

Title: Criminal Injuries Compensation Scheme Review Supplementary Consultation 2022 IA No: MoJ024/2022 RPC Reference No: Lead department or agency: Ministry of Justice Other departments or agencies: Criminal Injuries Compensation Authority (CICA), Scottish Government	Impact Assessment (IA)			
	Date: 26/04/2022			
	Stage: Consultation			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
Contact for enquiries: cics-review@justice.gov.uk				
RPC Opinion: Not Applicable				

Summary: Intervention and Options

Cost of Preferred (or more likely) Option (in 2021/22 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
n/a	n/a	n/a	Not a regulatory provision

What is the problem under consideration? Why is government action or intervention necessary?

The Criminal Injuries Compensation Scheme 2012 ('the Scheme') makes payments to victims of violent crime in Great Britain and payments for bereaved families and dependants of victims killed by a crime of violence. The core purpose of the Scheme is to recognise, through compensation, the harm experienced by a victim injured as a result of violent crime. The unspent convictions rule in the current Scheme means that an award will be withheld or reduced because the applicant has an unspent conviction. An applicant is not eligible for an award at all if their unspent conviction was serious enough to merit a custodial or community sentence listed in paragraph 3 of Annex D. This is referred to as the exclusionary rule. Where a conviction was less serious and resulted in a different sentence (e.g., a financial penalty or discharge), there is discretion as to whether an award will be reduced or refused.

Prior to the introduction of the exclusionary rule in 2012, the Criminal Injuries Compensation Authority (CICA) was required to exercise discretion on a case-by-case basis for all unspent convictions, and thereby to pay out awards to applicants with convictions where there were exceptional reasons for an award not to be withheld or reduced. The periods for which a conviction remains unspent (the rehabilitation period) differ by the seriousness of the offence, the type of punishment and the age of the offender. Time limits set out in the Scheme state that, for the majority of cases, a claim for compensation will need to be made 2 years from the incident, although there are different limits for those who were children at the time. Depending on the rehabilitation period associated with a conviction, potential applicants may be able to apply to the Scheme after their conviction has become spent.

In 2020, the Ministry of Justice published the Criminal Injuries Compensation Scheme (CICS) Review consultation, in which a rationale was given for retaining the rule unchanged. However, in August 2021 the High Court ordered that a further consultation take place on whether the rule should be revised in line with a recommendation made by the Independent Inquiry into Child Sexual Abuse (IICSA), that awards are not automatically rejected in circumstances where an applicant's criminal convictions are likely to be linked to their child sexual abuse.

What are the policy objectives of the action or intervention and the intended effects?

The objective of the consultation is to ensure that a final decision on whether the unspent convictions rule should be changed and how is informed by views of stakeholders and interested parties on a range of potential reforms.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The options considered in this consultation are laid out below. As there are three possible approaches to reform, each with multiple potential variations, the options in this IA should be seen as *illustrative* examples at this stage.

- **Option 0:** Do Nothing. Maintain the current unspent convictions rule.
- **Option 1:** Introduce exemptions to the exclusionary part of the rule for victims of child sexual abuse.
- **Option 2:** Amend the terms of the exclusionary part of the rule to remove Community Orders and Youth Rehabilitation Orders.
- **Option 3:** Removing the exclusionary part of the rule, so that no claims would be automatically rejected on the basis of a specified unspent conviction.

There is no preferred option.

Does implementation go beyond minimum EU requirements?	Error! Bookmark not defined.			
Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	Micro No	Small No Error! Bookmark	Medium No	Large No

		not defined.	
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A	Non-traded: N/A
Will the policy be reviewed? It will not be reviewed.			

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister



Date:

26. 04. 2022

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce exemptions to the exclusionary part of the rule for victims of child sexual abuse.

