



Ministry  
of Justice

# **Criminal Injuries Compensation Scheme Review 2020**

July 2020

CP 277



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of Justice

## **Criminal Injuries Compensation Scheme Review 2020**

Presented to Parliament  
by the Lord Chancellor and Secretary of State for Justice  
by Command of Her Majesty

July 2020



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# About this consultation

- To:** This consultation is aimed at the public, victims and survivors, victims' groups, academics and clinical experts. We also welcome views from professionals across criminal justice, health, welfare, local authorities and the charity sector.
- Duration:** From 16/07/20 to 09/10/20
- Enquiries (including requests for the paper in an alternative format) to:** Vulnerability Policy Unit  
Family and Criminal Justice Policy Directorate  
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- How to respond:** Please send your response by 09 October 2020 to:  
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Email: [cics-review@justice.gov.uk](mailto:cics-review@justice.gov.uk)
- Response paper:** A response to this consultation exercise is due to be published in January 2021 at:  
<https://consult.justice.gov.uk/>

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# Foreword

No amount of compensation can ever make up for the harm and suffering caused to victims by violent crime. From their inception, state-funded Schemes have existed to help those victims, who have been seriously injured and who may not have recourse to financial support. This remains a goal of today's Scheme, and I am proud that it is one of the most generous compensation schemes in the world.

In 2018, in the first-ever cross-government Victims Strategy, the Secretary of State for Justice pledged to undertake a thorough review of the Criminal Injuries Compensation Scheme (the Scheme). In the Conservative Party Manifesto 2019 we committed to supporting victims of crime. This review is part of our commitment to victims, alongside revision of the Victims' Code and the forthcoming consideration of a Victims' Law. It recognises the important role that financial compensation plays in victims getting the support they need to recover from their experience.

We also announced as part of the Victims Strategy that we would abolish the pre-1979 "same roof rule" which denied compensation for some victims who lived with their attacker prior to 1979. We have already achieved this; victims who have never applied for compensation, perhaps because of the existence of the rule, can now do so. We have also made provision for victims whose applications had previously been refused under this rule to reapply – and £10.9m has been made available to victims who applied under the amended Scheme in the period to 5 April 2020.

The availability of criminal injuries compensation is part of the wider general and specialist support services available to victims of violent crime. This consultation sets out how the Scheme can work to better serve some of the most vulnerable victims at one of the most difficult times in their lives. Our intention is not to take money out of the Scheme and the proposals we're making would ensure it remains sustainable.

Underlying the proposals in this consultation are key principles that have been woven into the fabric of the Scheme and which I believe must be retained: that it is a universal scheme that exists to support all eligible victims of violent crime who have suffered the most serious injuries, and that compensation is an important and public recognition of their suffering.

The Scheme must balance the consideration of individual applicants needs within a fair and transparent set of rules and eligibility criteria. Overall, it does this well. The Criminal Injuries Compensation Authority (CICA) deals with over 30,000 applications a year, and has a high satisfaction rating of 95% from applicants who had been in contact in 2018/19.

However, alongside recognising the strengths of the existing Scheme, stakeholders have highlighted areas where it may not be serving victims as effectively as it might. We have listened to and explored their feedback. We have worked to understand better how the Scheme applies and operates from the perspective of a person who has experienced a violent crime and been left with the trauma of a serious injury. We have tested criticisms and perceptions, identifying reforms that I believe will address concerns and improve the experience of victims applying to the Scheme.

Through the review we have looked at how the Scheme takes account of trends in violent crime and attitudes within society. The difficult but necessary national conversation taking place about non-recent sexual abuse, has led to a growing understanding that these are horrific crimes for which victims need specialist support. I am attentive to concerns raised by the Independent Inquiry into Child Sexual Abuse, the Victims' Commissioner for England and Wales and others about the support and services needed. The Government has announced additional funding for sexual violence services and the forthcoming cross-government strategy on child sexual abuse will drive a whole-system response to tackling issues to make sure that victims and survivors can access the right support for them, at the right time.

A key focus of this review has been to make the Scheme simpler and more transparent. I want to make it easier for victims to understand and engage with, the Scheme, building on the excellent work the CICA is already doing to streamline online and telephone application services. The CICA has been improving its processes and application of discretion, where permitted, to ensure that it is treating such applicants sensitively, in a way that is attuned to their needs and nature of what they have experienced.

This review has also shown me that we can and must do more to raise awareness about the Scheme. The revised Victims' Code offers a chance to clearly set out the minimum level of service victims can expect. It will clearly and simply explain to victims their right to information about compensation and signpost them to the Scheme as well as other methods of financial redress.

The reforms proposed in this consultation reflect that many aspects of the Scheme are working well, and most applicants are well supported. However, the consultation acknowledges that there are areas for improvement, as well as difficult balances to be struck in relation to the eligibility rules of the Scheme. I look forward to receiving your views.

Signature

**Alex Chalk MP**

Parliamentary Under Secretary of State



## Executive summary

1. Becoming a victim of any crime can be a traumatic experience, but where you suffer a serious physical or mental injury as a result of a violent crime, the impact can often be even more profound and long-lasting. No amount of money can fully compensate victims for what they have suffered or lost. Compensation is, along with access to emotional and practical support, one way that society can recognise the harm victims have experienced and help them in their recovery.
2. The Scheme has at its heart this purpose – to recognise, through compensation, the harm experienced by a victim injured as a result of violent crime. The Scheme is a universal one and has to work equally for all victims of violent crime. While recognising that each individual and each case will be different, it is vital that all applications are assessed against the same criteria and the same injury tariffs. This ensures against a hierarchy of victims, that the Scheme is administrable, and that tax-payers money goes to those victims most seriously injured. Wherever possible, victims are encouraged to explore other routes of achieving financial redress and recognition first, leaving the Scheme to be one of last resort.
3. In the cross-Government Victims Strategy, announced by the Secretary of State for Justice in September 2018, we set out our commitment to do more for victims at every stage of the criminal justice system. As part of this, we committed to a comprehensive review of the Criminal Injuries Compensation Scheme.
4. The Scheme was last reviewed in 2012. We committed to review the Scheme as a whole, to ensure that it is keeping pace with the changing nature of violent crime, and to identify where more might be done to support victims in their recovery. The Scheme was last reviewed in 2012 and since then the nature violent crime in Great Britain has not changed dramatically. Sadly, we have also seen more incidents of terrorism at home and overseas.
5. The Terms of Reference for the review were published in December 2018 and outlined that it would examine whether the Scheme remains fit for purpose, reflects the changing nature of violent crime and effectively supports victims in their recovery.<sup>1</sup> These also explained that the review would focus on the Scheme itself, with the performance of the CICA out of scope; this is because the CICA is an executive agency and administers the Scheme independently. Victims' awareness of

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<sup>1</sup> [http://data.parliament.uk/DepositedPapers/Files/DEP2018-1283/terms\\_of\\_reference\\_CICS\\_Review.pdf](http://data.parliament.uk/DepositedPapers/Files/DEP2018-1283/terms_of_reference_CICS_Review.pdf)

the Scheme is also out of scope of the review, as this is being considered as part of wider work on improving the Victims' Code.

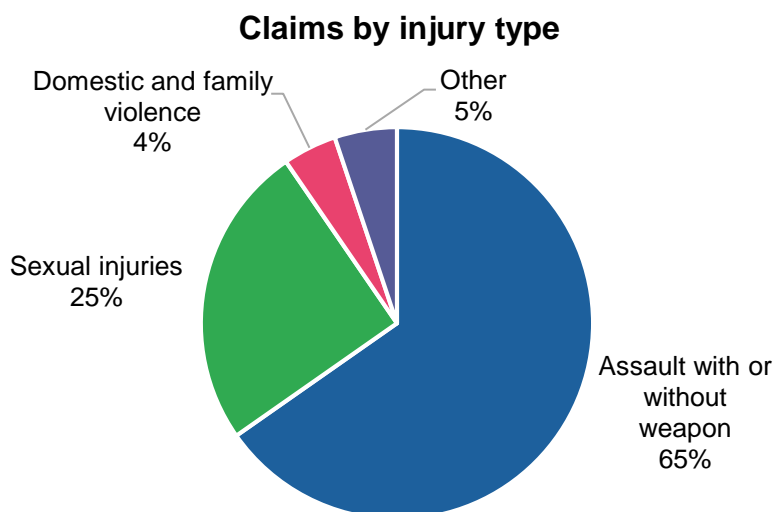
6. In particular, the review has been considering the definition of a crime of violence for the purposes of compensation, the current eligibility rules, and our approach to determining injury awards; we are also looking at how proposals for change can ensure the Scheme remains financially sustainable in the future.

## The review

7. The review of the Scheme is informed by the following principles, which also form the basis for the proposals within this consultation:
  - Compensation offers an important acknowledgment of the harm suffered by victims of violent crime;
  - Compensation is an important part of government support for victims of violent crime, which also includes general and specialist services, and emotional and practical assistance;
  - Compensation should be protected for those most seriously affected by their injuries, including where those injuries may not be immediately evident or their impacts easily quantifiable;
  - The Scheme is one of last resort, offering compensation for victims of violent crime who have been unable to seek compensation through other means; and
  - The Scheme needs to be both affordable and financially sustainable to continue to provide compensation to victims of violent crime.
8. The decision to apply for compensation is a personal choice for individual victims. Through the review we want to ensure the Scheme strikes the right balance for victims between simplicity and the need to account for all kinds of situations and circumstances within individual claims. We also want to be assured that, in any reforms we propose, we are not inadvertently creating a hierarchy of victims; and that decisions on compensation can continue to be made in a consistent, fair and transparent way for all victims.
9. We need to balance this ambition against ongoing financial challenges. One of our intentions for this review is for the Scheme to have ongoing financial sustainability, in order to continue compensating the most seriously injured victims of violent crime. While we look to ensure the Scheme is on a sustainable financial footing, we need to be mindful that future demand on the Scheme is unknown.
10. The operational performance of the CICA and victims' awareness of the Scheme are out of scope of this review. However, understanding the experiences of victims when they have made a claim for compensation (or in having considered doing so) has

been central to our understanding of how the Scheme's provisions impact on victims of violent crime, and in considering whether further action or a change in approach is needed.

11. Where these considerations have been material to the conclusions we have drawn, we have explicitly set them out in the consultation paper. We also provide further detail of how the CICA has taken on board these challenges and responded through improving its practice in Section 5 of this document. In some circumstances, challenges faced by claimants instead require a review of other parts of the criminal justice system, and are outside the scope of the review. Where we think this is the case we have said so.
12. To inform the review, we have undertaken a detailed analysis of approximately 75,000 claims received by the CICA between 1 January 2016 and 1 January 2019. Further detail on the limitations of this data set can be found within the Impact Assessment.
13. Analysis of this caseload data enabled us to build up a detailed picture of the operation of the Scheme and the impacts of different rules on victims of violent crime. We have a clearer understanding of what injuries are the subject of claims; the majority of cases, 65%, were for injuries sustained from an assault with or without a weapon. Sexual injuries accounted for 25% of cases, a further 4% were for domestic and family violence, and 5% were other incident types.<sup>2</sup> In some areas, the data analysis has shown that criticisms of the Scheme are unfounded.



14. We have established that the analysed dataset shows that for the vast majority of applicants, the Scheme operates as intended. The operation of the Scheme is also

<sup>2</sup> Percentages do not add up to 100% due to rounding.

working well. In 2018-19, the CICA's customer service score was high at 95%, whilst review and appeal rates are low at 21% and 6% respectively.<sup>3</sup> This is in contrast to claims that the Scheme is not functioning well and that many applicants are dissatisfied.

15. Although that is positive, we acknowledge that there is a lack of awareness of the Scheme. Its complexity may act to discourage some victims from making an application, although the CICA offers support and will take an application over the telephone for those who make contact with them. The eligibility criteria are designed to operate as a gateway to tax-payer funded compensation, and may be perceived as a barrier by some victims who are unable to meet the requirements in order to qualify for an award.
16. We think that there are areas of the Scheme that can be improved to deliver better support and experiences for applicants. We have spoken to key organisations and individuals with experience of, or a sustained interest in, the Scheme.

## Our approach

17. We have listened carefully to organisations representing victims, as well as victims themselves. We are grateful to all those who have taken the time to contribute their views through workshops, meetings and in writing. Furthermore, we have considered the points raised and recommendations made by the former Victims' Commissioner for England and Wales Baroness Newlove in her report on compensation,<sup>4</sup> have taken into account the early findings of the Independent Inquiry into Child Sexual Abuse, and examined issues raised by Dame Vera Baird the Victims' Commissioner for England and Wales,<sup>5</sup> the All-Party Parliamentary Group on Deaths Abroad, Consular Services and Assistance<sup>6</sup> and the All-Party Parliamentary Group on Adult Survivors of Childhood Sexual Abuse in their reports on homicide abroad and child

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<sup>3</sup> Criminal Injuries Compensation Authority Annual Report and Accounts 2018-9 – [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/83966/6/6.5786\\_CICA\\_ARA-2018-19\\_FINAL\\_250919\\_TagsFixed.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/83966/6/6.5786_CICA_ARA-2018-19_FINAL_250919_TagsFixed.pdf)

<sup>4</sup> 'Compensation without Re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation, January 2019 - <https://victimscommissioner.org.uk/published-reviews/compensation-without-re-traumatisation-the-victims-commissioners-review-into-criminal-injuries-compensation/>

<sup>5</sup> Struggling for Justice: Entitlements and Experiences of Bereaved Families Following Homicide Abroad, October 2019 – <https://victimscommissioner.org.uk/published-reviews/struggling-for-justice-entitlements-and-experiences-of-bereaved-families-following-homicide-abroad/>

<sup>6</sup> All-Party Parliamentary Group on Deaths Abroad, Consular Services and Assistance Report 2019: Why Families in the UK Deserve Better and What Can Be Done – <http://hannahbardellmp.scot/wp-content/uploads/2019/11/The-All-Party-Parliamentary-Group-on-Deaths-Abroad-Consular-Services-and-Assistance-Report-2019.pdf>

sexual abuse respectively. Furthermore, we have considered academic research in relation to our domestic compensation schemes and international comparators.

18. We have also examined topical issues that arose during the period of the review. Following the prosecution in 2019 of Carl Beech who fraudulently obtained an award under the CICS, we have reviewed how the Scheme safeguards against fraud and the steps the CICA takes to identify fraud and recover awards where necessary. In addition, following the introduction of the Assaults on Emergency Workers (Offences) Act in 2018, we have also considered how the Scheme makes provision for emergency workers who are victims of crimes of violence in the line of their work.
19. In considering changes, we have assessed the following factors: simplicity and transparency; improved experience and outcomes for claimants; affordability and financial sustainability; operational implications; and whether changes can be fairly and consistently applied across the Scheme without having a disproportionate impact on any one group.

## Key findings and proposals

20. We have heard challenges that the Scheme is not fit for purpose, that it is unnecessarily complex, and that eligibility rules are too stringent and do not reflect our improved understanding of the impacts of some violent crimes.
21. We have analysed a large number of claims decided by the CICA over a three-year period, to understand how the eligibility rules and requirements of the Scheme have been applied. We will refer to the evidence gathered in the detailed sections that follow and demonstrate how it has informed our proposals for change or no change, and where it has led us to seek further evidence.
22. In **Section One** we set out the background to the Scheme, why we are reviewing it and its underlying principles. We look at what will happen following the UK's withdrawal from the EU, and outline the approach and work that we have undertaken in the review.
23. In **Section Two** we consider the purpose and scope of the Scheme and how this might impact individuals differently. We explore the Scheme's definition of a crime of violence and where this may exclude victims of certain types of offences. We also consider the impacts of the Scheme's current provisions on victims of child sexual abuse and victims of terrorism. We ask for:
  - Views on the appropriate language for the approach to consent on the face of the Scheme;
  - Views on the merits of establishing a separate compensation scheme specifically for victims of terrorism at home and overseas; and

- Views on legislating to provide compensation to families bereaved by homicides abroad.
24. In **Section Three** we set out our considerations and proposals on current eligibility rules, reflecting on the purpose of the Scheme to deliver compensation for those most seriously injured by violent crime. We consider the impact changes in eligibility rules might have on the Scheme being able to deliver for all victims of violent crime. We ask for:
- Views on our proposal to remove the remaining adult “same roof rule” from the Scheme.
25. In **Section Four** we consider the current structure of awards and tariffs. We look specifically at whether we can take a simpler and more straightforward approach to injury awards in response to stakeholder concerns that the current tariff structure is unnecessarily complex and difficult to navigate. We consider claims for disabling mental injuries; payments in fatal cases; the interaction of the Scheme with other compensation payments; and other payments such as loss of earnings. We ask for:
- Views on changes to compensating for mental injury;
  - Views on approaches to simplifying the tariff of injuries: divided into Part A – physical and mental injuries and Part B – sexual and physical abuse and other payments;
  - Views on proposed changes to payments available to bereaved families in fatal cases; and
  - Views on potential changes to the Hardship Fund.
26. In **Section Five** we set out how the CICA is making continuous improvements to its processes and the accessibility of the Scheme, to better support victims and to respond to their needs and experiences.

