other compensation schemes such as the Armed Forces Compensation Scheme. However, respondents also commented that any transfer of functions to CICA would have to be supported by adequate funding.

**Evidence received on other schemes CICA might administer, if properly funded**

*“Other organisations, such as the Ministry of Defence and the Northern Ireland Compensation Agency deliver similar functions for other compensation Schemes, but do not duplicate the work of the CICA. Any consideration of mergers must be fully evidenced and supported by appropriate cost and benefit analysis.”* Non-Executive Advisors to CICA

*“The staff of the CICA have particular skills in determining compensation claims which could be applied to other Government compensation schemes.”* *“Northern Ireland operates a compensation scheme, however this is a smaller unit. [It] has sought out skills and experience of CICA demonstrating that CICA is effective in its delivery and [this] is a valuable relationship in terms of support.”* PCS

139. Other respondents, similarly concerned about resourcing, opposed such a move.

**Evidence received opposing the extension of CICA’s remit to other schemes**

*“HMCTS would be concerned if CICA performing additional functions led to a reduction in the quality of its decision-making, leading to an increase in appeals to the Criminal Injuries Compensation Tribunal, administered by HMCTS, or to any reduction in the timeliness of performing its functions.”* HMCTS



*“It is evident at the present time that the CICA’s resources are stretched. Requiring the Authority to undertake further functions would interfere with its primary role of compensating victims of violence. Taking on further roles would mean that the current backlog of cases would increase and pressure to improve performance without adequate budget or additional resources would make matters even worse. ... It might be that with adequate resourcing the CICA could administer complementary schemes such as Armed Forces Compensation ... We are therefore generally opposed to the CICA carrying out functions for any other public bodies, and efforts should instead be focused on the CICA’s core functions.” APIL*

140. Other bodies, including DWP and National Savings and Investment (NS&I), an Executive Agency of the Treasury, currently deliver other schemes that pay out government money. The option of merger needs to be considered in the context of reforms to MoJ’s and other Government delivery bodies.

141. An outright merger with another body is not recommended under this triennial review. It is recommended that these options be borne in mind as the MoJ and other Government departments consider whether there is scope for CICA to undertake other, similar work, on condition that it is adequately resourced to deliver that work without a loss of service to blameless victims of violent crime.

#### Maintain the status quo

142. This option requires to be tested with the same rigour and analysis as other more radical options. The starting point is to assess CICA against the coalition government’s three tests for NDPBs.

#### *Does CICA perform a technical function?*

143. The following are technical functions: the interpretation of the various criminal injuries compensation schemes by CICA claims officers; the review by claims officers of other claims officers’ decisions; the defence of such decisions before tribunals; and preparing responses to judicial review proceedings.

#### *Does CICA need to be politically impartial?*

144. CICA must be politically impartial. While there might be debate and controversy as to the content of any proposed new scheme, this is a matter for the political process. CICA claims officers’ role is limited to determining claims made under the criminal injuries compensation schemes as enacted by Parliament.

#### *Does CICA act independently and transparently to establish facts?*

145. In exercising their functions under the *Criminal Injuries Compensation Act 1995*, CICA claims officers act independently and transparently to establish facts. This independence is protected under the Act: they do not act on behalf of the Secretary of State; and their decisions on the merit and *quantum* of claims may only be reviewed by other claims officers, the tribunals, or the higher courts.

146. CICA’s functions clearly meet all three tests; and a number of stakeholders agreed.

#### **Evidence received on Cabinet Office’s “three tests”**

*“... CICA’s function clearly meets the tests required of an NPDB: that is, it must be delivered with absolute political impartiality, delivered independent of Ministers, and has a technical function which requires expertise external from that of the MoJ ...”*

Non-Executive Advisors to CICA

*“CICA delivers a technical function which requires expertise. Its decisions must be impartial.”*  
APIL

*“CICA does need external expertise, needs to be impartial and [must act] with integrity.”*  
Matthew Dyson, University of Cambridge

*“[It is] important that the functions are seen to be delivered with no perception of partiality.”*  
HMCTS

147. CICA and the MoJ work together closely to control the spend on CICA. In almost any eventuality, the Scheme and its administration would continue to be funded by the Ministry of Justice and the Scottish Government; this control is therefore important. Evidence submitted by the PCS and CICA emphasised this close cooperation, and the necessity of doing so in order to ensure the money is set aside to meet awards made by case workers.