FULL ECONOMIC ASSESSMENT

Price Base Year 2021/22	PV Base Year n/a	Time Period Years n/a	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate: n/a	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	n/a		n/a		n/a	
Description and scale of key monetised costs by 'main affected groups'						
Under the illustrative example for this option, claims for compensation victims of child sexual abuse (specifically for compensation for injury from the abuse they suffered) who have unspent convictions that would have been excluded would now fall to be considered under the discretionary system. It is anticipated that there would therefore be an increase in the number of awards paid out to claimants. The additional cost is calculated using the average award for child sexual abuse claims. The additional annual cost to the CICA is estimated to be £0.36m						
Other key non-monetised costs by 'main affected groups'						
There would be additional administrative costs to the CICA due to the application of discretion in a greater number of cases. Relevant cases would need to be individually considered, leading to increased staff time per case. Further, in order for the CICA to establish causal links it would need to acquire detailed evidence from the applicant, the police and other agencies. This would potentially cause upset and distress and delay the decision-making process.						
The exercise of discretion could attract additional review applications and appeals to the First-tier Tribunal resulting in additional administrative costs to CICA and HMCTS. It has not been possible to quantify these costs.						
This approach could create unfairness and discrimination as applicants with unspent convictions that do not fall within the exemptions or do not benefit from the discretion could argue that they were being treated less favourably than those who do. It would also potentially bring applicants who have committed serious offences into eligibility.						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	n/a		n/a		n/a	
Description and scale of key monetised benefits by 'main affected groups'						
The estimated additional annual cost to the CICA due to the increase in the number of awards paid out would result in a transfer from the CICA to claimants of £0.36m.						
Other key non-monetised benefits by 'main affected groups'						
This approach, which introduces discretion in claims for compensation by victims of child sexual abuse who have unspent convictions for the abuse they suffered, would respond to the recommendation made by the IICSA to reintroduce discretion and concerns raised by stakeholders regarding the importance of consideration being given to correlations between childhood sexual abuse and future criminal offending.						
Key assumptions/sensitivities/risks					Discount rate	n/a
<ul style="list-style-type: none"> Of sexual assault claims where an award was given, 66% are for child sexual abuse. It is therefore assumed that, of the sexual assault claims rejected or reduced due to unspent convictions, 66% are child sexual abuse claims. The additional cost is calculated using the average award for child sexual abuse claims. The average award for CSA claims given the full award is £11,018, while the average award for child sexual abuse claims where the award was reduced is £12,430. The analysis therefore uses the higher average award for both full and reduced awards as the more conservative assumption. 						

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: n/a	Benefits: n/a	Net: n/a	

Summary: Analysis & Evidence

Policy Option 2

Description: Amend the terms of the exclusionary part of the rule to remove Community Orders and Youth Rehabilitation Orders.

FULL ECONOMIC ASSESSMENT

Price Base Year 2021/22	PV Base Year n/a	Time Period Years n/a	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: n/a

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	n/a	n/a	n/a

Description and scale of key monetised costs by 'main affected groups'

Currently, an applicant is not eligible for compensation where they have an unspent conviction for an offence that has resulted in one of the custodial or community sentences listed in paragraph 3 of Annex D of the Scheme. Under the illustrative example for this option, claims for compensation by those with unspent convictions that resulted in Community Orders (COs) and Youth Rehabilitation Orders (YROs) would now fall to be considered under the discretionary system. It is anticipated that there would therefore be an increase in the number of awards paid out to claimants. The additional annual cost to the CICA is estimated to be £1.21m.

Other key non-monetised costs by 'main affected groups'

There would be additional administrative costs to the CICA due to the application of discretion in a greater number of cases. The relevant cases would need to be individually considered, leading to increased staff time per case. The exercise of discretion could also attract additional review applications and appeals to the First-tier Tribunal resulting in additional administrative costs to CICA and HMCTS. It has not been possible to quantify these costs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	n/a	n/a	n/a

Description and scale of key monetised benefits by 'main affected groups'

The estimated additional annual cost to the CICA due to the increase in the number of awards paid out would result in a transfer from the CICA to claimants of £1.21m.

Other key non-monetised benefits by 'main affected groups'

This approach would mean claims could no longer be automatically rejected on the basis of an unspent conviction for less severe sentences and allow the Scheme to recognise the harm experienced by more victims of violent crime. It would address concerns raised by stakeholders as to the alleged lack of proportionality with respect to the unspent conviction rule.