## **Equalities statement**

27. An Equalities Statement can be found at Annex A. We ask for:
- Views on the equalities impacts of our proposals

# Introduction

28. This paper sets out for consultation reform proposals for the review of the Criminal Injuries Compensation Scheme (the Scheme). The review seeks to deliver better access to compensation for victims of violent crime while ensuring the Scheme remains affordable and financially sustainable. The consultation is aimed particularly at those within England, Wales and Scotland, reflecting the geographic scope of the Scheme. We are especially interested in hearing from victims and survivors, victims' groups, academics and clinical experts. We also welcome views from professionals across criminal justice, health, welfare, local authorities and the charity sector.
29. For each of the areas covered by the review, we will outline the current position and identify the case for change. We will also indicate where there are links to other government initiatives or the wider provision of practical, emotional and financial support for victims where they are of relevance.
30. As the review is under way, proposals in this consultation are at different stages of development and the accompanying questions reflect this – for example, in some we will ask for views on specific proposals, whereas in others we may ask for further evidence to better understand the issue. We do not expect every respondent to answer every question and ask that you only answer those relevant to your experience or your expertise.
31. A Welsh language consultation paper will be available shortly at <https://consult.justice.gov.uk/>
32. Some of the proposals are expected to result in costs to the public sector, while other proposals are expected to result in savings to the public sector. It is possible to find combinations of proposals that would result in near net neutral costs for the public sector. Our intention behind revisions to the tariff is not to take money out of the Scheme. The proposals would ensure the sustainability of the Scheme. An Impact Assessment is attached and comments on it are welcome.

## Section 1: Background

33. A state compensation scheme for victims of violent crime has been in place in Great Britain since 1964. Originally a non-statutory scheme made awards based on common law damages; the first statutory scheme came into force in 1996 following the passage of the Criminal Injuries Compensation Act 1995. This created a tariff-based system for determining injury awards. Subsequent schemes were introduced in 2001, 2008 and 2012 under the same legislation – each new Scheme replacing the last, and each approved by Parliament. The Criminal Injuries Compensation Scheme 2012 was amended in July 2019 to remove the ‘same roof rule’ which barred applicants from receiving compensation if they had lived in the same household as the perpetrator at the time of incidents that occurred prior to October 1979.
34. The Scheme is administered by the Criminal Injuries Compensation Authority (CICA). Decisions are made on individual applications by claims officers independently of the Secretary of State. A separate Scheme, the Victims of Overseas Terrorism Compensation Scheme (VOTCS) 2012, which makes payments to victims of terrorism who were injured in incidents outside the UK, is also administered by the CICA.
35. Beyond our own legislation, we are bound by minimum requirements in the provision of compensation set out in the 1983 Council of Europe Convention on compensation for victims of violent crimes. This includes the provision of mutual assistance between ratifying countries in respect of access to compensation by victims of violent crime injured in another ratified country. The 1983 Convention also provides for assistance to British nationals in applying for compensation in other ratifying countries.
36. Additionally, the EU Directive 2004/80/EC on compensation for victims of crime in other EU countries requires all member states to have a compensation scheme in place for victims of violent intentional crime committed on their territories and establishes an EU-wide co-operation system to enable reciprocal support. Following the UK’s withdrawal from the EU on 31 January 2020, the UK will remain a part of this EU-wide system until 31 December 2020. After this date, the UK will no longer be party to the Directive and will instead fall back on the Convention, which has different requirements in place for assisting victims of violent crime. In practice, the CICA also acts as the assisting authority and liaison with ratifying counties of the 1983 Council of Europe Convention and for EU member states supporting British nationals who have been the victim of violent crimes in EU member states.
37. ‘There are other obligations and requirements relating to residency and nationality that affect the accessibility and eligibility for compensation of some applicants. An example of this, which has already been addressed by the updating of the 2012



Scheme, is in relation to victims of human trafficking. The 2012 Scheme makes victims of trafficking eligible provided they have been conclusively identified as such by a competent authority. We will continue to review accessibility of compensation in light of developments in Government policy in relation to non-GB citizens, such as changes to Immigration Rules to meet international obligations.’

38. Compensation under the Scheme is awarded to victims of violent crime who have sustained “a “criminal injury”. These are injuries of sufficient seriousness that they attract an award under the Scheme. Applicants should apply for compensation as soon as reasonably practical and within two years of the date of the incident; the time limit can be extended where due to exceptional circumstances the applicant could not have applied earlier. There are separate provisions for those who were under-18 at the time of the injury, and by exception CICA may accept an application made beyond the prescribed time-limits. They must also satisfy the other eligibility criteria set out within the Scheme. Applicants may be refused where they do not meet these criteria, which include residency requirements, reporting incidents to the police, and unspent convictions resulting in a custodial sentence, community order or other sentence specified in the Scheme. Awards can also be reduced or withheld in circumstances where the applicant’s conduct contributed to the injury, or where applicants do not co-operate with the CICA to progress the claim.
39. Awards are made by reference to a tariff of injuries found in Annex E of the Scheme. The individual tariffs are a core part of the Scheme and have to be approved by Parliament. The current tariff of injuries is made up of a total of 35 bands, covering both physical and mental injuries and injuries resulting from sexual offences. Injury awards range from £1,000 to £250,000 depending on the relative severity and duration of the injuries sustained. Victims may also be eligible for further payments such as for loss of earnings or for special expenses (covering items such as care, specialist equipment or home adaptations). A maximum total award of £500,000 is available under the Scheme.
40. The Scheme also makes provision for awards to those who are not themselves the direct victim of a violent crime, but who are present and witness an incident in which a loved one sustains a criminal injury. Finally, it also awards payments for bereaved families and the deceased’s dependants in cases where a crime of violence has resulted in the death of a loved one.
41. An important principle of the Scheme is that it is one of last resort and intended for those who are unable to seek or obtain compensation for their injuries by other means, such as through a civil personal injury claim. This principle informs many of the rules within the Scheme, and is, alongside the purpose of the Scheme to acknowledge harm, core to the Scheme’s ethos and approach.

42. The Code of Practice for Victims of Crime (Victims' Code) sets out the support and information victims of crime should, by law, receive from criminal justice agencies in England and Wales such as the police and courts, and other named organisations. The Victims and Witnesses (Scotland) Act 2014 requires Scottish Ministers to publish a Victims' Code for Scotland including a range of information which victims are likely to require. The latest Victims' Code for Scotland was published in 2018.<sup>7</sup>
43. In the cross-government Victims Strategy published in September 2018 we committed to revising the Victims' Code to address its complexity, accessibility and language, as well as update entitlements in the Code so they better reflect victims' needs. We published our first consultation on proposed changes in July 2019.<sup>8</sup> A second consultation was published on 5 March 2020 which included a draft of the revised Code.<sup>9</sup> The draft includes the right to be provided with information about compensation. It outlines the time limits and the fact that victims do not have to wait for the outcome of a criminal trial to apply. It also signposts where victims can find more detailed information.
44. During 2018-2019, the CICA received just over 31,000 applications, and at year-end had a caseload of nearly 33,000 cases. CICA resolved more than 35,000 claims (including those which were received in the previous year and carried over), and paid out over £130m in compensation. It decided the outcome of 45% of cases at six months, and 81% at twelve months. The CICA has a high satisfaction rating, of 95% from all applicants who had been in contact with it in 2018/19.

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<sup>7</sup> Victims' Code for Scotland, 2018 - <https://www.mygov.scot/victims-code-for-scotland/>

<sup>8</sup> Proposals for Revising the Code of Practice for Victims of Crime, July 2019 – [https://consult.justice.gov.uk/digital-communications/proposed-changes-to-the-victims-code/supporting\\_documents/proposalsforrevisingthecodeofpracticeforvictims.pdf](https://consult.justice.gov.uk/digital-communications/proposed-changes-to-the-victims-code/supporting_documents/proposalsforrevisingthecodeofpracticeforvictims.pdf)

<sup>9</sup> Consultation on Improving the Victims Code – <https://consult.justice.gov.uk/victim-policy/consultation-on-improving-the-victims-code/>

## Section 2: Scope of the Scheme

### Crime of violence definition

45. The Scheme has always been focused on providing compensation to victims who have sustained physical and/or mental injury as a result of a crime of violence.
46. One of the changes that resulted from the last review in 2012 was to introduce an explicit definition of a crime of violence on the face of the Scheme. The aim was to provide transparency and clarity around the circumstances in which victims of violent crime may be eligible for compensation under the Scheme.
47. The definition provides that a crime of violence is one which involves:
  - a physical attack;
  - any other act or omission of a violent nature which causes physical injury to a person;
  - a threat against a person, causing fear of immediate violence in circumstances which would cause a person of reasonable firmness to be put in such a fear;
  - a sexual assault to which a person did not in fact consent; or
  - arson or fire-raising.<sup>10</sup>
48. A person must then be a direct victim of that crime of violence, and the act – or omission – must have been done intentionally or recklessly. Where an injury has been sustained in these circumstances, that person may be eligible for a compensation award under the Scheme. This is similar to many other criminal injuries compensation schemes in Europe and around the world, and ensures that we meet our obligations under EU Directive 2004/80/EC and the 1983 Council of Europe Convention on compensation for victims of violent crimes.
49. Where the circumstances in which a person was injured are not included within the definition of a crime of violence within the Scheme, applications will be refused. It is understandably difficult for applicants to be told they are not eligible for compensation on the grounds that no crime of violence as defined in the Scheme has taken place, or that there may be insufficient evidence from the relevant authorities to confirm that such a crime has taken place, particularly where they have reported being the victim of a serious crime.
50. We have considered whether the current definition of a crime of violence for the purposes of the Scheme reflects the changing nature of violent crime. We have heard

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<sup>10</sup> Annex B, Criminal Injuries Compensation Scheme 2012 (amended)

concerns from stakeholders that it fails to provide for serious non-contact offences which have increased in prevalence, such as grooming, online exploitation, coercive control, stalking, and modern slavery. In such cases it is argued that whilst there may have been no physical altercation and no immediate threat of violence, the psychological impact may be commensurate with the type of mental injuries compensated through the Scheme. In its third report, the All-Party Parliamentary Group for Adult Survivors of Childhood Sexual Abuse called for the scope of the Scheme to be expanded to include non-contact and online forms of abuse.<sup>11</sup> And the Independent Inquiry into Child Sexual Abuse noted in its report on The Internet that account should be taken of the fact that online-facilitated abuse is often a feature of sexual offending against children.<sup>12</sup>

### **Changing nature of crime**

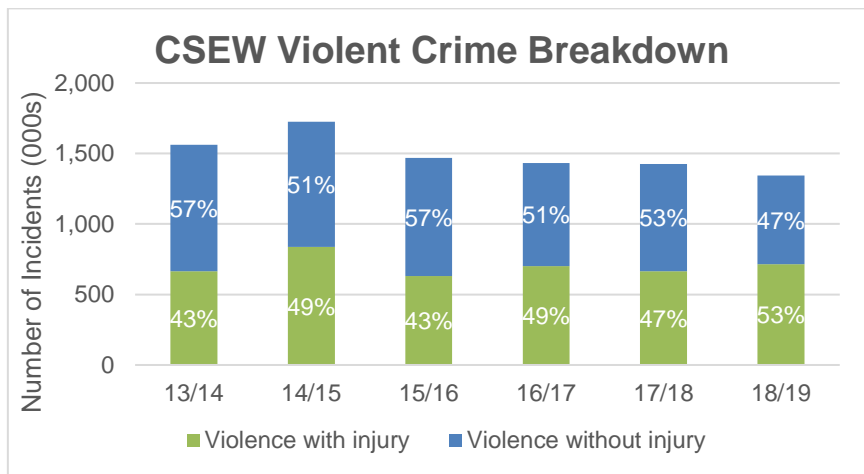
51. We have analysed available data to get a picture of violent crime since 2013/14. Measuring violent crime is challenging as data is variable and so does not always give a clear and reliable single picture of trends in crime. Overall, we believe there has not been a significant change in the nature of violent crime since the Scheme was last reviewed in 2012.
52. There are two principle data sources for the measurement of violent crime:
  - The Crime Survey in England and Wales (CSEW); and
  - Police Recorded Crime (PRC) data.
53. The Crime Survey in England and Wales is an annual survey that reflects the number of crimes experienced by the public. It includes crime that is not reported to or recorded by the police. It is a better indicator of long term trends in crime because it is not affected by changes in policing or police recording practices. Police Recorded Crime data only reflects crime which are reported to the police and recorded.
54. The analysis presented below uses published Crime Survey in England and Wales and Police Recorded Crime data for the past five years, between 2014/15 and 2018/19.
55. The Crime Survey in England and Wales (CSEW) captures lower-harm violent offences, it does not capture higher-harm violent offences very well and in some cases, such as homicide, does not cover them at all. Sexual offences are also not included as the data from the survey is too unreliable to report.

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<sup>11</sup> Can Adult Survivors of Child Sexual Abuse Access Justice and Support? February 2020 - <https://www.appgsurvivorscsa.co.uk/infosupportsurvivors>

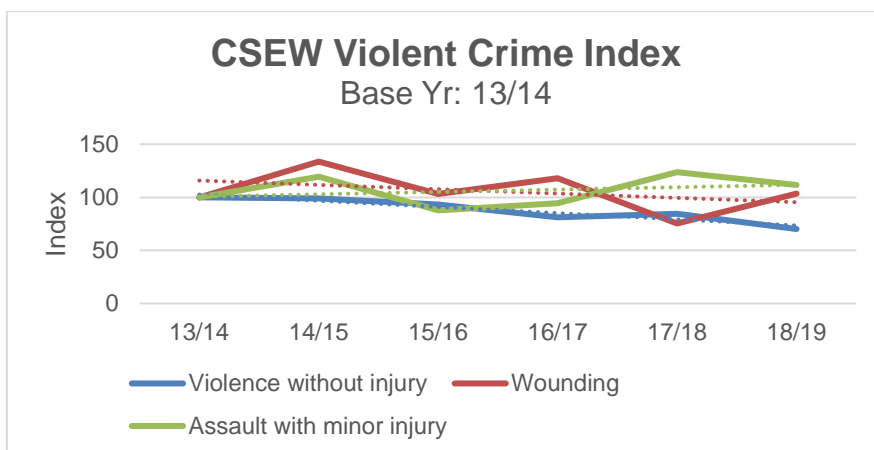
<sup>12</sup> Published 12 March 2020 – <https://www.iicsa.org.uk/news/inquiry-report-finds-risk-immeasurable-harm-children-internet>

56. The CSEW data shows that, overall, the number of violent crime incidents recorded by the survey has changed little over the last five years. Although incidents of violent crime rose in the year 2014/15, since then the number total of incidents has been slightly decreasing year on year. The survey has two broad, high level categories: 'violence with injury' and 'violence without injury'. Violence without injury is defined as an incident or (attempt) where the victim was punched, kicked, pushed or jostled but resulted in no injury. Incidents of violence without injury have been falling so that the majority of crimes are now of violence with injury.



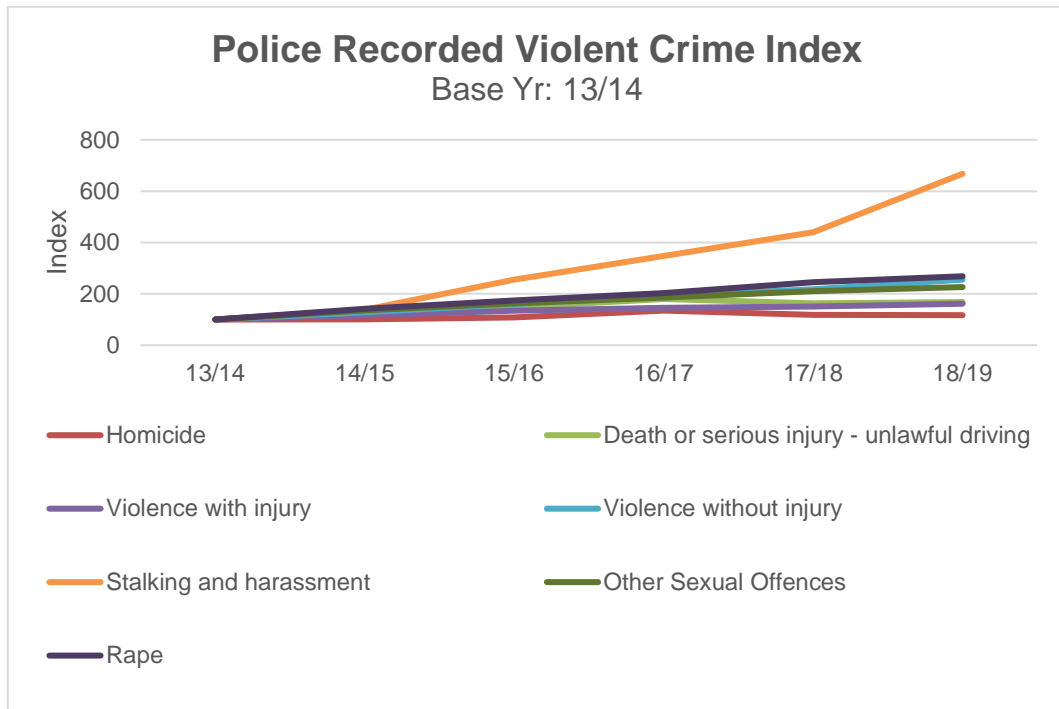
57. The survey breaks down the category 'violence with injury' into two further categories:

- 'Incidents of wounding' are severe or less serious injury, the latter of which can include severe bruising, chipped teeth and cuts that require medical attention; and
- 'Assault with minor injury' resulting in minor injury to the victim such as bruises and scratches.