**Evidence received on managing the spend on Criminal Injuries Compensation**

*“CICA needs to be able to predict and receive funding to meet claims; to ensure this balance under another model could be difficult.”* PCS

*“The Government needs to organise its finances in a way that avoids the potential for uncontrolled overspends. As part of the Ministry of Justice, CICA manages this process by close liaison with central finance teams to ensure that the pace of processing cases is closely aligned to the availability of funding. This requires CICA to be very good at forecasting its funding requirements (to ensure that funds are available to settle claims as they are decided). There is a very real and substantial risk that an organisation which is separate from central Government would have less corporate commitment to managing this process effectively.”* CICA Executive Management Team

148. A strong argument for retaining CICA as an ALB delivering criminal injuries compensation is that it possesses a store of knowledge and depth of expertise. This results from nearly 20 years of operation and experience of operating different compensation schemes, and enables CICA to adapt their operating model to operate new schemes effectively and efficiently, and to implement continuous improvement. It is reflected in respondents’ comments on the functions of CICA (see paragraph 41).
149. One concern about maintaining the *status quo* relates to the non-statutory status of CICA. This concern was voiced in the evidence by CICA Non Executive Advisers, who felt that CICA’s current status does not guarantee its independence from Ministers.

**Evidence received on CICA’s hybrid status**

*“Ministers should appropriately be distanced from key decisions in the interpretation and delivery of the Schemes. However, as a non-statutory body within the MoJ, the CICA cannot be assessed as fully removed from Ministers but have a level of ‘ad hoc’ independence.”*  
Non-Executive Advisors to CICA

*“Although, on the face of it, the function is delivered at arms length from Ministers, in reality, since it is publicly funded and subject to budgetary controls it cannot be truly ‘at arm’s length’.”* APIL

150. CICA’s current status is discussed at paragraphs 52-58, above. The complexity of current arrangements reflects the fact that CICA’s functions under statutory compensation schemes are not functions of the Justice Secretary, but its administrative functions are. Nevertheless, a number of respondents to the call for evidence saw risks in a move out of central government, and advantages to retention of the *status quo*.

**Evidence received on advantages to retention of the status quo**

*“Delivery of the function by central government underlines its importance to victims.”* The Bar Council

*“The risk of moving [CICA] from central government is loss of confidence in the impartiality and fairness of decisions.” “... changing its status could be costly with little benefit and could undermine public confidence.”* PCS

*“There would be no guarantee that an overall better service for victims would result by altering the present system. The three layers of administration are working well. With an independent tribunal service at the top, the Authority being dedicated as the administrator and individuals making the claims, often with assistance, a stable system is present.”* Ian Harkness, individual with experience of victims' services

*“The current structure provides the necessary protections to victims.”* APIL

151. Maintaining the *status quo* has a number of advantages. It is an established, well-run body, comprising of experienced and knowledgeable staff. Operating at arm's length from MoJ, its claims officers discharge their statutory duties independently, determining claims under statutory compensation schemes and, where appropriate, awarding compensation to the blameless victims of violent crime. Its Executive Agency-like governance and accountability mechanisms enable CICA to operate independently within its sphere of action, and account to MoJ for its performance and use of public funds.
152. However, its form – or, more accurately, its classification – is anomalous. Though classified as an “Executive NDPB”, it is, in essence, an Executive Agency, housing a number of statutorily-appointed claims officers exercising public functions.
153. Lack of clarity as to CICA's nature and identity, has in the past led to difficulties in negotiating contracts (for example, leases of its premises) and employment contracts. Some of these issues have been resolved, but its status remains unclear, and this has discouraged other government departments from delivering similar work through CICA.

154. Maintaining the *status quo* is a viable delivery option, and has a number of advantages. Given the anomalous nature of CICA's classification as an Executive NDPB, and that it operates as an Executive Agency, means that MoJ should consider carefully whether to reclassify it, to better reflect its nature. This is discussed at paragraphs 168-183, below.