Key assumptions/sensitivities/risks	Discount rate	n/a
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- As the CICA data does not capture information on the sentence a claimant had received, overall sentencing statistics are used to estimate the relevant number of claims. The key sentence types are custodial sentences, COs and YROs. On average, COs and YROs account for 50% of these sentences, with custodial sentences accounting for the other 50%. It is therefore assumed that, of the approximately 1,300 claims rejected or reduced per year due to unspent convictions, approximately 650 are due to COs and YROs.
- The additional cost is calculated using overall average awards for reduced and full awards. This is £4,333 for a reduced award and £7,011 for a full award.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: n/a	Benefits: n/a	Net: n/a	

Summary: Analysis & Evidence

Policy Option 3

Description: Remove the exclusionary part of the rule, so that no claims would be automatically rejected on the basis of a specified unspent conviction.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years n/a	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate: n/a	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	n/a		n/a		n/a	
Description and scale of key monetised costs by 'main affected groups'						
Under this option, no applicants would be automatically ineligible for compensation where they have unspent convictions and all claims would fall to be considered under the discretionary system. It is anticipated that there would therefore be an increase in the number of awards paid out to claimants. The additional cost is calculated using the overall average awards for reduced and full awards. The additional annual cost to the CICA is estimated to be £2.05m.						
Other key non-monetised costs by 'main affected groups'						
There would be additional administrative costs to the CICA due to the application of discretion in a greater number of cases. The relevant cases would need to be individually considered, leading to increased staff time per case. The exercise of discretion would also likely attract additional review applications and appeals to the First-tier Tribunal resulting in additional administrative costs to CICA and HMCTS. It has not been possible to quantify these costs						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate						
Description and scale of key monetised benefits by 'main affected groups'						
The estimated additional annual cost to the CICA due to the increase in the number of awards paid out would result in a transfer from the CICA to claimants of £1.21m.						
Other key non-monetised benefits by 'main affected groups'						
This approach would benefit victims of all types of violent crime who have unspent convictions equally. It would address concerns from stakeholders around the alleged disproportionality of the rule and its unfairness to certain victims' groups and in connection with specific circumstances such as compulsion or childhood trauma.						
Key assumptions/sensitivities/risks					Discount rate	n/a
<ul style="list-style-type: none"> The additional cost is calculated using overall average awards for reduced and full awards. This is £4,333 for a reduced award and £7,011 for a full award. 						

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: n/a	Benefits: n/a	Net: n/a	

Evidence Base

A. Background

1. The Criminal Injuries Compensation Scheme 2012 ('the Scheme') makes payments to victims of violent crime in Great Britain, as well as payments for bereaved families and the dependants of victims killed by a crime of violence. To do this effectively and fairly the Scheme balances the consideration of individual applicants needs within a universal and transparent set of rules and eligibility criteria.
2. The current unspent convictions rule provides that an applicant is not eligible for compensation where they have an unspent conviction for an offence that has resulted in one of the custodial or community sentences listed in paragraph 3 of Annex D of the Scheme (the exclusionary rule)¹. Paragraph 4 explains that, where an applicant has an unspent conviction which is less serious and resulted in a different sentence (e.g., a financial penalty or discharge) not set out in paragraph 3, there is discretion, however, unless there are exceptional reasons, an award will be withheld or reduced. Before the rule was changed to introduce the exclusionary part in 2012, the Criminal Injuries Compensation Authority (CICA) was required to exercise discretion on a case-by-case basis for all unspent convictions, and thereby to pay out awards to applicants with convictions where there were exceptional reasons for an award not to be withheld or reduced.
3. The 2012 unspent convictions rule serves to prevent individuals who have committed serious illegal acts benefitting from state-funded compensation. Its graduated approach to withholding or reducing awards is based on the seriousness of unspent convictions as reflected by the sentence imposed.
4. The periods for which a conviction remains unspent (the rehabilitation period) differ by the seriousness of the offence, the type of punishment and the age of the offender. For adults in England and Wales, a custodial or community conviction is spent after the length of the sentence plus an additional specified period (one year for community orders, up to seven years for custodial sentences under 4 years). Custodial sentences of over four years will never become spent.