58. Incidents of wounding, which is the more serious of the two, have shown a downward trend over the past five years while assault with minor injury has increased slightly.

59. Police Recorded Crime (PRC) data is a better measure of higher-harm less common types of crime. However, it is affected by changes in recording practices, police activity and changing priorities and victims' willingness to report crime. PRC provides further insight by reflecting a wider scope of offences by breaking down violent offences into seven types of crime. The data is supplied by 43 territorial police forces in England and Wales and the British Transport Police.



60. PRC data shows that reported violent crime has been consistently increasing over the past five years across all offence types. However, for most crime types this can be down to two factors rather than a genuine increase in crime. The first is improved recording processes and practices by the police rather than increases in the number of incidents. The second is a greater number of victims reporting crime, particularly for sexual offences, stalking and harassment and domestic abuse related crimes. The Office for National Statistics believes that for many offences police reported crime data does not provide reliable data on trends in crime.

61. Stalking and harassment has increased much more than other forms of violent crime, with the number of recorded incidents being nearly seven times as much in 2018/19 than in 2013/14. This is significantly more than the next highest violent crime type, with the number of recorded incidents of rape being just under three times as much in 2018/19 than in 2013/14. The increase in stalking and harassment is thought to be largely due to this offence type being particularly affected by improved police recording and changes to police priorities. It is also likely to be influenced by increasing public awareness of what constitutes stalking, harassment and other threatening behaviour.

62. Noting that there has not been a significant change in the nature of violent crime, it is our view that widening the definition beyond crimes that are violent in nature and involve touching and physical contact or threat of immediate violence, would mean going far beyond the original intention of the Scheme.
63. We believe that the current definition is broad enough to allow for a wide range of circumstances, including in certain cases, online exploitation, grooming, stalking and modern slavery where situations have escalated into ones involving violence or the immediate threat of violence. We acknowledge that victims of such crimes may experience psychological and emotional harm and trauma, even where there is no physical attack or a threat of such. However, those impacts can be suffered by victims of other types of crime, such as fraud and dishonesty.
64. An increase in the scope of the Scheme risks drawing arbitrary distinctions between crime types, would create significant operational difficulties in establishing evidence of the crime, as well as potentially making the Scheme unaffordable. It is also our view that to do so would not reflect the broader public understanding of what amounts to a crime of violence and which should be compensated for through a Scheme intended for those most seriously affected by violent crime. On balance, we do not consider there to be a sufficient distinction between crime types and the impacts of them to justify expansion of the current definition.
65. The non-availability of compensation for victims of crime, not currently within the definition, does not diminish the seriousness of those crimes, nor mean that the impacts of them are not significant for victims. We recognise that victims of some of those crime types may need specialist, tailored and longer-term support to recover from their ordeal. The commitments made in the Victims Strategy reflect this. We are working across government to align funding for victim services, to make sure that a victim can access the support needed to cope and, as far as possible, recover from the impact of the crime. In response to a recommendation from the Independent Inquiry into Child Sexual Abuse, departments have worked together to establish current levels of spending on services for victims of child sexual abuse, and the effectiveness of that spend. The response was published on 26 February 2020.<sup>13</sup> In September 2019 the Home Secretary also announced a £30 million package to help prevent child sexual abuse, and support victims and survivors.

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<sup>13</sup> <https://www.gov.uk/government/publications/government-response-to-the-independent-inquiry-into-child-sexual-abuse>

## Consent in sexual assault claims

66. As noted above, the Scheme's definition of a crime of violence includes "a sexual assault to which the person did not in fact consent". The Scheme recognises that a non-consensual sexual assault amounts to a crime of violence, and the rule aims to ensure that eligibility for compensation only exists where that is so. However, it also recognises that there may be circumstances in which sexual activity involving young people aged under 16 may not, in a small number of instances, be a crime of violence. For instance, where two 15-year olds have freely and willingly engaged in sexual activity with one another. We recognise that this constitutes a statutory crime, but where there is an absence of physical coercion or grooming, it remains our position that such cases should not be in scope for compensation as the crime which has taken place does not constitute violence where one individual has perpetrated injuries on another. This is in line with Crown Prosecution Service guidance that recognises that it is not in the public interest to prosecute underage teenagers who freely engage in sexual activity with one another.
67. Stakeholders have raised concerns that the provision about consent does not align with the approach to consent in the criminal law, as set out in the Sexual Offences Act 2003 and the Sexual Offences (Scotland) Act 2009. Following a 2017 campaign highlighting concerns about compensation being inappropriately withheld from children under the age of legal consent, significant changes were made by the CICA to its guidance and practice, in collaboration with key stakeholders, to ensure that this rule was being applied appropriately and consistently by claims officers, particularly with respect to cases involving children under 16 years of age.
68. The CICA's guidance is clear that there should **always** be a presumption of no consent in sexual assault or abuse cases, and new assurance procedures were introduced for these cases. The revised guidance was introduced in October 2017 and the CICA has introduced an additional safeguard of referring all claims relating to sexual offences against children under 13 at the date of the application to its legal team for full review prior to a decision being issued.
69. We have considered whether the Scheme's definition of consent should be aligned with the criminal law on consent. However, we believe that the operational changes made in 2017, and the continuing efforts of the CICA to make sure that staff have appropriate guidance and support, have provided the necessary safeguards to mitigate the risk of inappropriate refusals. We have decided that maintaining the rule is necessary to ensure that compensation is only awarded in cases where a crime of violence has taken place.



70. However, we recognise that there is scope to improve the way that the rule is framed, and potentially to incorporate the key aspects of the approach to it as set out in the operational guidance.

### Question

1. What in your view is the most appropriate language to use within the Scheme to clarify the approach to those under the legal age of consent?

## Specific victim groups

71. In the terms of reference for the review, we committed to consider whether the current provisions of the Scheme have unintended consequences for certain groups of victims in terms of them being able to apply for or access compensation. In particular we committed to consider the impact on victims of child sexual abuse, and victims of terrorism. In addition, following reports from the Victims' Commissioner for England and Wales and All-Party Parliamentary Group on Deaths Abroad, Consular Services and Assistance we have explored whether criminal injuries compensation should be made available to families bereaved by homicides committed outside Great Britain.

### Victims of child sexual abuse

72. We have considered carefully concerns raised in candid evidence provided by survivors and their representatives to the Independent Inquiry into Child Sexual Abuse, to the previous Victims' Commissioner for England and Wales for her report on victims' experiences of compensation, in reports of the All-Party Parliamentary Group for Adult Survivors of Childhood Sexual Abuse, and through our own engagement with stakeholders, of the challenges experienced by victims of recent and non-recent child sexual abuse in accessing compensation. We know that the victims of such crimes can suffer significant and long-lasting harm, and that the trauma involved can impact on their willingness and ability both to report to the police and to seek compensation.
73. We have also heard concerns about the difficulty some victims of child sexual abuse have experienced in applying for compensation. We have therefore considered through the review whether existing eligibility rules have a disproportionately negative impact on victims of child sexual abuse; and have explored these concerns explicitly within all the areas of the Scheme under review. This is reflected throughout the consultation paper, as well as within the Impact Assessment; Section 3 considers the implications of the eligibility rules for this group of victims and **Section 5** looks at changes to the CICA's operational practice.

74. As noted in **Section 1**, analysis of a three-year caseload data set showed us that sexual injuries accounted for 25% of the resolved cases. Of the approximately 75,000 applications analysed, around 13,000 cases were submitted after the two-year time limit and 82% of these related to sexual assault applications. Of the sexual assault applications submitted after the two-year time limit, 72% went on to receive an award, as the time limit discretion was applied and the criteria for an award were also met. Approximately 3,500 cases were rejected due to unspent convictions of which 12% were sexual assault cases.
75. Our analysis suggests that the Scheme is working well for the majority of victims of child sexual abuse. Our findings show that provisions in the Scheme, such as time limit discretion, reflect an understanding of the difficulties these victims face in reporting these crimes, and changes to operational practices ensure that they are supported in applying for compensation.

### **Victims of terrorism**

76. Compensation for victims of domestic terrorism is currently provided for under the Criminal Injuries Compensation Scheme. As the Scheme focuses on compensating injury rather than on specific offence types, victims of domestic terrorist incidents are treated under the Scheme in the same way as all other victims of violent crime who have sustained qualifying injuries. A separate scheme, the Victims of Overseas Terrorism Compensation Scheme (VOTCS), provides compensation for those who have sustained injuries overseas, in incidents designated by the Foreign and Commonwealth Office as an act of terrorism. It is also administered by the CICA and both schemes use similar eligibility criteria and operate the same tariff of injuries.
77. Terrorist atrocities, at home and overseas, continue to focus our thoughts on support for victims of terrorism. Stakeholders have questioned how claims from victims of terrorism are considered, with specific concerns centring on the quality of the information about compensation available to victims and bereaved families in the aftermath of an attack; the immediate financial support that may be available; whether requirements for applicants to be direct victims are appropriate in the context of terrorism given that those in close proximity may also sustain significant psychological injury; and the imbalance when charitable donations may be available to victims of some domestic terror attacks where there has been a significant public response, but not others. Further concerns have been raised by stakeholders in relation to the speed of decision-making by the CICA, especially where injuries have been life-changing, and the value of the injury awards received by victims.
78. The CICA operates a dedicated team of claims officers to respond to all terrorist incidents (domestic and those designated by the Foreign and Commonwealth Office under the VOTCS). This allows the CICA to better support potential victims of a single incident and to co-ordinate with support services and criminal justice agencies on the

ground. When a terrorist incident occurs, whether domestic or overseas, the CICA sets up a major incident team, staffed by team members with previous experience in handling major incidents, to process all applications resulting from the attack in a co-ordinated and consistent manner. This involves a bespoke communications plan to give victims and their families the information that is most likely to be needed immediately, such as how to access local support. The CICA also signposts its services through its website and on social media. In addition, staff liaise with the police to establish what evidence will be required for the purposes of compensation claims, to allow claims to be finalised as quickly as possible. For example, following the Manchester Arena incident in 2017, Greater Manchester Police worked with the CICA to help improve understanding of what had happened to assist in determining eligibility for victims.

79. The Scheme allows victims of terrorism the same amount of time to make a claim, recognising that this may not be their uppermost priority following the trauma they have experienced. The CICA has told us that it recognises that some victims of terrorism in particular require more time to disclose their mental health injuries. It has also been the CICA's experience that a significant proportion of victims of terrorism seek opportunities for redress through the civil courts. Their claim for tax-payer funded compensation may be deferred by CICA pending the outcome of civil proceedings, recognising the Scheme's status as compensator of last resort.
80. There is a relatively low number of applications each year to both the CICS and VOTCS for terrorism overall. The case dataset evidence suggests that applicants for terror incidents experience comparable outcomes to applicants for other crime types. However, in recognition of the circumstances associated with terrorist attacks (including the nature of the violence and impacts on multiple victims), we consider there is a strong case to have a dedicated provision for terrorism in a standalone scheme.
81. We propose to create a standalone scheme for victims of terrorism, both domestic and overseas. This would also allow for targeted awareness raising, both with the wider public and with criminal justice agencies, to ensure victims are provided with the correct information immediately following a terrorist incident. A separate scheme would also ensure applications are processed as rapidly as possible following an incident, given the dedicated processes and staff a separate scheme would require, notwithstanding where cases are deferred pending civil litigation. Where a case could be made for doing so, specific provision could be made for these highly traumatised victims.
82. Our proposal for a separate scheme will require new primary legislation. The existing legislation, the Criminal Injuries Compensation Act 1995 and the Crime and Security Act 2010, respectively limit compensation to crimes of violence occurring in Great

Britain and to injuries resulting from designated terrorist incidents abroad. Further to the outcome of this consultation, we would anticipate legislating for a new measure as soon as parliamentary time allows to provide for compensating victims of domestic and foreign terrorism. We would keep victims of domestic terrorism within the CICS in the short-term, and overseas terrorism would continue to be provided for through the VOTCS in that interim period.

## Questions

2. Do you agree with our proposal to legislate to establish a new compensation scheme for victims of terrorism at home and abroad?
3. If so, what are your views about ways in which a dedicated compensation scheme might differ from the Criminal Injuries Compensation Scheme and Victims of Overseas Terrorism Compensation Scheme?

## Victims of homicide abroad

83. Homicides abroad are not currently covered by the Criminal Injuries Compensation Scheme (CICS) which is for incidents that occur in Great Britain or another 'relevant place' outlined in Annex C of the Scheme. However, if a death results from a designated terrorist incident outside of Great Britain, it would be in scope of the Victims of Overseas Terrorism Compensation Scheme (VOTCS).
84. Bereaved families of victims killed abroad may receive some state-funded support, both pecuniary and holistic, from the Foreign and Commonwealth Office and the Ministry of Justice funded Homicide Service in England & Wales. However, as the reports by the Victims' Commissioner for England and Wales<sup>14</sup> and the All-Party Parliamentary Group on Deaths Abroad, Consular Services and Assistance note,<sup>15</sup> this provision can be inconsistent.
85. Bereaved families may also be able to apply to state compensation schemes in the country where the crime occurred. If the crime took place in an EU state or a country which has ratified the Council of Europe Convention on the Compensation of Victims of Violent Crimes, UK victims are eligible to apply. They are, however, subject to the eligibility criteria and scope of those schemes, many of which will be less generous than the CICS. Following the UK's withdrawal from the EU on 31 January 2020 and once the transition period is completed on 31 December 2020, there will be fewer European compensation schemes for which UK victims of violent crime abroad will be

<sup>14</sup> <https://victimscommissioner.org.uk/published-reviews/struggling-for-justice-entitlements-and-experiences-of-bereaved-families-following-homicide-abroad/>

<sup>15</sup> <http://hannahbardellmp.scot/wp-content/uploads/2019/11/The-All-Party-Parliamentary-Group-on-Deaths-Abroad-Consular-Services-and-Assistance-Report-2019.pdf>

eligible. It is likely that victims will have to directly navigate language barriers and a lack of easily available information about these schemes.

86. In cases where the victim had valid travel insurance, insurers may cover the cost of repatriation back to the UK or the cost of an international funeral director if the family chooses to have the funeral abroad. However, as the All-Party Parliamentary Group report highlights, travel insurance, even when comprehensive and providing cover for medical expenses, does not compensate for the physical or mental injury suffered, nor provide bereavement payments (which are available under the CICS and VOTCS) where a family member has died as a result of a violent crime.
87. Given the number of homicides abroad, estimated at 60-90 per year, and the lack of comprehensive and consistent support, we propose to consider whether state-funded compensation should be made available to these bereaved families. We suggest that any provision for homicides abroad should mirror how the CICS compensates bereaved families, in terms of both the types of payment available and their value. In the same way as the CICS, this should be subject to the principle of last resort so that it provides financial support where it is not available from other sources.
88. Providing compensation for homicides abroad is likely to introduce an additional operational burden. It will be more complex to obtain police reports from abroad, and will require the CICA to work closely with foreign justice systems and services in some cases with an added language barrier. We have established that it would not be possible to incorporate provision for homicides abroad into the CICS or VOTCS due to the framing of primary legislation that these schemes rest upon and would undermine the distinct purpose and rationale of each scheme. Subject to the outcome of the consultation on provision for terrorism, we will undertake further work to determine whether there should be a new standalone scheme or if homicide abroad could be included in a combined scheme for domestic and overseas terrorism.