#### Delivery by a new NDPB

155. Under this option, a new NDPB would be created in statute as the independent body responsible for determining claims for criminal injuries compensation.
156. The clear advantage of this option is that the body delivering criminal injuries compensation would be a fully independent statutory NDPB operating at arm's length from the MoJ with its responsibilities, governance and accountabilities clearly defined.
157. CICA Non-Executive Advisers expressed concern that CICA's non-statutory status meant that, as part of the MoJ, there was a potential for political interference, and that its independence in discharging its functions when determining claims under the statutory criminal injuries compensation scheme was not guaranteed.

#### **Evidence received from CICA Non-Executive Advisers on CICA independence**

*“As part of the MoJ, the CICA is open to allegations of political interference, and is not afforded the freedoms and flexibilities of a statutory NDPB.” “While the CICA's function clearly meets the tests required of an NPDB ... the current status of the CICA as a non-statutory body does not guarantee [its independence]”* Non-Executive Advisers to CICA

158. Though it would provide much the same functions as CICA, a statutory body delivering criminal injuries compensation would have more transparent governance, and greater accountability and oversight. Arrangements might include statutory provision for the appointment of an independent board, headed by a non executive chair; the appointment and remuneration arrangements for a Chief Executive and staff; and the opportunity to set out in legislation clear statutory responsibilities in respect of the statutory criminal injuries compensation schemes.

159. However, the call for evidence did not yield much evidence in support of this option. Though neither explicitly supported such a move, two submissions contained arguments that would favour establishing CICA as a fully-fledged NDPB.

**Evidence received in favour of greater independence**

*“VSS believes the scheme should be administered by an entirely impartial arms-length body with the ability to act independently and in the public interest. This is important to help ensure it is fair and not at risk of influence or interference from competing political agendas or priorities.”* Victim Support Scotland

*“An outside group would look at each case objectively.”* Individual respondent

160. The PCS raised the concern that changes necessary to make CICA an NDPB would not benefit delivery of its functions.

**Evidence received on lack of benefits from changing CICA to an NDPB**

*“CICA’s position as an NDPB is slightly anomalous, [but] it has a clearly defined function being delivered to a high standard by civil servants with reducing administrative costs. It would not benefit the function to add a board and change the status of staff. It needs to be directly accountable for the funds it administers. (CICA does have a board of directors led by the CEO and her deputy. In a way we are half way there!)”* PCS

161. One reason this option may not have attracted much support in the call for evidence is that, as seen in the analysis above, the balance of opinion is for maintaining the *status quo* (see paragraph 150).

162. Establishing a new NDPB to replace CICA would engage a number of issues. Firstly, it might create the impression that the current arrangements, and therefore CICA themselves, are substantially deficient. This is not borne out by the evidence received.

163. Secondly, legislative time is in short supply, and debates on any legislative proposals might focus on the statutory schemes delivered by CICA rather than the structure of the new body.

164. Thirdly, the cost of administering any new body may be higher than the cost of administering CICA – particularly if its replacement has a remunerated Chair and a greater number of Non-Executive Board members – without guaranteeing significant improvements in performance or service to victims.

165. Fourthly, CICA and the MoJ work closely together to manage the financial and reputational risk to the department (see paragraph 147, above); the MoJ’s relationship with a statutory NDPB that replaced CICA may be less close, entailing an increase in these risks. This might be exacerbated by the perception (at paragraph 162) that there must have been a fundamental problem with the current arrangements.

166. Fifthly, concerns over independence and accountability may be addressed better through improved governance arrangements and greater transparency. Where undertaken, such a governance review is, primarily, a matter for Stage 2 of a Triennial Review.

167. Given the risks and costs associated with establishing a new, statutory NDPB to replace CICA, and the relative lack of evidence that this would improve outcomes for victims, this approach is not recommended.

Delivery as an Executive Agency

168. Executive Agencies are established to enable executive functions within government to be carried out by a well-defined business unit, with a clear focus on delivering specified outputs within a framework of accountability to Ministers. They deliver specific functions of that

department, as distinct from giving policy advice. They have specific targets, which are reported to Parliament; and produce their own annual reports and accounts.