Time limits are set out in the Scheme state that, for the majority of cases, a claim for compensation will need to be made 2 years from the incident, although there are different limits for those who were children at the time.. Depending on the rehabilitation period associated with a conviction, potential applicants may be able to apply to the Scheme after their conviction has become spent.

5. Since 2012, there have been varying calls for abolition of the exclusionary rule or reform to re-introduce discretion. Stakeholders have cited the alleged disproportionate impact of the rule on victims of abuse, exploitation, trafficking and other forms of coercive behaviour. Arguments have also been raised as to the alleged lack of proportionality with respect to the rule, in particular with regard to the victims of serious crimes whose unspent convictions are for minor offences.
6. In 2020, the Ministry of Justice published the Criminal Injuries Compensation Scheme Review consultation, in which the unspent convictions rule was examined². This gave a rationale for retaining the rule unchanged, based on the conclusion that it was not possible to commit to making any change without introducing significant potential discrimination and operational challenge.
7. Although the Supreme Court determined in July 2021 that the rule is lawful, in a separate case in August 2021 the High Court declared that the terms of the Victims Strategy (published 2018) had created a legitimate expectation of a consultation on revising the unspent convictions rule. The court ordered that a further consultation take place on whether the rule should be revised in line with a recommendation made by the Independent Inquiry into Child Sexual Abuse (IICSA), that awards are

¹Whether a conviction is spent, or a sentence is excluded from rehabilitation, will be determined in accordance with the Rehabilitation of Offenders Act 1974 Act, as set out in paragraph 2, Annex D of the current Scheme.

² www.gov.uk/government/consultations/criminal-injuries-compensation-scheme-review-2020

not automatically rejected in circumstances where an applicant's criminal convictions are likely to be linked to their child sexual abuse.

8. This Impact Assessment (IA) assesses the three approaches to reforming the 2012 unspent convictions rule considered in the consultation, views on which will inform the final decision on whether the rule should be changed and how.

B. Policy Rationale and Objectives

Policy Rationale

9. The conventional economic approaches to Government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more vulnerable groups in society).
10. The rationale for consulting on the unspent convictions rule is equity. The Government needs to ensure that the eligibility rules of the Scheme apply fairly and are proportionate in the wider context of the Scheme.

Policy Objective

11. This consultation is being undertaken to comply with the order made by the High Court in August 2021 that a further consultation take place on whether the unspent convictions rule should be revised in line with a recommendation made by the IICSA, and that a decision on changes to the rule should be taken after the consultation is complete.
12. The objective of consulting on these potential reform proposals is to ensure that a final decision on whether the rule should be changed and how is informed by views of stakeholders and interested parties.

C. Affected Stakeholder Groups, Organisations and Sectors

13. The following groups would be most affected by the options presented in this IA:
 - Victims of violent crime with unspent convictions when they apply for compensation; and, where applicable, their qualifying relatives eligible for an award under the existing 2012 Scheme;
 - CICA, Ministry of Justice (MoJ), HM Courts and Tribunals Service (HMCTS), Scottish Government
 - Those who represent or assist applicants including victims' charities, victims' services commissioned by local Police and Crime Commissioners;

D. Description of Options Considered

14. The consultation considers three approaches to reform of the unspent convictions rule:
 - a) **Introduce exemptions to the exclusionary part of the rule**, so that not all claims are automatically rejected on the basis of a specified unspent conviction.
 - b) **Amend the terms of the exclusionary part of the rule**, to reduce the number of claims that would be automatically rejected on the basis of a specified unspent conviction.
 - c) **Remove the exclusionary part of the rule**, so that no claims would be automatically rejected on the basis of a specified unspent conviction.
15. In the consultation, approaches (a) and (b) have been left open ended to allow a broad discussion of potential reforms to the rule, and their implications. As there are multiple potential variations on these approaches, the IA considers an *illustrative* example for each.
16. The following options are therefore considered in this IA:

- **Option 0: Do Nothing.** Maintain the current unspent convictions rule.
- **Option 1: Introduce exemptions to the exclusionary part of the rule for victims of child sexual abuse.**
- **Option 2: Amend the terms of the exclusionary part of the rule to remove Community Orders and Youth Rehabilitation Orders.**
- **Option 3: Remove the exclusionary part of the rule, so that no claims would be automatically rejected on the basis of a specified unspent conviction.**

17. There is no recommended option.

Option 0

18. This option would maintain the current unspent convictions rule, which provides that an applicant is not eligible for compensation where they have an unspent conviction for an offence that has resulted in one of the custodial or community sentences listed in paragraph 3 of Annex D of the Scheme.