### Question

4. What are your views on legislating to establish provision for compensation for families bereaved by homicide abroad?

## Section 3: Eligibility rules

89. Eligibility rules have been in place since the establishment of criminal injuries compensation in 1964. These rules have developed and changed in the intervening years, in line with crime trends and changing social attitudes, in order to ensure that the Scheme can support those who need it most. The rules are also an important tool in reinforcing the purpose of the Scheme, which exists as a last resort for victims and is a public acknowledgement of the harm they have suffered. And they act as a safeguard on spending of public funds and in turn the future sustainability of the Scheme.
90. The previous Victims' Commissioner for England and Wales, in her report on compensation, raised concerns that victims found it difficult to understand whether they were eligible for compensation. The CICA has already taken steps to clarify existing rules on eligibility, including the introduction of a step-by-step guide on who may be eligible for compensation, and is undertaking further work to make the Scheme more accessible for victims.
91. An important aspect of this review has been to examine eligibility rules closely and to consider whether they remain appropriate for victims of violent crime today.

### Time limits

92. At present, the Scheme requires those who wish to claim compensation to submit an application to the CICA as soon as reasonably practicable and within two years of the date of the incident which resulted in the relevant injury.<sup>16</sup> This has been the time limit since 1996, having been three years under some of the non-legislative schemes that ran from 1964, and is broadly in line with other international compensation schemes.
93. Claims made outside of the two-year limit can be considered by the CICA in "exceptional circumstances" and where the evidence provided means that the CICA will not have to make extensive further enquiries to resolve the claim. The CICA will always consider all the circumstances of each case in deciding whether there are exceptional circumstances which mean the application could not have been made sooner. An example of a circumstance might be where the applicant suffered such a serious physical or mental injury that they were unable to make an application within the relevant time limit. Exceptional circumstances do not include situations where an applicant may have waited for the conclusion of a criminal case before submitting a

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<sup>16</sup> Criminal Injuries Compensation Scheme 2012 (amended) paragraph 87

claim for compensation, or for a conviction to become unspent before applying (where this has taken them over the two-year time limit).

94. Separate provision is made within the current Scheme for those who were under the age of 18 at the time the relevant injury was sustained. Applications for such cases are considered eligible if the incident was first reported to the police before the applicant's 18<sup>th</sup> birthday and the application is received on or before their 20<sup>th</sup> birthday; or if the incident was first reported to the police on or after the applicant's 18<sup>th</sup> birthday and the application is received within two years of the date of that report.
95. Stakeholders have raised concern about the two-year time limit given that some victims lack awareness regarding the Scheme. We have also heard anecdotal evidence of victims being advised by police or prosecutors to wait until the conclusion of a criminal case to avoid being accused of making allegations for profit, with victims subsequently unable to make a successful claim for compensation as a result of the time limit. This issue has also been raised by the Victims' Commissioner for England and Wales<sup>17</sup> and reflected in evidence provided by survivors to the Independent Inquiry into Child Sexual Abuse<sup>18</sup> and the All-Party Parliamentary Group for Adult Survivors of Childhood Sexual Abuse. The impact of trauma on victims and particularly those of child sexual abuse, and the difficulty of claiming compensation while still recovering from a crime of violence, has also been raised as a concern, with stakeholders suggesting that a more generous time limit in which to make applications may be required. These victims may find the application process uniquely challenging, finding it difficult to navigate and to describe their experiences.<sup>19</sup>
96. We recognise that the current time limits are perceived to affect certain groups of victims, and have carefully examined the concerns raised. Our evidence from the CICA caseload data set showed that the proportion of claims refused on the grounds of being "out of time" was small when compared to refusals on other grounds. From the data set 18% of personal injury cases were submitted outside the 2-year time limit, of these 63% still went on to receive an award. There was no apparent disproportionate impact on those claiming for sexual assault. Of the cases in the data set received after the two-year time limit, 82% were sexual assault cases and 72% of these went on to result in an award being made. The "exceptional circumstances" criteria - to allow out of time claims to the Scheme where victims were (reasonably) unable to submit a claim within the two-year time limit – and the time limit for

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<sup>17</sup> Compensation without re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation – January 2019 - <https://victimscommissioner.org.uk/published-reviews/compensation-without-re-traumatisation-the-victims-commissioners-review-into-criminal-injuries-compensation/>

<sup>18</sup> Interim Report of the Independent Inquiry into Child Sexual Abuse, section 5.3 – April 2018 – <https://www.iicsa.org.uk/publications/inquiry/interim>

<sup>19</sup> Compensation without re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation – January 2019 – see above

applicants who were children at the time of the crime appear to be working well. Of all rejected personal injury cases, only 4% were rejected for being outside the 2-year time limit.

97. It is important for the Scheme to operate a time limit to ensure that victims are supported to progress their recovery, that the CICA is able to gather sufficient evidence to determine compensation claims, and to ensure the financial sustainability of the Scheme. It is our view that a two-year time limit allows sufficient time for victims in most cases to consider making a claim for compensation, and to have explored other routes for compensation.
98. In the meantime, action is being taken to include further explicit information on Scheme time limits within the Victims' Code. This is reflected in the second consultation published in February 2020. The draft revised Code includes in *Right 5: To be provided with information about compensation*, clarity about the time limits, advice not to delay making an application, and confirmation that, only in exceptional cases will the CICA wait for the outcome of criminal proceedings before determining a claim.
99. Alongside this, we will continue to explore what more can be done with criminal justice agencies to raise awareness of the Scheme, and in particular to ensure a robust response where compensation claims are raised in the context of criminal proceedings.

## Unspent convictions

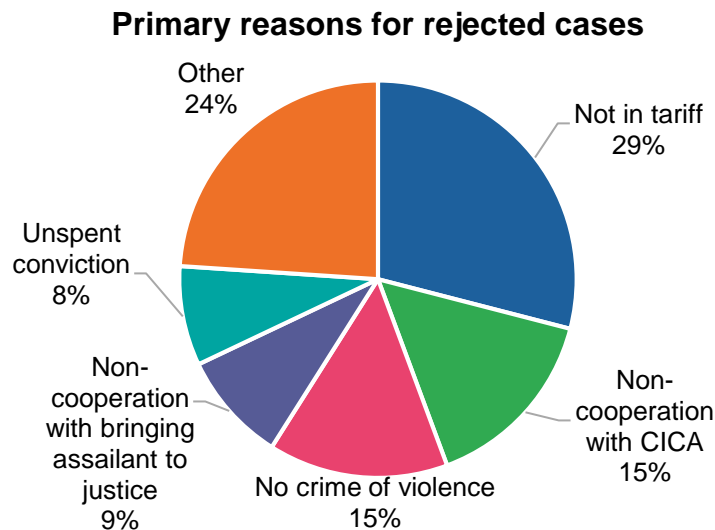
100. Unspent convictions may result in an applicant's compensation award being reduced or withheld depending on the sentence that has been imposed for the offence committed. The 2012 Scheme provides that an applicant is not eligible for compensation where they have an unspent conviction that has resulted in one of the following custodial or community sentences:
  - a) a sentence excluded from rehabilitation;
  - b) a custodial sentence involving detention or imprisonment, detention in a young offender institution, or sentences of youth custody or corrective training;
  - c) a sentence of service detention;
  - d) removal from Her Majesty's service;
  - e) a community order;
  - f) a youth rehabilitation order; or
  - g) a sentence equivalent to a sentence described in (a) to (f) above, imposed under the law of Northern Ireland or a member state of the European Union, or such a sentence properly imposed in a country outside of the European Union.



88. The current rule was introduced following the 2012 review, and serves to prevent individuals who have committed serious illegal acts benefitting from state-funded compensation, while ensuring that the Scheme is able to help victims most in need of financial support.

101. Before the change in 2012, the CICA had discretion on a case-by-case basis, to pay out awards for those with unspent convictions where there were exceptional reasons for an award not to be withheld or reduced. The new rule was intended to simplify the Scheme, to support the principle that state-funded compensation be provided to victims who have not cost society through their offending behaviour, and allow further transparency, clarity and consistency in decision making.

102. Our evidence from the CICA caseload data set showed that in 8% of all rejected cases the primary reason was that the applicant had an unspent conviction. This was the 5th most common primary rejection reason, after injury not in tariff, non-cooperation with the CICA, no crime of violence, and non-cooperation with bringing the assailant to justice.



103. Stakeholders have raised concerns about the impact of the 2012 rule on victims of abuse, exploitation and controlling and coercive behaviour, arguing that the Scheme does not differentiate between victims who have been forced to offend by their exploiters and abusers, and offenders who have more agency over their actions. Stakeholders have expressed that this penalises individuals who have already been through harrowing experiences, and may have a disproportionate impact on victims of trafficking or sexual exploitation. In its interim report considering accountability and redress mechanisms for survivors of child sexual abuse, the Independent Inquiry into Child Sexual Abuse recommended that the rule be revised so that awards are not automatically rejected in circumstances where an applicant’s criminal conviction is

likely to be linked to their child sexual abuse, and that each case be considered on its merits.<sup>20</sup> The previous Victims' Commissioner for England and Wales also called for the changes to the rule, recommending that there be greater discretion for victims of exploitation, abuse and coercive control in particular.<sup>21</sup> The All-Party Parliamentary Group for Adult Survivors of Childhood Sexual Abuse went further, calling in its report *Survivor's experience of court and applying for compensation* published in October 2019 for the unspent convictions rule to be abolished.

104. The intention of the existing rule is to reflect the degree of harm done to others and the cost to society of offending behaviour when deciding eligibility for compensation. Any change in this area is likely to introduce additional complexity to the Scheme and to increase the time it takes for the CICA to make a decision on eligibility. We must also take into consideration that all individuals with unspent convictions will have been found guilty of a crime, and are likely to have had particular circumstances of their vulnerability presented in mitigation and taken into account during sentencing. Under the Rehabilitation of Offenders Act 1974, offenders must fairly bear the impact of their offending, which in our view includes exclusion from compensation of this kind, until their conviction becomes spent.
105. The current rule applies equally to all victims of violent crime applying to the Scheme, and provides for a graduated approach to withholding or reducing awards based on the seriousness of the conviction, the circumstances of the offender and the applicable mitigation. We believe that the starting point for the unspent convictions rule – where individuals with unspent convictions that have resulted in community and custodial sentences will not be eligible for awards – is the right one and that it is important to continue to reflect the costs to society and to the state from offending.
106. After careful consideration, we do not believe it is possible to commit to making any change to this rule, without undermining the core principles of the Scheme and introducing significant potential discrimination and operational challenge.

## The “same roof” rule

107. Since the introduction of criminal injuries compensation in 1964, each subsequent scheme has included rules to prevent awards being made where the applicant and the assailant were adults living together as members of the same family. The intention is to protect victims from being coerced or forced into making a claim for

<sup>20</sup> Interim Report of the Independent Inquiry into Child Sexual Abuse, section 5.2, April 2018 <https://www.iicsa.org.uk/publications/inquiry/interim>

<sup>21</sup> Compensation without re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation, January 2019 – <https://victimscommissioner.org.uk/published-reviews/compensation-without-re-traumatisation-the-victims-commissioners-review-into-criminal-injuries-compensation/>

compensation, and also to ensure that assailants do not benefit from the compensation award intended for their victim. Until June 2019, the Scheme made separate provision for criminal injuries sustained before and after 1 October 1979. Under paragraph 19 of the Scheme (the pre-1979 rule, now deleted), an award would not have been made if, at the time of the incident giving rise to the injury the applicant and assailant lived together as members of the same family; the rule applied to adults and children.

108. The Court of Appeal found in the case of JT that the pre-1979 “same roof rule” was discriminatory; we consequently amended the 2012 Scheme to remove this rule in relation to criminal injuries sustained before 1 October 1979. We also, exceptionally and as a direct response to the judgment, made provision to allow victims who may not have applied before to the Scheme because of the rule to make an application, and to allow for applicants previously refused compensation on the basis of the pre-1979 same roof rule to reapply.
109. As part of the review we committed to consider the remaining same roof rule, that applies only to adults, that is still in the amended 2012 Scheme. This prevents awards from being made if, at the time of the incident giving rise to the injury, the applicant and assailant were adults living together as members of the same family and continue to do so; however, awards may be made where the applicant and assailant no longer live together and are unlikely to do so again.
110. We believe that protections to ensure assailants do not benefit from compensation awards to their victims are an important part of the Scheme; they protect victims from undue pressure and operate to ensure assailants are unable to access compensation intended for their victims. We have reviewed the protections already in place, including rules enabling the CICA to withhold awards where assailants may benefit from them.<sup>22</sup> In our view these protections are sufficient, and we do not believe that familial relationships should prevent victims from accessing compensation to which they would otherwise be entitled, provided that there is no possibility of the assailant benefitting. We propose to remove the remaining same roof rule from the Scheme.

## Question

5. Do you agree with our proposal to remove the remaining same roof rule, which applies only to adults, from the Scheme?

<sup>22</sup> Criminal Injuries Compensation Scheme 2012 (amended) paragraph 21

## Police reporting requirement

111. The Scheme establishes eligibility rules that recognise the applicant's role in the pursuit of justice. A rule was introduced in 2012 that required the incident in which an applicant was injured to have been reported to the police as soon as reasonably practicable and subsequently for the applicant to co-operate as far as reasonably practicable in bringing the offender to justice.<sup>23</sup>
112. Within previous Schemes, reports of violent crimes could be made to other "appropriate authorities" in certain circumstances for the purposes of compensation. The change in the reporting requirement in 2012 has helped ensure the CICA has the information it needs to determine whether a crime of violence has taken place, and to establish whether the applicant fully co-operated in the justice process. The Scheme does not specifically require that it be the victim that reports the incident to the police, just that the incident in which the injury is sustained is reported to the police.
113. Stakeholders have raised concerns that the requirement to report only to the police adversely impacts on victims of abuse who may either never report to the police or delay reporting for a considerable length of time, resulting in victims who might otherwise have been eligible for compensation being unable to claim an award. Issues have also been raised regarding those who have reported physical or sexual assault at work, for example, prison officers and first responders such as paramedics, through internal procedures and who have either been unaware of the police reporting requirement, or have been unable to obtain a crime reference number.
114. Broader barriers that victims of sexual violence may face when reporting their abuse to the police have also been raised, such as a fear of intrusive or intimidating investigations, being made to feel responsible for the violence they have experienced, and having to navigate difficult and confusing criminal justice processes.
115. Wider efforts are being made across the criminal justice system to proactively address many of these concerns. As highlighted in the Victims' Strategy, there are initiatives under way to tackle under-reporting of crimes of sexual and physical abuse by recognising and responding to the needs of victims as they recover, as well as improving understanding of the importance of transparent processes and accessible information. The Government has also committed to improving services specifically for victims of sexual violence, streamlining the support and information available, and strengthening the Victims' Code to ensure that the rights of victims are adequately protected.
116. We continue to believe that supporting the authorities to bring an offender to justice is a key cornerstone of a state funded compensation scheme, and can, importantly, aid

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<sup>23</sup> Criminal Injuries Compensation Scheme 2012 (amended) paragraph 22

in preventing an assailant from injuring someone else. The requirement to report to the police helps to limit the information that CICA requires from applicants in the first instance, and is an important safeguard against fraudulent claims.

117. It also brings important consistency for the CICA in operating the scheme and determining whether, on the balance of probabilities, a crime of violence has taken place. CICA guidance requires claims officers to consider the psychological impact of crimes on victims and how this may influence delay in reporting to the police, with particular care taken in claims involving sexual abuse, grooming and coercion, and trafficking.
118. Therefore, we intend to retain the police reporting requirement within the Scheme.
119. We are also committing to explore how, through the implementation of the new Victims' Code and through further engagement with partners across the criminal justice system, we can ensure victims are aware of the need for an incident to be reported to the police to be eligible for compensation.

## **Emergency workers**

120. The manner in which the Scheme is applied means that any emergency worker who is assaulted while working, from paramedics to firefighters, will be considered a direct victim of an intentional crime of violence, as with applications from all other victim groups, and assessed under the same eligibility criteria.
121. Where an emergency worker is injured due to a crime of violence other than an assault, their application will be considered under paragraph 5 of the Scheme, which outlines that an exceptional risk taken in the course of limiting or preventing a crime will potentially be eligible for an award. This includes where this is work, volunteering or assisting a police officer. However, the paragraph also explains that a risk will not be considered exceptional if it would normally be expected in an applicant's line of work.
122. When assessing a claim under paragraph 5, the CICA's caseworkers apply discretion on a case-by-case basis, considering a number of factors such as whether the applicant had received training in dealing with similar risks, and whether their intervention prevented a more serious outcome.
123. Emergency workers must also report the incident to the police, as with all other applicants to the Scheme. However, anecdotal evidence suggests that some emergency workers may instead make a report through internal workplace proceedings, in the mistaken belief that this is sufficient under the Scheme.