169. Some respondents opposed to delivery of CICA functions by an Executive Agency, on the basis that it was not necessary.

**Evidence received against establishment of CICA as an executive agency**

*“The only possible benefit of establishing a new Executive Agency would be to enable a “fresh start” approach to the administration of the Scheme. However, the cost and disruption would be extensive and APIL would prefer to seek improvements and efficiencies by working in collaboration with the CICA rather than an entirely new body.” APIL*

*“Victim Support can see no compelling case for a return to this model, a version of which existed prior to 1997.” Victim Support*

170. Internal respondents were more favourable, though they stressed that such a move would entail little change.

**Evidence received in favour of establishment as an executive agency**

*“Establishing CICA as a new executive agency could have advantages in clarifying its status. It would not change it dramatically.” PCS*

*“Delivery by a new Executive Agency may provide the benefit of additional governance and reduced risk, but the cost of establishing a new Executive Agency must be taken into account when considering the business case.” Non-Executive Advisors to CICA*

171. Both the Non-Executive Advisors to CICA and the NAO have raised concerns around the formal governance mechanisms for CICA. Their concern is that, though CICA is currently managed well, and enjoys a good relationship with MoJ, were this not to be the case, current governance arrangements may not be sufficiently robust.

172. CICA’s anomalous status means that its governance mechanisms are not entrenched: they are subject to question, and key stakeholders are often unclear as to its nature, and its distance from the Department.

173. CICA is currently run, in effect, as an Executive Agency of MoJ. It has appointed “Non-Executive Advisors” to sit on the audit committee and a quarterly “Policy and Performance” challenge board alongside the Executive Management Team. Its governance and accountability mechanisms are almost identical to those of an Executive Agency. It could therefore simply be reclassified as an Executive Agency, with little or no substantive change to its governance arrangements.

174. Under the Executive Agency model, typically, Non-Executive Directors would sit on a Management Board, and scrutinise CICA’s operation more closely than at present, with greater responsibility for its quality. In reclassifying CICA, consideration should be given as to how its Non-Executive Directors could best contribute to its work, without undermining recent improvements in performance associated with the move to an Executive Management Team model.

*Financial Implications*

175. Establishing CICA as an Executive Agency will not incur significant costs. Its structure and governance arrangements would be virtually identical, and staff would stay on MoJ terms and conditions. CICA has provision for three Non-Executive Advisors currently in post; there would be no need to appoint additional Non-Executive Directors.

176. CICA should take the opportunity to examine how its Non-Executive Advisors can best contribute to its work, making best use of their expertise from other sectors. This may lead to

an increase in their daily remuneration (currently £200 *per diem*), or the number of days worked a year (currently nine), or both.

177. These costs would be minimal, in the context of the administrative spend on CICA, and would be justified by better use of Non-Executives' expertise, improved governance mechanisms, and the greater clarity of CICA's status.

#### *Benefits of Executive Agency status*

178. By granting CICA Agency status, current arrangements – under which CICA operates as a well-defined business unit with a clear focus on delivering specific outputs – would be entrenched. It will allow CICA the flexibility to make decisions within the boundaries of their framework, with the knowledge that they are directly accountable to Ministers for administering the schemes. Clarity over status would make it easier for CICA to take on similar work from other government departments and devolved administrations, which may offer efficiency savings.

179. Executive Agency status will also allow its staff to remain civil servants. It can address the concerns over governance, whilst avoiding the need for major changes. Its classification will be consistent with both its current operation, and Cabinet Office classifications of ALBs.

180. An Executive Agency is typically closer to a Department than an NDPB. There is a risk that reclassification would be perceived as an attempt to move CICA closer into government. This is not the case. CICA does not currently function as an NDPB, and the independence necessary to performing its functions lies with claims officers appointed under the *Criminal Injuries Compensation Act 1995*. Granting CICA Executive Agency status would merely be a reclassification, not establishing it anew. It would protect those aspects of its current operation that motivated respondents' support for the *status quo*.

181. The independence of claims officers when exercising their public functions does not seem to have faced significant problems in CICA's past Executive Agency-like operation. However, consideration should be given as to whether, if reclassified as an Executive Agency, the Framework Document that would replace CICA's Framework Agreement with MoJ should include specific protections of this independence.