Option 1

19. One impact of the current exclusionary rule is that someone who suffered sexual abuse as a child can be ineligible for compensation for that abuse as a result of unspent convictions for offences they committed after the abuse had occurred. Therefore, under this option the rule would be revised so that claims for compensation by the victims of child sexual abuse (specifically for compensation for injury from the abuse they suffered) who have unspent convictions are not automatically excluded from eligibility for an award. New provision would also be made to enable consideration of whether to withhold or reduce an award if there was a causative link between the abuse the applicant had been a victim of as a child and the criminal offending that they themselves perpetrated.

Option 2

20. The rule would be revised to remove Community Orders (COs) and Youth Rehabilitation Orders (YROs) from the exclusionary part. This would reduce the number of cases automatically excluded and leave them to be considered under paragraph 4 of Annex D (where an award will be withheld/reduced unless there are exceptional circumstances not to withhold or reduce them).

Option 3

21. This option would allow CICA, in all cases, discretion as to whether and to what extent to reduce compensation in the case of an applicant with unspent criminal convictions. The exclusionary part of the rule would be removed, and the Scheme would return to the position that all unspent convictions would be subject to the discretionary provision that an award will be withheld or reduced unless there are exceptional reasons not to.

E. Cost Benefit Analysis

22. This Impact Assessment (IA) follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the Her Majesty's Treasury Green Book.

23. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in Great Britain with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. Impacts in this IA

are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.

24. The costs and benefits of the options for each policy area are compared to Option 0, the counterfactual or 'do nothing' option. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).
25. The costs and benefits set out below are economic transfers – that is to say, they involve the transfer of resources between groups and do not involve the consumption of resources. While some economic costs are considered, such as administrative costs, it has not been possible to monetise these.

Data

26. The principal dataset used to carry out the analysis presented in this IA is claims data provided by the CICA. The data covers approximately 75,000 claims received by the CICA over three years (between 1 January 2016 and 1 January 2019). Any annual costs or benefits presented are based on an average of these three years unless otherwise stated.
27. The claims included in the dataset may fall into any one of the categories below:
 - **Decided** – The CICA has made a decision on the application however this has yet to be offered to the claimant;
 - **On offer** – The CICA has made a decision on the application and has offered this to the claimant but the claimant is yet to accept or reject it;
 - **Resolved** – The CICA has made a decision on the application, it has been offered to the claimant and the claimant has accepted.
28. For the purposes of ensuring as wide a sample as possible, all three categories have been included in the analysis presented in both this IA and the accompanying Consultation Document. That is to say, the latest available decision for each claim has been used. While resolved cases are final, there is the possibility that some claimants may go on to appeal decisions for cases currently only decided or on offer. Any appeals may increase the total amount of compensation paid out to claimants. It is therefore reasonable to include all three categories of claims in order to provide lowest bound estimates.

Discretionary System

29. Data on claims involving unspent convictions prior to the 2012 rule change (i.e. when discretion was still applied to all unspent convictions) suggests 57% of claimants had their claim rejected and 43% received a reduced award. It is possible that some claimants would have received a full award despite their unspent convictions. However, this cannot be seen in the data as those who receive a full award would not be captured in the system as having an unspent conviction as their award was neither withheld nor reduced. To account for these exceptional cases, it is assumed that, under a discretionary system, 5% of claimants would receive a full award despite their unspent convictions. The rejection and reduction rates are consequently adjusted to account for this, giving the rates presented in the table below.

Table 1: Discretionary system claim outcomes

Claim Outcome	Discretionary System
Rejected	54%
Reduced	41%
Full Award	5%

30. As all the options presented in this IA would extend the use of discretion with regards to unspent convictions, these rates are used across all the analysis to estimate the impact the outcome of claims when under the discretionary system. This distribution is applied to the total number of rejected and reduced claims relevant to each option.
31. As was noted above, the consultation is seeking to allow a broad discussion of potential reforms to the rule, and their implications. This also means, however, that there are multiple potential variations on the approaches to reform and it has not been feasible to model the impacts of each. As a result,

the options in this IA should be seen as *illustrative* examples of the possible approaches to reform described above and the impacts described below should be seen as being indicative, not definitive.