124. We therefore feel that, although the Scheme is largely working effectively to provide support for this victim group, more work can be done to raise awareness of the Scheme and its eligibility criteria among emergency workers. We are also committing to explore how to ensure that, when emergency workers do make a police report, they are signposted to the Scheme as with all other victim groups.

## Section 4: Injury awards

### Minimum and maximum awards

125. Individual claims for compensation are assessed against a tariff of injuries, set out in Annex E of the Scheme. There are almost 400 separate qualifying injuries within the Scheme. Each injury is assigned to an award band, which contains injuries of a similar nature or level of seriousness; and each award band is given a distinct value. The current minimum injury award that may be given is £1,000; the maximum injury award is £250,000.
126. Overall, compensation awards available under the Scheme (which may include loss of earnings, special expenses or, within fatal claims, dependency or child payments) are capped at a maximum of £500,000. Stakeholders have criticised the value of the injury awards made available under the Scheme, noting their lack of parity with injury values in civil claims, and have called for an increase of the maximum cap in line with inflation.
127. Our Scheme remains one of the most generous in the world.<sup>24</sup> Injury awards are intended to be an acknowledgement of harm and an important gesture of public sympathy that can help in the recovery of the most seriously injured victims of violent crime. We also recognise that no amount of compensation can ever make up for the trauma a person has suffered, and it is therefore important to ensure that victims also are able to access practical and emotional support to help them recover from their injuries. We also wish to ensure the Scheme is affordable and financially sustainable in the future. Therefore, we do not consider that it is appropriate to increase injury awards or cap in line with inflation and do not intend to change the minimum or maximum value of awards under the Scheme at this time.

### Compensating for mental injury

128. The current Scheme considers mental injury only when it is disabling (i.e. has a substantial adverse effect on a person's normal day-to-day activities), and may be

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<sup>24</sup> The closest comparable cap is in the French Scheme, where the maximum award is capped at €476,000 (c.£428,000 at the time of writing). Maximum caps range widely from £15,000 to £500,000. No caps are imposed within schemes in Finland, Germany and Quebec. The Finnish scheme requires that victims claim damages from the perpetrator first, where relevant. The German scheme's purpose is narrower, awarding only for cases where there has been damage to physical or mental health that lasts for 6 months or more, and public awareness of the scheme is low. The Quebecois scheme has similar time limits and requirement of proof that a criminal act was committed to CICS.

either permanent or non-permanent. Severity is assessed through the extent and the duration of the impacts on each applicant. The breadth of the current descriptions recognise that the Scheme is compensating for mental injury, rather than illness, and enable the CICA to account for an individual's personal resilience and other relevant factors when assessing the extent of the impact of a mental injury in each individual case.

### **Diagnosis or prognosis requirement**

129. A "diagnosis or prognosis" from a clinical psychologist or psychiatrist is required for applicants to be eligible for awards for disabling and permanent mental injury under the Scheme. The Scheme does not specify assessments from named medical specialists for any other injuries included in the tariff, although such specialist assessment can of course be sought by the CICA on a case-by-case basis where further evidence is required to determine the most appropriate award for an injury.
130. Concerns have been raised that the requirement for specialist diagnosis in the case of disabling mental injury is disproportionate and creates unnecessary barriers to compensation, both in terms of time and resources. Although costs for reports from clinical psychologists or psychiatrists can be significant, CICA will instruct and pay those costs where required, recognising the initial outlay is otherwise unaffordable for many applicants. We have considered these issues and looked at the extent to which other medical and mental health professionals may be competent to provide the level of evidence required by the CICA to assess disabling mental injury.
131. By their very nature, mental injuries are more difficult to objectively diagnose and accurately assess prognoses for recovery. Whilst some applicants may choose to seek a clinical referral themselves, which can mean an up-front cost to them (which may later be reimbursed by the CICA), arrangements made by the CICA have removed the onus from the applicant to obtain a clinical diagnosis/prognosis. The CICA has a team of in-house psychologists who assess many claims based on medical records, and those requiring face-to-face assessment are referred to a contracted provider whose charges are met by CICA.
132. In determining whether an award is appropriate the totality of the information available needs to be assessed, given the complexity of diagnosing conditions. Further, the mental injury must be directly attributable to the crime of violence suffered; an experienced clinician is able to arrive at an informed critical judgement of this, distinguishing mental injury that is of a severity that the Scheme intended to compensate, and considering the presence of any pre-existing conditions which may have been exacerbated. Recognising the complexities of mental injury, it is important to make sure that cases are assessed by those with the necessary expertise and training, to ensure a consistent and accurate approach.



133. The requirement for a diagnosis or prognosis is therefore an important safeguard, to make sure that disabling mental injury payments, which may be in addition to a physical injury payment or standalone, are made in appropriate cases and to those most seriously affected. The specialist resources and approaches that CICA has put in place relieve much of the burden on applicants and help avoid the need for potentially re-traumatising face-to-face medical assessments where possible. We therefore propose to retain this requirement.

### Revising the dividing line from 2 to 3 years

134. In the interests of simplicity and ensuring the Scheme keeps pace with our evolving understanding of mental injury, we also wish to explore whether the current bandings for disabling mental injury – ranging from 28 weeks to over five years – are appropriately drawn and reflect current medical evidence on normal expected recovery from mental injury caused by trauma, noting of course that this will be different in every case.

135. We are committed to ensuring that the Scheme deals fairly and consistently with all victims of violent crime. There is some danger of inconsistency when assessing recovery from mental injury if there have been delays to appropriate treatment. An injury may be assumed to be more severe (i.e. longer lasting) simply because the applicant did not or was not able to begin treatment until sometime after the incident.

136. The dividing lines between disabling mental injuries as listed in Part A of the tariff are as follows:

Description	Band	Value
Disabling mental injury lasting between 6 weeks – 28 weeks	A1	£1,000
Disabling mental injury lasting between 28 weeks – 2 years	A4	£2,400
Disabling mental injury lasting between 2 years – 5 years	A7	£6,200
Disabling mental injury lasting over 5 years, but is not permanent	A9	£13,500
Permanent mental injury – moderately disabling	A11	£19,000
Permanent mental injury – seriously disabling	A13	£27,000

137. Clinicians have advised that the 2-year dividing line between the current A4 and A7 awards is particularly problematic, and causes significant operational difficulty when making determinations. The language employed by clinical psychologists when assessing such cases is ‘complex’ vs. ‘non-complex’, and we have been advised that a 3-year dividing line matches more closely with this terminology and would therefore be more appropriate.

138. We propose to change the dividing line from two years to three years, to ensure that mental injuries are consistently compared fairly and compensated accordingly.

### Question

6. What are your views on revising the dividing line from 2 to 3 years?

### Merging longer-term disabling mental injuries together

139. As shown above, non-permanent longer-term disabling mental injuries are divided into those with prognoses between 2 years – 5 years (A7) and over 5 years but not permanent (A9).

140. Recent years have seen significant advancements in understanding of mental health more generally, but injuries to the mind are still far more difficult to assess than physical injuries. The CICA makes judgements regarding prognoses relatively early in the course of a victim's recovery, meaning that there are inherent difficulties in accurately categorising longer-term mental injuries, particularly between the current A7 and A9 bands.

141. From our discussions with clinicians, including the CICA in-house psychologists, we understand that there would be significant merit to merging these two bands together. This would mean that, combined with the proposal above, any disabling mental injuries with a prognosis for recovery of over 3 years would be categorised together.

142. In combination with revising the dividing line from 2 to 3 years, disabling mental injuries could look like the example below. The example below uses the proposed new bands and award values as outlined in paragraph 156.

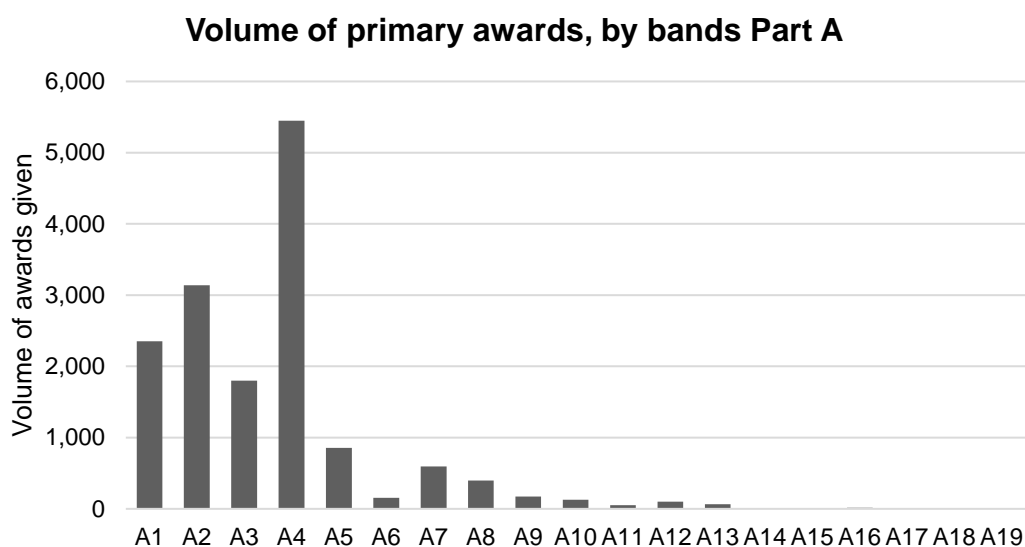
<b>Proposed new description</b>	<b>New Band</b>	<b>New Value</b>
Disabling mental injury lasting between 6 weeks – 28 weeks	A1	£1,000
Disabling mental injury lasting between 28 weeks – 3 years	A2	£2,000
Disabling mental injury lasting over 3 years but not permanent	A4	£8,000
Permanent mental injury – moderately disabling	A6	£20,000
Permanent mental injury – seriously disabling	A7	£30,000

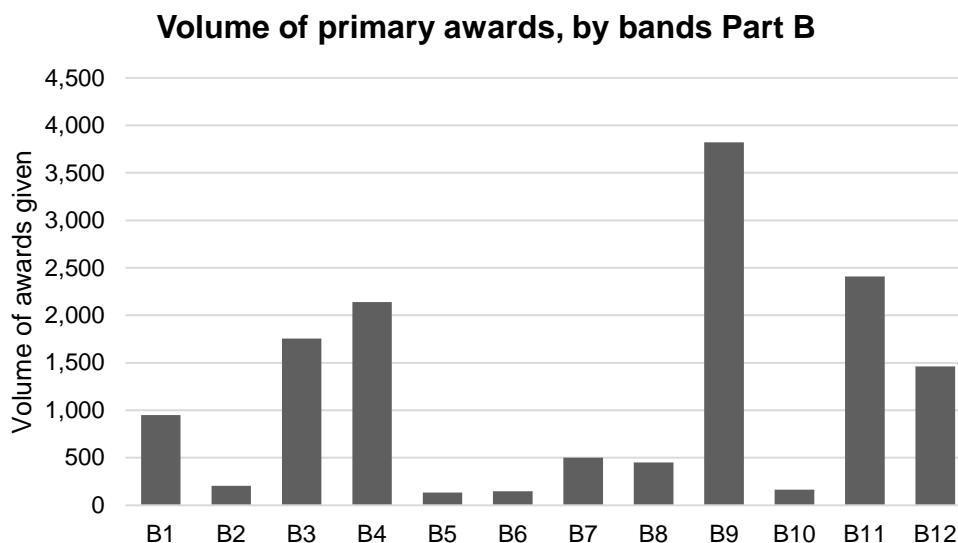
## Question

7. What are your views on merging bands A7 and A9, which combined with the proposal above, would mean any disabling mental injury with a prognosis for recovery of over 3 years would be categorised together?

## Changes to the tariff of injuries

143. The tariff of injuries in Annex E of the Scheme lists and describes qualifying injuries and the associated awards. The tariff was introduced in 1996, following the enactment of the Criminal Injuries Compensation Act 1995 and changes were made in 2001, 2008 and 2012.
144. Since 2012 the tariff has been divided into two parts. Part A contains 341 physical and mental injuries distributed over 20 award bands, categorised according to severity; Part B covers 52 injuries relating to sexual assault and physical abuse distributed over 15 award bands, and also includes other payments such as bereavement awards.
145. Analysis of the CICA caseload data set has shown that the majority of the primary injury awards made by the CICA relating to physical and mental injuries (Part A) are concentrated in the first four award bands (A1 to A4). Awards relating to sexual assaults were more widely distributed across the bands, although bands B9, B11 and B12 accounted for just over half of all awards made.





### Case for change and proposals

146. Victims and their representatives have told us that the Scheme and the tariff of injuries are difficult to understand and use. The previous Victims' Commissioner for England and Wales' report on victims' experiences of the Scheme raised particular concerns about the complexity of the tariff, noting that many victims "struggle to understand how much they might be entitled to receive". Difficulty in estimating potential awards risks raising the expectations of applicants and could lead to dissatisfaction with the outcome of claims. The report also included a recommendation that additional funding be provided to ensure vulnerable victims can access legal support when applying to the Scheme.<sup>25</sup>

147. We have looked in detail at concerns from applicants that the tariff is not user friendly; it is very long (spanning a third of the Scheme), is complex to navigate, the layout is not always easy to follow and the language can be difficult to understand. This perception of complexity may have led to some applicants choosing to engage legal representation. In these cases, up to 25% of their award could be retained by a solicitor for their services. It is our intention that applicants should feel that the Scheme is accessible and gives them confidence to go through the application process without a solicitor.

148. Our proposals aim to strike a balance between simplifying the Scheme while reflecting the seriousness and nature of injuries suffered. Our intention behind revisions to the tariff is not to take money out of the Scheme. There are instances where the proposals might mean some injuries will attract higher awards and some will be less. We have tried to balance this unintentional impact across the tariff so no

<sup>25</sup> Compensation without re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation, January 2019 – <https://victimscommissioner.org.uk/published-reviews/compensation-without-re-traumatisation-the-victims-commissioners-review-into-criminal-injuries-compensation/>

one group of injuries is affected. More detail for proposed approaches can be found in the Impact Assessment. Any reduction in the cost of the Scheme due to a simplified tariff would be used to fund other reforms to the Scheme.

149. Simplicity, transparency and ease of navigation were key themes identified through the review of the Scheme. These themes have, along with the need for consistency, shaped the proposed approaches described below. These approaches will allow applicants to better anticipate what award they might receive and to feel empowered to make an application themselves without the need for legal assistance. It could also lead to reduced stress during the application process, and mitigate applicant dissatisfaction caused by misunderstanding upon receiving their decision letter from the CICA. Simplification of the scheme is also expected to result in operational benefits which may lead to swifter decision making by the CICA.

### **Part A – Physical and mental injuries**

150. Part A contains 20 bands and 341 individual physical and mental injuries. The 2012 review and subsequent Scheme saw changes to the Part A tariff, which, along with other reforms, aimed to make the Scheme more affordable. In this review we have developed five approaches that individually and in combination could improve the simplicity of Part A. For each approach we have outlined how this might look in practice:

- 1) Simplification of language;
- 2) Changing the language for injury severity;
- 3) Reducing the number of bands;
- 4) Grouping some injuries together, where appropriate; and
- 5) Overhauling the way brain injury is represented.

#### *Simplification of language*

151. This approach seeks to move away from overly complex, medical language and use more common terminology with the aim of improving understanding of injuries and their descriptions. Explanatory notes would be included, which may contain more technical terms, retaining specificity where needed.

152. **For example**, this could mean using the words ‘collar bone’ rather than ‘clavicle’, ‘shoulder blade’ rather than ‘scapula’ and ‘arm’ rather than ‘humerus’, ‘radius’ and ‘ulna’.

#### *Changing the language for injury severity and recovery*

153. In the current tariff, the language used for injury severity is not always consistent or appropriately sensitive. This approach would refine the language used to improve consistency across Part A and promote better understanding.

154. **For example**, as the Scheme is for victims who have been most seriously injured, the term of some injuries as ‘minor’ could be judged as insensitive and potentially

misleading. Instead the following three degrees could be used wherever possible throughout Part A: moderate, serious and severe. In cases where further degrees are required, 'very serious' and 'very severe' could be used.

#### *Reducing the number of bands*

155. In 2012 five bands containing less serious injuries were removed from the tariff; we are not proposing to rationalise the injuries covered by Part A further. However, through the review we have learned that most awards are paid across bands A1 to A16, and we suggest that reducing the number of bands would make the Part A tariff clearer and simpler to navigate and operate. The intention of this approach would not be to use consolidation of bands as a tool to reduce or change the overall cost of the Scheme. However, we appreciate that it is unavoidable that consolidation would mean that some injuries would attract higher awards while some would attract less.
156. **For example**, the model below shows what this could look like in practice with a reduction to 12 bands: the injuries currently in bands A1 to A16 would be condensed into eight new bands, leaving the most severe injuries currently in bands A17 to A20 relatively unchanged. The new bands should contain injuries of comparable seriousness, and the band values should reflect an appropriate gradation in seriousness.