182. In its evidence, HMCTS raised "the risk of allegations of conflict of interest of an HMCTS administered tribunal adjudicating on appeals against decisions of ... [a] sister agency" (see paragraph 131). Despite CICA's current nature, such difficulties do not appear to have arisen. Tribunal members must be impartial, and are appointed by the Judicial Appointments Commission; therefore, the fact the Tribunals are administered by HMCTS is as relevant to appeals against decisions under the Scheme as is the administration of the High Court by that same body in relation to Judicial Reviews.

#### *Conclusion on delivery as an Executive Agency*

183. On the basis of the evidence collected, and the findings of this Triennial Review, it is recommended that CICA be reclassified as an Executive Agency.



## Summary and Recommendations

### Functions

184. As set out in the analysis of the functions of the body, there is support for these functions to continue. All of the functions are necessary to the effective delivery of the Schemes established by Parliament under the *Criminal Injuries Compensation Act 1995*. It is clear that CICA functions are still required, at least for the present.

#### Stage 1 Recommendation: Functions

185. It is recommended that all of the current functions of CICA be retained, unchanged.

### Form

186. The call for evidence produced very few calls for a change of form. Respondents recognised that CICA performs relatively well; and suggested improvements focused on matters to be resolved through greater engagement with stakeholders, and transparency in the basis on which decisions are made. It is recommended that CICA address these matters through established stakeholder engagement channels.

187. The Triennial Review also looks at CICA functions according to the ‘three tests’:

Test	Analysis
Is this a technical function (which needs external expertise to deliver)?	Yes – in interpreting and adjudicating claims under the various criminal injuries compensation schemes, CICA claims officers exercise a technical function; as is defending decisions at tribunals and in the higher courts.
Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?	Yes – claims officers do not act for the Secretary of State, but exercise independent public functions under the 1995 Act; these decisions must be politically impartial.
Is this a function which needs to be delivered independently of ministers to establish facts and/or figures with integrity?	Yes – in determining claims under the Schemes, Claims Officers employed at CICA act independently and transparently to establish facts; which determinations may be reviewed first by another claims officer, then by the First Tier Tribunal and the higher courts.

188. The analysis of alternative delivery models highlights difficulties surrounding alternatives to public sector delivery of CICA by a single body. There was considerable support for maintaining the *status quo*. However, CICA’s status is anomalous, and it operates, in effect, as an Executive Agency.

#### Stage 1 Recommendation: Form

189. It is recommended that CICA be reclassified as an Executive Agency.

## Conclusion

190. The recommendations above do not require that a stage 2 governance review be undertaken in this Triennial Review. However, such an exercise is desirable, and will be undertaken as part of the MoJ Services and Structures Review, over the coming months.

## Annex A: Questions asked in the Call for Evidence

The questions which follow are intended to frame the CICA Call for Evidence. Given the recent consultation on a revised Criminal Injuries Compensation Scheme, it is necessary to outline what information we are seeking from consultees.

The questions below are not designed to be exhaustive and do not seek to replace invitations to respond directly to the review team.

The questions presume an understanding of the functions, form and purpose of the CICA. They are primarily aimed at key stakeholders such as legal and consumer representative bodies. We would invite these bodies to share the survey wider with their members.

The survey is divided into two parts:

1. the function of the CICA; and
2. the form the CICA takes.

These align with the Stage 1 remit for Triennial Reviews, as mandated by Cabinet Office.

### **The function of the CICA.**

The Criminal Injuries Compensation Authority is the government body responsible for administering the Criminal Injuries Compensation Scheme in England, Scotland and Wales. Its aim is to compensate the blameless victims of violent crime. As the body that administers the Scheme, it is an experienced caseworking organisation.

#### **1. Should the CICA continue to administer the Criminal Injuries Compensation Scheme?**

Points to consider:

- How does this contribute to the core business of the CICA and the Ministry of Justice?
- How does this contribute to wider Government policy objectives?
- Is providing the function a justifiable use of taxpayers' money?
- What would be the cost and effects of not delivering the function?