Option 1: Introduce exemptions to the exclusionary part of the rule for victims of child sexual abuse.

Costs of Option 1

Monetised costs

- 32. Under the illustrative example for this option, claims for compensation by victims of child sexual abuse (specifically for compensation for injury from the abuse they suffered) who have unspent convictions that would have been excluded would now fall to be considered under the discretionary system. It is anticipated that there would therefore be an increase in the number of awards paid out to claimants.
- 33. Although claims are categorised as “Sexual Assault” under crime type, the CICA data only lists injuries for which a claimant actually received an award. It is therefore not possible to see which claimants applied for injuries as a result of *child* sexual abuse (as opposed to adult sexual abuse) and had their award rejected due to unspent convictions. Looking at sexual assault claims where an award was given, 66% are for child sexual abuse. It is therefore assumed that, of the sexual assault claims rejected or reduced due to unspent convictions, 66% are child sexual abuse claims.
- 34. Using the discretionary rates set out above, the table below gives the estimated outcomes of child sexual abuse claims currently rejected or reduced due to unspent convictions were they to be subject to discretion. The additional cost is calculated using the average award for child sexual abuse claims.

Table 2: Claim outcomes and costs under Option 1

Claim Outcome	Current System	Discretionary System	Average Award	Additional Cost
Rejected	87	58	£0	£0.00m
Reduced	21	44	£12,430	£0.29m
Full Award		5	£12,430 ³	£0.07m
Total	108	108		£0.36m

- 35. The additional annual cost to the CICA is estimated to be £0.36m.

Non-monetised costs

- 36. There would be additional administrative costs to the CICA due to the application of discretion in a greater number of cases. relevant cases would need to be individually considered, leading to increased staff time per case. Further, in order for the CICA to establish any causal links between the exploitation or abuse that the applicant had suffered and the offence they committed, or to demonstrate that an applicant was compelled to offend, it would need to acquire detailed evidence and information from the applicant as well as from the police and other agencies. Seeking this information would potentially cause upset and distress to applicants, and it would inevitably delay the decision-making process.
- 37. The exercise of discretion would also likely attract additional review applications and appeals to the First-tier Tribunal (FTT) resulting in additional administrative costs to both CICA and HMCTS. It has not been possible to quantify these costs.
- 38. This approach would also carry the risk of creating unfairness and discrimination to other applicants with unspent convictions who are victims of other forms of abuse, exploitation, and other trauma that do not fall within exemptions, or do not benefit from the discretion, who could argue that they were being treated less favourably than those who do. It is also possible that an approach which introduces

³ The average award for CSA claims given the full award is £11,018, while the average award for CSA claims where the award was reduced is £12,430. This counter-intuitive result is likely due to the small sample size for reduced CSA claims. The analysis therefore uses the higher average award for both full and reduced awards as the more conservative assumption.

discretion for some would also potentially bring applicants who have committed serious offences into eligibility, unless specific offences were explicitly excluded as part of the exemption.

Benefits of Option 1

Monetised benefits

39. The estimated additional annual cost to the CICA due to the increase in the number of awards paid out would result in a transfer from the CICA to claimants of £0.36m.

Non-monetised benefits

40. This approach, which introduces discretion in claims by victims of child sexual abuse who have unspent convictions for the abuse they suffered would partially respond to the recommendation made by the IICSA to reintroduce discretion and concerns raised by stakeholders regarding the importance of consideration being given to correlations between childhood sexual abuse and future criminal offending.

Option 2: Amend the terms of the exclusionary part of the rule to remove Community Orders and Youth Rehabilitation Orders.