Current band	Current award	Potential new band	Potential new award
A1	£1,000	A1	£1,000
A2	£1,500	A2	£2,000
A3	£1,800	A3	£4,000
A4	£2,400	A4	£8,000
A5	£3,500	A5	£15,000
A6	£4,600	A6	£20,000
A7	£6,200	A7	£30,000
A8	£11,000	A8	£50,000
A9	£13,500		
A10	£16,500		
A11	£19,000		
A12	£22,000		
A13	£27,000		
A14	£33,000		
A15	£44,000		
A16	£55,000		

Current band	Current award	Potential new band	Potential new award
A17	£82,000	A9	£80,000
A18	£110,000	A10	£100,000
A19	£175,000	A11	£175,000
A20	£250,000	A12	£250,000

*Grouping some injuries together, where appropriate*

157. Part A of the tariff is currently made up of 341 separate injuries. In this approach, the number of injuries would be reduced by grouping them, where appropriate, with the objective of making the tariff easier for applicants to navigate.

158. **The example** below shows how wrist injuries appear in the current tariff as 10 separate injuries and how this could be condensed into 6 injuries.

Current injuries	Current descriptions	
Fractured – colles type or equivalent fracture or displacement of distal radius	One wrist	Substantial recovery
		Continuing significant disability
	Both wrists	Substantial recovery
		Continued significant disability
Fractured or dislocated – including scaphoid fracture	One wrist	Substantial recovery
		Continuing significant disability
	Both wrists	Substantial recovery
		Continued significant disability
Sprained	One wrist	Disabling for 13 weeks or more
	Both wrists	Disability for 13 weeks or more

Potential new injuries	Potential new descriptions	
Sprain to	One wrist – disabling for over 13 weeks	
	Both wrists – disabling for over 13 weeks	
Dislocation/fracture or equivalent fracture (colles, scaphoid or distal radius type) to	One wrist – substantial recovery	
	One wrist – continuing significant disability	
	Both wrists – substantial recovery	
	Both wrists – continuing significant disability	

*Overhauling the way brain injury is represented*

159. In the current tariff, brain injury has been highlighted as particularly confusing both by applicants and operational colleagues. Brain injuries can be complex and difficult to accurately categorise, making the tariff difficult to navigate and for decisions in individual cases to be understood.

160. We propose a simplified approach, to remove confusion and make this aspect of the tariff easier to understand, by presenting brain injury using a table of injuries. The intention is to retain the current descriptors for the gradation of injury severity; for clarity they have been incorporated into the table and will remain part of the Scheme. In the table below the proposed tariff bands are those that would be available if the number of bands was reduced from 20 to 12 as described in the example for the proposal at paragraph 156 above.

<b>Injury</b>	<b>Description</b>	<b>Proposed New Band</b>	<b>Proposed New Value</b>
<b>Minor head injury</b>	One or more of concussion, impairment of balance or headaches - less than 6 months	A1	£1,000
<b>Minor head injury - permanent</b>	One or more of concussion, impairment of balance or headaches – permanent.	A4	£8,000
<b>Moderate brain damage – see matrix</b>	Good recovery, able to socialise and return to work but persisting problems with concentration, memory, disinhibition of mood affecting lifestyle, leisure activities, future work prospects.	A4-A6	£8,000 - £20,000
<b>Moderately serious brain damage</b>	Some dependence on others, intellectual deficit, personality change, ability to work reduced, some effect on the senses – few symptoms present.	A7	£30,000
<b>Serious brain damage</b>	Some dependence on others, intellectual deficit, personality change, ability to work reduced, some effect on the senses - some but not all symptoms present.	A8	£50,000
<b>Very serious brain damage</b>	Some dependence on others, intellectual deficit, personality change, ability to work reduced, some effect on the senses - majority of symptoms present.	A9	£80,000
<b>Moderately severe brain damage</b>	Serious disablement of physical or mental faculties requiring substantial dependence on professional or other care, with marked impairment of intellect and personality, abnormal behaviour and poor communication.	A10	£100,000



Injury	Description	Proposed New Band	Proposed New Value
<b>Severe brain damage</b>	Severe physical limitation, significant effect on the senses with little insight or significant reduction in life expectancy. Little or no meaningful response to the environment, little or no language function, double incontinence and need for full-time or all day and some night nursing care.	A11	£175,000
<b>Very severe brain damage</b>	No useful physical movement, significant effect on the senses with some degree of insight. Little or no meaningful response to the environment, little or no language function, double incontinence and need for full-time nursing care.	A12	£250,000

161. Whilst most of the categories of brain injury are self-explanatory, moderate brain injury is the most ambiguous, which gives rise to operational challenges in making and explaining decisions to the satisfaction of applicants. The issue with moderate brain injury is how to reconcile severity of symptoms with duration, and presenting the categories in a way that is clear and limits discretion so that it can be applied fairly and decisions in individual cases are easier to understand.

162. We propose a separate matrix for moderate brain injury to present the potential entitlements. We consider that it is necessary to address the specific issues with moderate brain injury separately from the table to avoid overcomplicating the table. In the matrix below the proposed tariff bands are those that would be available if the number of bands was reduced from 20 to 12 as proposed at paragraph 156 above.

<b>MODERATE BRAIN INJURY MATRIX</b>			
<b>Good recovery, able to socialise and return to work but persisting problems with concentration, memory, disinhibition of mood affecting lifestyle, leisure activities, future work prospects.</b>			
<b>Severity</b>	High – majority of symptoms present	A5	A6
	Medium – some but not all symptoms present	A4	A5
	Low – few symptoms present	A4	A4
		Short – less than 6 months	Medium – 6 months up to 2 years
			Long – 2 years or more
<b>Duration</b>			

### Question

8. What are your views on the proposed approaches to Part A (please give reasons for your responses):
- 1) Simplification of language?
  - 2) Changing the language for injury severity?

- 3) Reducing the number of bands?
- 4) Grouping some injuries together, where appropriate?
- 5) Overhauling the way brain injury is represented?

## **Part B – Sexual and physical abuse and other payments**

163. Part B was introduced in the 2012 Scheme in order to protect awards for victims of sexual and physical abuse. This was done to recognise the long-term physical and psychological impact that these offences can have upon victims' day-to-day lives.

164. Part B is divided into four sections:

- Fatal criminal injury;
- Physical abuse (further sub-divided into whether the victim is an adult, or under-18 / or adult lacking capacity);
- Sexual abuse (further sub-divided into whether the victim is an adult, or under-18 / adult lacking capacity); and
- Other payments (including contracting Sexually Transmitted Infections / HIV / Hepatitis B or C and pregnancy / loss of foetus).

165. In this review we have developed four approaches that individually and in combination could improve Part B. For each approach we have outlined how this might look in practice:

- 1) Moving the fatal injury award;
- 2) Simplifying injury descriptions;
- 3) Removing the distinction between under-18s/adults lacking mental capacity and adults; and
- 4) Increasing awards for mental injury.

### *Moving fatal injury award ('bereavement payment')*

166. The fatal injury award in Part B of the tariff is not an injury payment to a victim, but a payment to a victim's family as a recognition of their loss. We suggest that it does not need to be linked to a specified band and would be more appropriately detailed in the main body of the Scheme, alongside details of other payments available in cases where a person has been killed. Additionally, to make the language consistent across the Scheme we propose 'bereavement payment' is a more appropriate term.

### *Simplifying injury descriptions*

167. Like Part A, simplifying the injury descriptions in Part B will make them more understandable. In some instances, where there are differences in the language and descriptions between Part A and Part B they would be standardised to ensure consistency across the tariff.

168. **An example** of how this approach might look in practice would be to standardise the diagnosis requirements for disabling mental injury in Part A and Part B as they are currently phrased differently.

*Removing the distinction between under-18/adult lacking capacity and adults*

169. In the past changes to the provisions for sexual injury included bringing descriptions into line with terminology in the Sexual Offences Act 2003. In 2012 sexual injuries were separated into Part B of the tariff and divided into two sections depending on whether the applicant was an adult (17 injuries), or aged under-18 /adult lacking capacity (20 injuries). This was done to recognise the vulnerability of children and adults lacking capacity. In the tariff of injuries there are five additional injuries in the under-18/adult lacking capacity section. The additional sexual abuse injuries in the under-18/adult lacking capacity are greater severities or frequencies of existing injuries in the adult section. They are listed below.

Physical abuse:

B1 (£1,000) – isolated or intermittent assault(s) resulting in weal's, hair pulled from the scalp etc

B10 (£13,500) – persistent pattern of repetitive violence resulting in severe multiple injuries (this is an existing injury but with an addition level of severity)

Sexual abuse:

B2 (£1,500) – minor – non-penetrative frequent sexual physical act(s) over clothing

B4 (£3,300) – sexual assault – one or more of non-penile penetrative or oral genital act(s) – one incident

B5 (£4,400) - sexual assault – one or more of non-penile penetrative or oral genital act(s) – two or more isolated incidents

170. There are some minor differences, but both sections are fairly similar. We are exploring bringing these two sections together to simplify and shorten Part B. If so they would be combined so that claimants regardless of age fall into the scope for all sexual abuse injuries including the additional five listed above for physical and sexual abuse that currently only apply to under-18s/adults lacking capacity.

*Increasing awards for mental injury*

171. When Part B was created in 2012, sexual injuries were recognised to be particularly distressing, drawing on evidence that victims of sexual offences may suffer long lasting impacts and emotional distress. Furthermore, in acknowledgement that sexual injuries can lead to psychological impacts, permanent disabling mental injury was combined with a number of sexual offences. There are 12 Part B injuries that include permanent DMI across B12-B15 bands; 6 for adults and 6 for under-18/lacking mental capacity.

172. The disabling mental injury proposals outlined in paragraphs 134-142 would lead to awards in cases that come within Part A of the tariff increasing. This could have the unintended consequence of making the value of Part B disabling mental injuries lower than equivalent injuries in Part A. In particular, band B13 (used for permanent and severe) and above would be affected. The permanent disabling mental injury equivalent proposed in Part A (new band A7) would be of a higher value. If the Part A disabling mental injury approach is adopted, we propose to increase Part B award(s). This would ensure that the added element of sexual assault combined with disabling mental injury is adequately compensated for in Part B.

173. Below is a table with the Part B disabling mental injury bands and an example of what the increase could look like to ensure that these injuries are adequately compensated for given the sexual element of the cause of the injury.

Band	Description	Old Award Value	New Award Value
B12	Permanent -Moderate	£22,000	£22,000
B13	Permanent -Severe	£27,000	£30,000
B14	Permanent - Moderate with serious internal bodily injury	£33,000	£33,000
B15	Permanent - Severe with serious internal bodily injury	£44,000	£47,000

### Question

9. What are your views on the proposed approaches to Part B (please give reasons for your responses):
- 1) Moving the fatal injury award
  - 2) Simplifying injury descriptions
  - 3) Removing the distinction between under-18s / adults lacking mental capacity and adults
  - 4) Increasing awards for mental injury

## Other payments

### Payments in fatal cases

174. Losing a loved one because of a crime of violence is a terrible experience. The UK Government is committed to providing support for bereaved families, which is available through the National Homicide Service in England and Wales. The Service, delivered in partnership with the charity Victim Support, provides families with access to the fullest range of practical, emotional, specialist and peer support. The new

Homicide Service commenced in April 2019 and replaces previous funding arrangements that divided funded support between pre- and post- 2010 bereavements. The Ministry of Justice is providing up to £3.4m per year in funding for the delivery of the Service. There is a similar service in Scotland, Support for Families Bereaved by Crime, provided by the charity Victim Support Scotland. It was launched in 2019 and is receiving Scottish government funding of £1.2m to support relatives bereaved through murder or culpable homicide.<sup>26</sup>

175. The Scheme provides support in the form of compensation to bereaved relatives where a close family member has died as a direct result of an injury sustained from a crime of violence. The payments available are to acknowledge the loss of a loved one and to provide support to bereaved family members: a standard bereavement award, dependency payments (where the family member was dependent on the deceased), and child payments (where a child has lost a parent as a result of a crime of violence). Funeral expenses can also be paid (up to a maximum of £5,000). The maximum cap of £500,000 for awards from the Scheme also applies in fatal claims.
176. In recognition of the particularly traumatic circumstances in losing a family member to violent crime, the CICA provides a named caseworker for bereaved families in order to make the process of claiming compensation as easy as possible in such difficult circumstances. We are proposing to simplify the approach to bereavement awards and funeral payments, increasing payments for the majority of applicants.

### **Bereavement awards**

177. Bereavement awards under the Scheme are intended to acknowledge the loss of a loved one as a result of violent crime, accepting that no amount of compensation can ever reflect the value of a life or the full impact felt by bereaved families. Bereavement awards are currently set at £11,000 in fatal claims where there is one qualifying relative; in claims where there is more than one qualifying relative, awards are paid at £5,500 to each individual.
178. Qualifying relatives include the spouse or civil partner (living in the same household) of the deceased; the partner (living in same household continuously for at least two years); a spouse, civil partner or partner who did not live with the person due to ill-health or infirmity; a spouse or civil partner, or former spouse or civil partner, who was financially dependent on the deceased; or a parent or child of the deceased.
179. Stakeholders have raised concern about the value of bereavement awards in particular, given the devastating impact of the loss of a loved one. We believe that the amount of compensation specified on the Scheme is not intended to place a monetary

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<sup>26</sup> <https://www.gov.scot/news/support-for-bereaved-families/>

value on the life of a deceased individual, but rather to acknowledge the pain and suffering of bereaved families as a result of a crime of violence.

180. The previous Victims' Commissioner for England and Wales raised concerns about bereaved relatives being refused compensation because of the conduct of the deceased. She highlighted that this can have a devastating impact, and recommended that the CICA bases decisions on the conduct of the potential recipient of a payment only.

181. The Scheme makes clear the grounds for withholding or reducing awards at paragraphs 22-28. In particular, with regards to fatal cases, paragraph 28(a) states: "In addition to paragraphs 22 to 27, an award made in respect of a fatal criminal injury may be withheld or reduced if:

(a) the deceased's conduct before, during or after the incident giving rise to their death, makes it inappropriate to make an award or a full award. Conduct does not include the deceased's intoxication through alcohol or drugs to the extent that it made the deceased more vulnerable to becoming a victim of a crime of violence; or..."

182. An example of where conduct of the deceased could lead to a refusal or reduction in an award is if the deceased was clearly identified as the instigator or aggressor with the intent to cause injury to others in the incident which led to their death. Given that the Scheme is funded by the taxpayer, we believe it is reasonable that there is some consideration of the conduct of the deceased. In particular, where the deceased has caused or contributed to the incident, and/or the deceased intended to injure, or injured others at the time of their death. This approach also applies to the personal injury cases where there is no fatal injury.

183. Further, paragraph 28(b) states:

"(b) for exceptional reasons, the deceased's character on the date of their death, whether due to their unspent convictions or otherwise, makes it inappropriate to make an award or a full award."

184. An award in a fatal application would not normally be withheld or reduced due to the character of the deceased. What constitutes exceptional circumstances will depend on the facts of the case. In general, even where the deceased had a number of unspent convictions or other character issues, these will not constitute exceptional circumstances unless they are considered so serious that to make an award would be an inappropriate use of public funds. Again, we believe it is reasonable that the deceased's character or unspent convictions are taken into account where it would be inappropriate to use public funds to pay out an award.

185. The current approach to the payment of bereavement awards is administratively complex and can lead to longer waiting times for claims to be settled where there is more than one potential qualifying relative. We propose a simpler approach to create parity for bereaved relatives in awards where there are multiple qualifying relatives. We propose to create a single rate payment for bereavement awards, set at £8,000 for all qualifying relatives.
186. Although this will result in a decreased award for the small number of claims in which there is only one qualifying relative, it will mean an increase in award of £2,500 for the majority of applicants claiming in fatal cases. It should also make the process of applying for compensation easier for applicants and speed up the process of deciding claims.