#### **2. Should the CICA be permitted to undertake other functions? (E.g. casework for other government departments or organisations; administering schemes for paying out damages; etc.)**

##### **The form of the CICA**

The Criminal Injuries Compensation Authority was established in 1994 under prerogative powers. It is treated as an Arm's Length Body for administrative purposes. Its staff are directly employed by the Ministry of Justice. It is run by a Chief Executive and a Board of Directors.

##### **Is there an alternative form that the CICA might take?**

Here follow a range of delivery options for consideration. This is not an exhaustive list – and consultees are encouraged to think creatively when assessing how the Criminal Injuries Compensation Authority's functions might be delivered.

#### **3. Should the CICA move out of Central Government?**

Points to consider:

- Do the various schemes administered by the CICA need to be run by the same body?
- Why does central government need to deliver this function?
- Can the function be delivered by local government, by the voluntary sector or by the private sector?



- Is there an existing provider (or providers) in the local government, voluntary or private sector that could deliver this function?
- Can the function be privatised or delivered under contract by the voluntary or private sector?
- Can the function be delivered by a mutual, Community Interest Company or social enterprise?
- What are the risks and benefits of moving the function out of central government?

#### **4. Should the CICA be brought in-house?**

Points to consider:

- Why does the function need to be delivered at arms length from Ministers?
- Can the function be delivered more efficiently or effectively by the Ministry of Justice or by an existing Agency of the Ministry of Justice?
- What would be the cost and benefits of bringing the function in-house?

#### **5. Should the CICA be merged with another body?**

Points to consider:

- Are there any other areas of central government delivering similar or complimentary functions?
- Does the function duplicate work undertaken elsewhere?
- Could the function be merged with those of another public body?

#### **6. Should the CICA be established as a new Executive Agency?**

Points to consider:

- Could the function be delivered by a new Executive Agency?
- What would be the costs and benefits of this?

#### **7. Should the function continue to be delivered by a Non-Departmental Public Body?**

Points to consider:

- Is the CICA's function:
  - (i) a technical function which needs external expertise to deliver;
  - (ii) a function which needs to be, and to be seen to be, delivered with absolute political impartiality – such as certain regulatory or funding functions; or
  - (iii) a function which needs to be delivered independently of Ministers to establish facts or figures with integrity?
- How well is the CICA currently delivering the function?
- Are the freedoms and flexibilities inherent in the NDPB model being used to deliver the function?

#### **8. Are there any other possible delivery options?**

Please write in any alternative forms of delivery not listed above.

## Annex B: List of Respondents

### Participants in Direct Engagement

Workshops	
Type of Stakeholder	Organisation
Reviewee	Criminal Injuries Compensation Authority (CICA)
Victims' services organisations	Victim Support
	Victim Support Scotland
Legal professional bodies	Association of Personal Injury Lawyers (APIL)
	The Law Society of England and Wales
Public or government bodies	Victims and Witnesses Policy – MoJ
	Scottish Government
	Her Majesty's Courts and Tribunals Service (HMCTS)

Face-to-face meetings	
Type of Stakeholder	Organisation
Reviewee	Criminal Injuries Compensation Authority (CICA)
	Non-Executive Advisors to CICA
Trade Unions	MoJ Departmental Trade Union Side (DTUS) / Public and Commercial Services Union (PCS)

### Responses to Call for Evidence

Type of Stakeholder	Organisation <sup>32</sup>
Reviewee	Criminal Injuries Compensation Authority (CICA)
	Non-Executive Advisors to CICA
Victims' services organisations	Victim Support
	Victim Support Scotland
	Safety Net Advice and Support Centre, Carlisle
	False Allegations Support Organisation (FASO)
Legal professional bodies	<a href="#">Association of Personal Injury Lawyers (APIL)</a>
	<a href="#">The Bar Council</a>
	The Law Society of England and Wales
Public or government bodies	Scottish Government
	Her Majesty's Courts and Tribunals Service (HMCTS)
	Justice Select Committee
Judiciary	The Lord Chief Justice of England and Wales
Academics	Dr Matt Dyson, University of Cambridge
Trade Unions	Public and Commercial Services Union (PCS)
Individuals	2 individuals submitted responses

<sup>32</sup> Where available, the name of the organisation is linked to the published response.



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