Costs of Option 2

Monetised costs

41. Currently, an applicant is not eligible for compensation where they have an unspent conviction for an offence that has resulted in one of the custodial or community sentences listed in paragraph 3 of Annex D of the Scheme. For adults, community orders last the total length of order plus 1 year, which may mean that would exceed the time limits for applications set out in the Scheme. Under the illustrative example for this option, claims for compensation by those with unspent convictions that resulted in Community Orders (COs) and Youth Rehabilitation Orders (YROs) would now fall to be considered under the discretionary system. It is anticipated that there would therefore be an increase in the number of awards paid out to claimants.

42. As the CICA data does not capture information on the sentence a claimant had received, overall sentencing statistics are used to estimate the relevant number of claims⁴. While paragraph 3 of Annex D of the Scheme lists several sentence types, the key sentence types, as presented in MoJ Criminal Court Statistics, are custodial sentences, COs and YROs. On average, COs and YROs account for 50% of these sentences, with custodial sentences accounting for the other 50%. It is therefore assumed that, of the approximately 1,300 claims rejected or reduced per year due to unspent convictions, approximately 650 are due to COs and YROs.

43. Using the discretionary rates set out above, table 3 below gives the estimated outcomes of these claims were they to be subject to discretion. The additional cost is calculated using the overall average awards for reduced and full awards.

Table 3: Claim outcomes and costs under Option 2

Claim Outcome	Current System	Discretionary System	Average Award	Additional Cost
Rejected	570	351	£0	£0.00m
Reduced	78	264	£4,333	£0.81m
Full Award		32	£7,011	£0.23m
Total	648	648		£1.03m

⁴ Criminal Justice Statistics Quarterly, Outcomes by Offence Tool, using 2015-2020 data.

44. The additional annual cost to the CICA is estimated to be £1.21m.

Non-monetised costs

45. There would be administrative costs to the CICA due to the application of discretion in a greater number of cases. The relevant cases would need to be individually considered, leading to increased staff time per case.

46. The exercise of discretion would also likely attract additional review applications and appeals to the FTT resulting in additional administrative costs to both CICA and HMCTS. It has not been possible to quantify these costs.

Benefits of Option 2

Monetised benefits

47. The estimated additional annual cost to the CICA due to the increase in the number of awards paid out would result in a transfer from the CICA to claimants of £1.03m.

Non-monetised benefits

48. This approach would mean claims could no longer be automatically rejected on the basis of an unspent conviction for less severe sentences and allow the Scheme to recognise, through compensation, the harm experienced by more victims of violent crime. It would address concerns raised by stakeholders as to the alleged lack of proportionality with respect to the unspent conviction rule, from its failure to differentiate between those victims of serious crimes with unspent convictions for minor offences, and those who have been victims of minor crimes but have unspent convictions for serious crimes which they have committed themselves.

Option 3: Remove the exclusionary part of the rule, so that no claims would be automatically rejected on the basis of a specified unspent conviction.

Costs of Option 3

Monetised costs

49. Under this option, no applicants would be automatically ineligible for compensation where they have unspent convictions and all claims would fall to be considered under the discretionary system. It is anticipated that there would therefore be an increase in the number of awards paid out to claimants.

50. Approximately 1,300 claims are currently rejected or reduced per year due to unspent convictions. Using the discretionary rates set out above, the table below gives the estimated outcomes of these claims were they to be subject to discretion. The additional cost is calculated using the overall average awards for reduced and full awards.

Table 4: Claim outcomes and costs under Option 3

Claim Outcome	Current System	Discretionary System	Average Award	Additional Cost
Rejected	1,132	697	£0	£0.00m
Reduced	154	524	£4,333	£1.60m
Full Award		64	£7,011	£0.45m
Total	1,286	1,286		£2.05m

51. The additional annual cost to the CICA is estimated to be £2.05m.

Non-monetised costs

52. There would be administrative costs to the CICA due to the application of discretion in a greater number of cases. The relevant cases would need to be individually considered, leading to increased staff time per case. The exercise of discretion would also likely attract additional review applications and appeals

to the FTT resulting in additional administrative costs to both CICA and HMCTS. It has not been possible to quantify these costs.

Benefits of Option 3

Monetised benefits

53. The estimated additional annual cost to the CICA due to the increase in the number of awards paid out would result in a transfer from the CICA to claimants of £2.05m.