### Question

10. What are your views on the proposed change to the bereavement award available under the Scheme?

### Funeral payments

187. The Scheme provides for a minimum basic payment of £2,500 towards funeral costs where a person has died as a direct result of injuries inflicted by a crime of violence. An additional discretionary award for further costs up to £2,500 may be available where these costs are considered reasonable and the claimant can provide receipts.
188. The current rates were established in 2012; in previous schemes, it had been wholly at CICA's discretion to determine whether expenses relating to funeral costs were "reasonable". The current basic payment provision allows for a quicker, simpler payment where applicants can demonstrate they have paid towards the cost of a funeral, without the need for a determination of "reasonableness" where costs do not exceed £2,500.
189. The cost of a basic funeral has increased significantly since 2012. We have found from reviewing the CICA's caseload that the majority of funeral payments made to applicants since 2016 have exceeded the minimum basic payment of £2,500. In 2018 the average funeral payment was £3,800; this is commensurate with the average cost of a cremation in 2019 which in SunLife's Cost of Dying Report was £3,858.<sup>27</sup> In the majority of cases this requires the CICA to verify costs by requesting receipts, and to make a determination as to "reasonableness". This can result in delays for applicants

<sup>27</sup> Cost of Dying Report 2020 – <https://www.sunlife.co.uk/siteassets/documents/cost-of-dying/SL-cost-of-dying-report-2020.pdf/>

in receiving funeral payments, at a time when families need as swift and simple a process as possible.

190. Our ambition is to make it as straightforward as possible for bereaved family members to be able to apply for funeral payments through the Scheme. We believe that this could be achieved by moving to a single payment; it would result in a quicker, less onerous claim process. We propose that the single payment should be for £4,500. We recognise that there are regional variations in the costs of funerals, but in the same way as for other awards under the Scheme, the funeral payment is not intended to meet fully the costs of a funeral. The suggested value is above the average funeral payment made by CICA and more closely reflects the current average costs of a basic funeral. We expect that it would benefit the majority of applicants.

### Question

11. What are your views on the proposal to change the approach to funeral payments within the Scheme, introducing a new single payment of £4,500?

191. We have also reviewed how and to whom funeral payments can be made. Paragraph 75 of the Scheme states a payment may be made in respect of funeral expenses “for the benefit of the estate”. However, nothing further appears on the face of the Scheme as to how this provision operates nor who can claim and receive the payment.

192. We understand that funeral directors may require all/some payment in advance and within a relatively short period after a funeral has taken place, especially in cases where they anticipate difficulties in securing payment after the funeral. This was a point that emerged in the aftermath of the Manchester Arena terrorist attack. We understand that the CICA requires an invoice from a funeral director before it will make a payment which affects the timescales for payments.

193. Administratively, matters are made more difficult for the CICA in the absence of an estate or executor. In such cases funeral payments may be paid directly to a bereaved family member or partner despite this not adhering to the exact wording of the Scheme. Problems can be exacerbated where the cost of a funeral is split between several individuals; a fully itemised invoice is required from the funeral director before appropriate payments may be made. Currently, CICA pays out funeral expenses within 3 months in 47% of cases, and within 6 months in 78% of cases. The recently established Children’s Funeral Fund has set up a new model for funeral payments, whereby the state pays money directly to funeral directors, which might be suitable in some cases qualifying for a payment under the Scheme.



194. Further to our proposal to move to a single payment, we also propose to update paragraph 75, as to how the new single payment can be made, whether the deceased has an estate or not to enable CICA to respond more quickly.

### Question

12. What are your views on the proposal to the Scheme as to how a single funeral payment can be made?

### Loss of earnings payments

195. Compensation awards under the Scheme may also include payments of loss of earnings for the most seriously injured. The Scheme steps in where Statutory Sick Pay ends, requiring the applicant to have been unable to work for more than 28 weeks. In 2012, changes were made to limit payments to those who are able to demonstrate they have no, or very limited, capacity to work as a direct result of the injury and the rate at which loss of earnings payments are calculated was capped at the Statutory Sick Pay rate. Previous schemes had been more generous, requiring diminished capacity to work and compensating applicants for lost earnings up to 1.5 times the median gross weekly earnings at the time of the assessment.<sup>28</sup>

196. It is clear from the CICA caseload dataset that these changes have had a dramatic impact on both the volume and value of loss of earnings claims. They have resulted in a less complex and more equitable administrative process, and a Scheme that focuses on only the most seriously injured victims. For those eligible for loss of earnings, the evidence required for payments is more straightforward, and claims can be decided more quickly and accurately by claims officers.

197. However, stakeholders have raised concerns that the resulting awards may insufficiently compensate those with catastrophic and life-changing injuries. There have also been concerns about the new threshold of “no”, rather than “diminished”, capacity to work, especially in cases where applicants may retain some ability to work but are no longer able to do the job they did before.

198. Given that the Scheme is intended to be one of last resort for those unable to seek financial support or compensation by other means, we consider that it is reasonable for it to compensate victims when other state-funded benefits cease. The changes made to the rate of payment in 2012 reflect this principle; and they are also an important element of ensuring the Scheme remains affordable. We propose to retain

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<sup>28</sup> At the time of the 2012 CICS consultation, was £751.50 (based on ONS data – annual hours & earnings, 2011). By comparison, the current Statutory Sick Pay rate is £95.85 per week.

the current eligibility criteria and maximum cap in relation to loss of earnings payments.

## Other topics

### **Taking account of other payments for the same injury**

199. Awards under the Scheme may be withheld or reduced if an applicant has received or has an entitlement to other similar payments; an order for damages from a civil court; a compensation order made on conviction of an offender; or has agreed the settlement of a damages claim with respect to the injuries they are claiming for. This reflects the longstanding legal principle of avoiding double compensation for the same injury, and ensures we are able to protect compensation awards for those unable to access compensation or similar payments by other means.
200. The CICA does not deduct separate payments that an applicant may have received through charitable donations from injury awards made under the Scheme. These payments are an expression of sympathy and solidarity from the public.
201. The CICA caseload dataset shows us that the average deduction made from an injury award to account for other forms of compensation was around 25%, although this ranged from as little as 0.4% of an award to no award being made where the alternative compensation was higher than the tariff payment under the Scheme for the injury. Reflecting wider trends on the use of compensation orders by the courts, deductions were much more likely to be for smaller amounts, and were more prevalent in physical assault claims.
202. Stakeholders have raised concerns about the deduction of court-ordered compensation in its totality where payments have not been received, or not received in full, by the applicant.
203. It is an important principle that offenders should be expected – where the courts consider it appropriate – to provide financial reparation to those that have suffered as a result of their actions, and moreover that this burden should, where possible, be met by the offender rather than the taxpayer. The courts must take into account several considerations when imposing compensation orders, including the wishes of the victim and the means of the offender to pay. In practice, compensation orders are most often used in cases where loss and damage, for example to property, can easily be established. In cases involving physical or mental injury, courts must have sufficient information, at that time, to make an assessment as to loss to make a compensation order lawfully – in many cases, sufficient information is simply not available.

204. The Scheme is a route of last resort and it is right that it takes into account compensation already awarded for the relevant injury to avoid doubly compensating individuals for the same injury. While the Scheme empowers the CICA to pursue recovery of monies from applicants who subsequently receive court-ordered compensation, the CICA does not have the power to pursue recovery of money from offenders. A rule accounting for instalments over time in individual claims would be very difficult and costly for the CICA to operate given the lack of centrally collated information. We recognise the impact this may have on applicants where orders relating to them have not been paid, or fully paid, but believe that the way to resolve this is through work being led by Her Majesty's Courts and Tribunal Service to develop more effective enforcement procedures rather than by making changes to the Scheme. We do not propose to make changes to the current rules in the Scheme on the deduction of other forms of compensation.

### **Multiplier tables in the Scheme**

205. Loss of earnings, child payments, special expenses and dependency payments are paid in a lump sum. These payments are discounted to account for future losses and any interest that may be earned on these payments if invested. This is similar to the approach taken to lump sum payments awarded in civil claims.

206. The Scheme uses three multiplier tables to discount lump sum payments. These are loosely based on the Actuarial Tables for Use in Personal Injury and Fatal Accident Cases, produced by the Government Actuary's Department. The multiplier tables in the Scheme were last updated in 2012, following the previous public consultation, to better reflect the Actuarial Tables at the time.

207. Since 2012, these Actuarial Tables have changed and we recognise that, as a result, the multiplier tables in the Scheme are out of date. We therefore intend to undertake further work to review the multiplier tables.

### **Use of trusts to manage an award**

208. Like its predecessors, the 2012 Scheme makes provision for awards to be placed in trust in certain unusual circumstances, for example, when applicants lack the capacity to manage their own affairs, or there is a danger that an offender will benefit from an award. A trust may also be established where a large award is made specifically for the future care of the applicant, to ensure that portion of the compensation award is used to meet the applicant's continuing need for long-term support or treatment.

209. In her study of victims' experiences of claiming compensation, the previous Victims' Commissioner for England and Wales reported that the current restrictions on how victims and their families can use money held in trusts are restrictive, and recommended that the CICA consider how it may be able to offer greater flexibility in this area. The previous Victims' Commissioner for England and Wales also

recommended a reconsideration of the policy that awards held in trust are returned to the CICA on the victim's death.<sup>29</sup>

210. Whether a trust should be imposed will always depend on the particular circumstances of the case. The terms of the trust are imposed when it is established, and trusts are managed by appointed trustees. Once a trust is established CICA does not control how the award is utilised within the terms set out.

211. Trust conditions can include having the whole or any part of the award revert back to the CICA, on behalf of the taxpayer, on the death of the applicant. We consider this position remains appropriate given the use of public money in the provision of compensation awards.

### **Right to re-open a case on medical grounds**

212. The Scheme allows for decided claims to be reopened where there is so material a change in condition that not amending the original award would "give rise to an injustice". Requests to re-open a claim on medical grounds must be received within two years of the final decision, although can be considered beyond two years where no further extensive enquiries are required to determine the claim.

213. As part of the review, we have considered whether any changes need to be made to this entitlement, given existing opportunities for applicants to review or appeal decisions made by the CICA where they are not satisfied with the initial decision. One of the options we have considered is whether imposing a specific time limit on medical re-openings would be appropriate to enable claims to be decided more quickly and efficiently, as is seen within some other comparable schemes internationally (limits range from a year in Spain and Belgium for example, to ten years in Sweden).

214. However, we have concluded that the current approach enables us to ensure the most seriously injured victims receive an appropriate level of compensation where their injuries have unexpectedly and unpredictably worsened over time. We intend to retain the right to re-open cases on medical grounds on the same basis as within the current Scheme.

### **Hardship Fund**

215. The Hardship Fund was established in 2012 to mitigate the impacts on the lowest paid workers of the removal of the lowest five injury bands from the Scheme. It provides limited financial support to those in England and Wales whose injuries do not fall within the Scheme, who are temporarily unable to work as a result of a crime of

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<sup>29</sup> Compensation without re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation, January 2019 – <https://victimscommissioner.org.uk/published-reviews/compensation-without-re-traumatisation-the-victims-commissioners-review-into-criminal-injuries-compensation/>

violence, and who have no other recourse to other financial assistance. Applicants to the fund must be directly referred by Victim Support. As with the Scheme, the CICA administers the fund, assessing applications and making payment.

216. The qualifying criteria are that applicants:

- earn less than £118 per week;
- don't get Statutory Sick Pay or equivalent sick pay;
- are unable to work for at least 7 consecutive days as a result of the crime; and
- don't have any unspent convictions that resulted in a custodial sentence or community order
- have reported the incident to the police as soon as reasonably practicable.

217. 60 applications have been made to the fund since it was established, with 16 awards made ranging from £313 to £61. Stakeholders have raised concerns about the lack of awareness of the Fund among victims, and difficulties in accessing it through Victim Support. The Hardship Fund is intended to be a last resort for victims who have sustained injuries as a result of a violent crime, but where the injuries are not sufficiently serious to qualify for compensation under the Scheme. We believe this is an important safety net and propose to retain the fund, with its current criteria, to support the most vulnerable victims.

218. Historically, Victim Support has acted as the sole referral route for victims wishing to apply to the Hardship Fund, by carrying out eligibility assessments and by assisting victims in making an application to the fund. However, with changes to the way victims' services are commissioned, with regional Police and Crime Commissioners now having the power to opt for local services, we recognise that victims can no longer access Victim Support in many areas.

219. We therefore wish to seek views on improving access to the fund, either by widening referral routes to include local victim support services, or by allowing victims to make their applications directly to the CICA. This would ensure victims across England and Wales have equal access to the fund, regardless of where they live. However, if referral routes are widened, there may be a risk that a lower level of scrutiny will be applied to applications at the initial referral stage, increasing the burden on the CICA. Alongside any change to referral routes, we intend to improve public awareness of the Hardship Fund among victims' services and criminal justice agencies to ensure victims are signposted to the fund as necessary.

## Question

13. What are your views on proposals to change how victims access the Hardship Fund by either:

- a. Changing the referral route to allow local victim support services to assess eligibility and make referrals in regions where Victim Support is no longer present; or,
- b. Removing the referral mechanism to allow victims to make applications directly to the CICA?

## Section 5: Operational improvements

220. The experience and journey of every victim of violent crime is different. Taking this as a central operating principle for the Scheme means taking a much more victim-centred approach and ensuring all CICA's processes and interactions with applicants are sensitive to the difficult circumstances people find themselves in and are driven by an understanding of the trauma victims will have experienced. It is crucial that victims are able to access clear, accurate information, and explanations to support them when they are ready to consider making a claim for compensation.

221. Within the Victims Strategy, the CICA committed to improving how it handles compensation claims in particularly complex and sensitive cases – building on newly introduced staff guidance for dealing with applications from victims of child sexual abuse, taking account of grooming by offenders, and offering dedicated caseworkers for such cases. The CICA also committed to speeding up the process of determining compensation. Improved case management processes have been introduced which set out information gathering according to the type of violence and nature of injury experienced. Specialised teams manage claims involving terrorism, fatalities, sexual assault or abuse, and those where an applicant has limited life-expectancy. A team of directly employed clinical psychologists provide expert advice on mental injury claims where medical records are held to confirm a disabling mental injury and prognosis for recovery, thereby removing the requirement for the applicant to attend a further medical examination.

222. In addition to the commitments made in the Victims Strategy, the CICA has also taken further steps to expand and improve its telephony services so that it provides both general information and case specific support for applicants. In 2018-19, it received a customer satisfaction rate of 95% and complaints were reduced by 22% compared with the previous year.<sup>30</sup> More recently, information for callers regarding live wait times and call-back options have been introduced.

### Streamlined processes

223. The CICA acknowledges that some claimants have reported the application process to be daunting or unclear. Because of the traumatic experiences victims have endured, it is natural that they may have diminished confidence in engaging with these processes. The CICA has made further efforts to simplify and improve its

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<sup>30</sup> The CICA's Annual Report and Accounts 2018-19 – <https://www.gov.uk/government/publications/cica-annual-report-and-accounts-2018-19>

website to make it easier to navigate, ensuring the site uses clear and straightforward language, and providing easily understood information on eligibility criteria and how to apply.

224. Work on a new streamlined online application service which presents substantially fewer questions and removes specific triggers for re-traumatisation identified by victims, is currently awaiting approval for deployment from the Government Digital Service, before steps can be taken to extend it to be used by all applicants and their representatives.
225. The CICA has made significant investment in an upgrade to its electronic case management system and operates an internal Quality Assurance Framework to increase the pace and accuracy of decision making. This has helped reach a point where, in 2018-19, 81% of new applications were decided within 12 months, with a total of 35,355 claims resolved.
226. Complex cases where long term prognoses for recovery are material to resolving the claim or where an appeal is made to the First-tier Tribunal can take longer to conclude, which can become frustrating for those making claims. The CICA initiatives to resolve more complex cases using dedicated and specialist resources are significantly reducing the number of older claims awaiting resolution. Although the proportion of applicants who make an appeal is small compared to overall volume of applicants, the organisation is engaging closely with its counterparts in Her Majesty's Courts and Tribunals Service to improve appellant experience for those applicants who do appeal to the First-tier Tribunal.
227. As demonstrated throughout this consultation paper, we are also looking at ways we can simplify the Scheme itself to enable more straightforward and timely applications and decision-making processes.

## **Better meeting victims' needs**

228. Earlier this year, the pre-1979 "same roof" rule was removed from the Scheme. As this change applies to cases going back several decades, a great deal of time will have passed in many cases and there is concern that it may be especially painful for victims to re-live and recount events they may have tried to put behind them. Details may also be understandably less clear as so much time has passed. The CICA has sought to simplify the application process for victims impacted by this rule change, by providing named caseworkers and specialist support. It is anticipated that this will reduce the number of times those applying need to recount upsetting events, helping to minimise re-traumatisation, and should allow for more consistent communication.



229. Named caseworkers are in place for victims in other complex or difficult cases, such as bereavements, and more recently the CICA has extended this service to applicants over 70 years of age or who have a limited life-expectancy or terminal illness. It is exploring how this might be extended to other applicant groups in future.
230. Feedback from victims and stakeholders, including the previous Victims' Commissioner for England and Wales, has indicated that applicants are dissatisfied with the level of compassion in the decision letters sent to them: that they seem generic, reflect complex language contained in the Scheme and the tariff of injuries, and can be difficult to understand. The CICA has acted to address this, drafting tailored letters for specific groups of victims. A review of all letters to ensure that their tone and content recognises victims' individual situations with sensitivity, whilst remaining consistent with the language of the Scheme, is nearing completion.