Non-monetised benefits

54. This approach would allow the Scheme to recognise, through compensation, the harm experienced by more victims of violent crime. This approach would benefit victims of all types of violent crime who have unspent convictions equally. It would address concerns from stakeholders around the alleged disproportionality of the rule and its unfairness to certain victims groups, such as victims of sexual abuse or exploitation, and in connection with specific circumstances that may have surrounded the convictions, such as compulsion or childhood trauma.

Summary

55. The policy options are summarised in the table below. As the monetised costs and benefits are transfers, the total net economic cost is £0. NPVs have therefore not been calculated for the options. There is no recommended option.

Table 5: Summary of estimated annual transfers under each option

Policy Option	Transfer to applicants	Transfer to the CICA
Option 0: Do Nothing	n/a	n/a
Option 1: Introduce exemptions to the exclusionary part of the rule for victims of child sexual abuse.	+£0.36m	-£0.36m
Option 2: Amend the terms of the exclusionary part of the rule to remove Community Orders and Youth Rehabilitation Orders.	+1.03m	-£1.03m
Option 3: Remove the exclusionary part of the rule, so that no claims would be automatically rejected on the basis of a specified unspent conviction.	+£2.05m	-£2.05m

F. Risks and Assumptions

56. It is assumed that the dataset used for this IA is still representative of the current Criminal Injuries Compensation Scheme. Although the data, comprised of more than 75,000 claims, is robust and thorough, it was taken from a period between 2016-2018.

57. Another assumption is that the volumes of claims received by CICA under the reintroduction of discretion would remain the same. It is possible that more victims will come forward to claim compensation if they believe that they are now eligible for an award via the Scheme. This would have an impact on the overall cost of each potential option.

58. The assumed rejection and reduction rates under a discretionary system for claimants with unspent convictions are based on CICA data from 2010/11 and 2011/12 under the 2008 scheme (i.e. when discretion was applied to all unspent convictions). To account for exceptional cases, it is assumed that, under a discretionary system, 5% of claimants would receive a full award despite their unspent

convictions. The rejection and reduction rates in the data are consequently adjusted to account for this, giving the rates in table 1 above.

59. The key assumptions specific to each of the options are described below. There is a risk that, if the assumptions do not hold, the costs and benefits presented in this IA could be higher or lower.

Option 1

- Looking at sexual assault claims where an award was given, 66% are for child sexual abuse. It is therefore assumed that, of the sexual assault claims rejected or reduced due to unspent convictions, 66% are child sexual abuse claims.
- The additional cost is calculated using the average award for child sexual abuse claims. The average award for child sexual abuse claims given the full award is £11,018, while the average award for child sexual abuse claims where the award was reduced is £12,430. This counter-intuitive result is likely due to the small sample size for reduced child sexual abuse claims. The analysis therefore uses the higher average award for both full and reduced awards as the more conservative assumption.

Option 2

- As the CICA data does not capture information on the sentence a claimant had received, overall sentencing statistics are used to estimate the relevant number of claims. While paragraph 3 of Annex D of the Scheme lists several sentence types, the key sentence types, as presented in MoJ Criminal Court Statistics, are custodial sentences, COs and YROs. On average, COs and YROs account for 50% of these sentences, with custodial sentences accounting for the other 50%. It is therefore assumed that, of the approximately 1,300 claims rejected or reduced per year due to unspent convictions, approximately 650 are due to COs and YROs.
- The additional cost is calculated using overall average awards for reduced and full awards. This is £4,333 for a reduced award and £7,011 for a full award.

Option 3

- The additional cost is calculated using overall average awards for reduced and full awards. This is £4,333 for a reduced award and £7,011 for a full award.

G. Wider Impacts

Equalities

60. An Equality Impact Statement has been completed and will be published alongside this IA.

Better Regulation

61. These proposals do not meet the definition of regulation under the Small Business Enterprise and Employment Act 2015. Any costs which arise will not count towards the department's Business Impact Target.

Environmental Impact

62. There is no direct environmental impact from the policy options presented in this IA.

H. Monitoring and Evaluation

63. We are open to monitoring and evaluating the impact of the unspent convictions rule in the new Scheme to ensure there are no significantly adverse impacts.