## **Improved staff training and guidance**

231. Media scrutiny and reports by the Victims' Commissioner for England and Wales and the Independent Inquiry into Child Sexual Abuse have highlighted a need for the CICA to improve its approach to certain groups of victims – especially those who have been subject to abuse. The CICA has engaged with organisations including Samaritans, Women's Aid and Rape Crisis Scotland to provide specialist trauma informed training to ensure that staff are better equipped to deal sensitively with those who have lived through traumatic periods of abuse, including victims of grooming and exploitation. This has improved understanding across the CICA of how victims cope in the aftermath of violent crime and how their experiences may impact on their engagement with the compensation application process.
232. The CICA has also been proactively reviewing its training and guidance for staff to improve the experience of applicants as part of a programme of continuous improvement. This has contributed improvements in the way staff understand and deal with changing trends in violent crime such as increased recognition of grooming in sexual crime and the application of exceptional circumstances such as where claims for compensation for non-recent sexual abuse are made outside the time limits set out in the Scheme.

## **Accessible services**

233. The CICA is committed to providing a service that does not re-traumatise victims by ensuring that the information it asks for from applicants is necessary and appropriate, and that the reasons for requiring that information are clearly explained.

234. A proactive focus on applying for compensation has resulted in easier processes for victims to apply by telephone, and extension of the streamlined on-line process detailed above will bring further improvements. In an effort to improve victims' experiences of applying for compensation, the CICA has updated its website to ensure the language it uses is clear and easily understood. The website now also provides a specialised contact form for victims of sexual assault and allows victims to request a call back service from the CICA, to make an application at an agreed time. These improvements have been introduced to give victims as much choice and agency as possible over how and when they apply to the Scheme. 91% of applicants now report that only low to moderate effort is required to complete an application online, with further simplification in development. Increased investment in staffing in the CICA's customer service team during 2018-19 led to average waiting times falling by 11%, with over 27,000 hours of support provided.
235. The CICA recognises that further improvements can be made in this area, and it continues to work closely with victims' groups through its stakeholder forum and within individual projects to make claiming for compensation simpler and more accessible for those who have suffered through violent crime.

# Equalities

236. The Equalities Statement accompanying this consultation document considers the impacts of proposals alongside the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and,
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

237. Under the Equality Act, the protected characteristics are race, sex, age, disability, sexual orientation, religion or belief, pregnancy and maternity, gender reassignment, marriage/civil partnership.

238. We do not believe that the outlined proposals for the Scheme are discriminatory within the meaning of the Equality Act. We do not consider that these proposals will result in people being treated less favourably due to any protected characteristic.

## Question

14. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please give reasons.
15. Do you agree that we have correctly identified the range and extent of the equalities impacts under each of these proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts as appropriate.
16. Are there forms of mitigation in relation to equalities impacts that we have not considered?

# Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

## Section 2: Scope

### Consent

1. What in your view is the most appropriate language to use within the Scheme to clarify the approach to those under the legal age of consent?

### Victims of terrorism

2. Do you agree with our proposal to legislate to establish a new compensation scheme for victims of terrorism at home and abroad?
3. If so, what are your views about ways in which a dedicated compensation scheme might differ from the Criminal Injuries Compensation Scheme and Victims of Overseas Terrorism Compensation Scheme?

### Homicide abroad

4. What are your views on legislating to establish provision for compensation for families bereaved by homicide abroad?

## Section 3: Eligibility rules

### Same roof rule

5. Do you agree with our proposal to remove the remaining same roof rule, which applies only to adults, from the Scheme?

## Section 4: Injury awards

### Mental injury

6. What are your views on revising the dividing line from 2 to 3 years?
7. What are your views on merging bands A7 and A9, which combined with the proposal above, would mean any disabling mental injury with a prognosis for recovery of over 3 years would be categorised together?

### **Simplification of the tariff of injuries**

8. What are your views on the proposed approaches to Part A (please give reasons for your responses):
  - 1) Simplification of language?
  - 2) Changing the language for injury severity?
  - 3) Reducing the number of bands?
  - 4) Grouping some injuries together, where appropriate?
  - 5) Overhauling the way brain injury is represented?
  
9. What are your views on the proposed approaches to Part B (please give reasons for your responses):
  - 1) Moving the fatal injury award
  - 2) Simplifying injury descriptions
  - 3) Removing the distinction between under-18s/adults lacking mental capacity and adults
  - 4) Increasing awards for mental injury

### **Other payments**

10. What are your views on the proposed change to the bereavement award available under the Scheme?
  
11. What are your views on the proposal to change the approach to funeral payments within the Scheme, introducing a new single payment of £4,500?
  
12. What are your views on the proposal to the Scheme as to how a single payment can be made?
  
13. What are your views on proposals to change how victims access the Hardship Fund by either:
  - a. Changing the referral route to allow local victim support services to assess eligibility and make referrals in regions where Victim Support is no longer present; or,
  - b. Removing the referral mechanism to allow victims to make applications directly to the CICA?

### **Equalities**

14. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please give reasons.
  
15. Do you agree that we have correctly identified the range and extent of the equalities impacts under each of these proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts as appropriate.

16. Are there forms of mitigation in relation to equalities impacts that we have not considered?

## **Other comments**

17. Do you have any further comments on the Scheme?

**Thank you for participating in this consultation exercise.**

# About you

Please use this section to tell us about yourself

<b>Full name</b>	
<b>Job title</b> or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
<b>Date</b>	
<b>Company name/organisation</b> (if applicable):	
<b>Address</b>	
<b>Postcode</b>	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

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## Contact details/How to respond

Please send your response by 9 October 2020 to:

Vulnerability Policy Unit  
Family and Criminal Justice Policy Directorate  
Ministry of Justice  
7<sup>th</sup> Floor  
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### Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

### Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested from [cics-review@justice.gov.uk](mailto:cics-review@justice.gov.uk)

### Publication of response

A paper summarising the responses to this consultation will be published in January 2021. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

### Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.



## **Confidentiality**

By responding to this consultation, you acknowledge that your response, along with your name/corporate identity will be made public when the Department publishes a response to the consultation in accordance with the access to information regimes (these are primarily the Freedom of information Act 2000(FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

Government considers it important in the interests of transparency that the public can see who has responded to Government consultations and what their views are. Further, the Department may choose not to remove your name/details from your response at a later date, for example, if you change your mind or seek to be 'forgotten' under data protection legislation, if Department considers that it remains in the public interest for those details to be publicly available. If you do not wish your name/corporate identity to be made public in this way then you are advised to provide a response in an anonymous fashion (for example 'local business owner', 'member of public'). Alternatively, you may choose not to respond.

# Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691383/Consultation\\_Principles\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf)

# Annex A: Equalities Statement

## Introduction

1. The Criminal Injuries Compensation Scheme (the Scheme) provides compensation to people who have been physically or mentally injured because they were a victim of a violent crime in England, Scotland or Wales.
2. A review of the Scheme was announced in September 2018 as part of a wider package of measures within the Victims Strategy, and the Terms of Reference were published in December 2018. The review has sought to ensure the Scheme remains fit for purpose, reflects the changing nature of violent crime, and effectively supports victims in their recovery. In particular, the review has been considering the definition of a crime of violence for the purposes of compensation, the current eligibility rules, and the value and composition of awards and payments available.
3. The review of the Scheme is informed by the following principles, which also form the basis for the proposals included in the consultation:
  - Compensation offers an important acknowledgment of the harm suffered by victims of violent crime;
  - Compensation is an important part of government support for victims of violent crime, which also includes general and specialist services, and emotional and practical assistance;
  - Compensation should be protected for those most seriously affected by their injuries, including where those injuries may not be immediately evident or their impacts easily quantifiable;
  - The Scheme is one of last resort, offering compensation for victims of violent crime who have been unable to seek compensation through other means; and
  - The Scheme needs to be both affordable and financially sustainable to continue to provide compensation to victims of violent crime.

## Policy proposals summary

4. The consultation includes the proposals below for the provision of compensation, under the existing Scheme and more broadly. The proposals fit with themes of improving simplicity, transparency and ease of navigation that cut across representations made by stakeholders, our evidence analysis, and the review objectives:

**Crime of violence - Change language relating to consent in sexual assault claims in the Scheme, to clarify the approach in cases involving children under the legal age of consent:** Currently, the language of the Scheme recognises that there may be circumstances in which sexual activity involving young people aged under 16 may not, in a small number of instances, be a crime of violence. This language differs, however, from the approach to consent in the criminal law. This proposal would aim to clarify the operational approach through the language used in the Scheme.

**Eligibility - Remove the “same roof” rule from the Scheme:** Currently, awards cannot be made if, at the time of an incident giving rise to injury, the applicant and assailant were adults living together and continue to do so. The rule that applied from 1964 to adults and children was removed in 2019 and this proposal would remove the same roof rule from the Scheme completely.

**Tariff of injuries - Change provisions for disabling mental injury by:** i) – repositioning the boundary between the bands providing for injury lasting 28 week to 5 years; and ii) – merging the bands that provide for non-permanent longer term injuries: This proposal would ensure the Scheme’s approach to mental injury reflects medical practice and understanding of the complexity and severity of mental injury.

**Tariff of injuries - Approaches to simplify Part A of the tariff of injuries:** i) – simplify language; ii) - reduce the number of injury bandings; iii) – group injuries together where appropriate; iv) – overhaul how brain injury is represented: This proposal aims to simplify Part A of the tariff that sets out awards for physical and mental injury, both in the language used and in its design, to make it more accessible for victims.

**Tariff of injuries - Approaches to simplify Part B of the tariff of injuries:** i) – simplify injury descriptions; ii) – consult on removing the distinction between under 18s/those lacking mental capacity and adults for physical and sexual abuse claims; iii) – increase awards for permanent disabling mental injury to align with part A; iv) – move the fatal injury award to the main body of the Scheme: This proposal aims to simplify Part B of the tariff that includes awards for sexual and physical abuse as well as other payments, to make it simpler and easier to navigate for victims.

**Payments in fatal cases - Introduce a single rate payment of £8,000 for bereavement awards:** Qualifying family members may currently receive a bereavement payment of £11,000 if only one eligible relative claims, or £5,500 each if more than one relative claims. The proposal would instead award a flat rate payment of £8,000 to each qualifying relative that claims, which would be an increase for the majority of applicants.

**Payments in fatal cases - Move to a single funeral payment of £4,500 and update the provision as to how a payment can be made:** Bereaved family members may currently claim a minimum basic funeral payment of £2,500, with an

additional discretionary award for further costs up to an additional £2,500. The proposal to replace this with a flat rate payment of £4,500, which is greater than the average funeral payment under the current Scheme, and to change how payments can be made would make the application process simpler and less onerous.

**Hardship Fund - Change how applicants access the fund set up in 2012 to provide limited financial support to those whose injuries do not fall within the Scheme:** Currently, Victim Support is the sole referral route to the Fund, but, with a change in regional support services, applicants may have difficulty accessing Victim Support for assessment and referral to the Fund. This proposal would ensure victims can access the Fund regardless of what support services are available to them locally.

**Terrorism – Consider establishing a separate compensation scheme for victims injured in domestic and overseas terrorist attacks, to replace the existing provision in the Criminal Injuries Compensation Scheme and Victims of Overseas Terrorism Compensation Scheme:** Victims of terrorist attacks occurring in Great Britain can currently apply to the Scheme, while victims of recognised terrorist attacks overseas can apply to the Victims of Overseas Terrorism Compensation Scheme. A separate compensation scheme for victims of terrorism would allow for targeted awareness raising and would ensure applications are processed as rapidly as possible following an incident.

**Homicide abroad – Consider establishing provision for compensation for families bereaved by homicide abroad:** Currently, families bereaved by homicide abroad may receive some support such as from the Foreign and Commonwealth Office and from state-funded Homicide Services in England and Wales and in Scotland. Homicides outside Great Britain do not come within the scope of the Scheme, but are covered by the Victims of Overseas Terrorism Compensation Scheme where they resulted from a terrorist attack.

## Evidence and analysis

### Criminal Injuries Compensation Scheme (CICS) caseload data

5. Caseload data held by the Criminal Injuries Compensation Authority (CICA) is the main data source used for understanding how the Scheme is working and for the purposes of estimating the potential cost implications of the proposals. The dataset used for our review of the Scheme covers approximately 75,000 claims received by the CICA over three years (between 1 January 2016 and 1 January 2019). The claims included in the dataset may fall into any one of the categories below:
  1. **Decided** – The CICA has made a decision on the application, however this has yet to be offered to the claimant;
  2. **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;

3. **Resolved** – The CICA has made a decision on the application, it has been offered to the claimant and the claimant has accepted.
6. Each case record contains information on age, sex and ethnicity. This has been combined with information on crime type, injury type and awards made, allowing analysis in relation to those three protected characteristics.

### **Limitations of the CICS caseload data**

7. The dataset is limited to cases in the three categories described above, so unresolved cases are not included in any analysis. Not including unresolved cases poses a risk: by assuming that the demographic breakdown of unresolved cases resembles the resolved cases we do not account for any possible systemic delays to resolving cases from certain protected groups. If this were the case, the analysed data would underrepresent the claims from those groups which may distort some estimated impacts upon them.
8. The CICS caseload data does not contain information about several protected characteristics, so we are unable to assess how any policy change would have impacted the claims over the above-mentioned period in relation to:
  - disability
  - sexual orientation
  - religion / belief
  - pregnancy / maternity
  - gender reassignment
  - marriage / civil partnership.
9. Any considerations of impacts, either positive or negative, upon the protected characteristic groups for whom we do have data must be caveated. Whilst the rate and category of claims received by the CICA has not seen a great deal of variation year to year over the period covered, we cannot predict the demographics of future claimants and victims of violent crime with certainty. The dataset itself is not fully finalised and some figures may be subject to change.

### **Public sector equality duty aims**

10. The following equalities statement relates to the proposals for the provision of compensation outlined above and should be read in conjunction with the relevant Impact Assessment.
11. Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have “due regard” to the need to:
  - Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;

- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
  - Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
12. In line with our responsibilities under the Equality Act we have paid early consideration to the nine protected characteristics:
- race
  - sex
  - age
  - disability
  - sexual orientation
  - religion or belief
  - pregnancy and maternity
  - gender reassignment
  - marriage/civil partnership
13. Under our statutory obligations, the impact of the final proposals on the nine protected characteristics will be considered where data is available. In the consultation, we ask the following questions on equalities matters:
- What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please give reasons.
  - Do you agree that we have correctly identified the range and extent of the equalities impacts under each of these proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts as appropriate.
  - Are there forms of mitigation in relation to equality impacts that we have not considered?
14. We encourage respondents to the consultation to highlight any equality issues and point to any further available data and evidence. The equalities evidence gathered through this consultation will then be taken into account when developing final policy proposals.

## **Equality considerations**

### **Direct discrimination**

15. We do not believe that the outlined proposals for provision of compensation, under the existing Scheme and more broadly, are directly discriminatory within the meaning of the Equality Act. We do not believe that these proposals will result in people being treated less favourably due to any protected characteristic.

### Indirect discrimination

16. We believe that individuals with some protected characteristics may be affected by the proposals for the Scheme and provision of compensation more broadly due to their overrepresentation as victims of different types of violent crime. We do not believe the proposals will cause particular disadvantage to people with protected characteristics, as explained below:

#### *Change provisions for disabling mental injury:*

17. The CICA caseload dataset shows that 59% of applications for mental injury are made by female applicants. The ethnic and age-range demographic breakdown for both these categories are not dissimilar from the overall picture in the CICA caseload data, but, as with mental injury more broadly, there is over-representation of female applicants for both of the bands for non-permanent longer term mental injuries, A7 and A9, that we propose to merge: 60% and 70% respectively. As there is a greater percentage of female applicants in the A9 category than A7, this suggests that proportionately more women will receive a lower award. However, there are significantly fewer applicants in the A9 band, balancing out this disproportionality.
18. As 60% of applicants that fall under band A7 for disabling mental injury are female, the impact of repositioning the boundary between bands A4 and A7 will have a greater effect on females. However, the aim of this change is to simplify the tariff for all victims, and we believe this proposal is a proportionate means of achieving this aim.

#### *Payments in fatal cases - Move to a single funeral payment of £4,500:*

19. This proposal is likely to have a greater effect on religious groups where cremation is prohibited or burials are preferred, such as Muslims and Orthodox Jews. Given that the average cost of burials is significantly higher than the cost of cremation, at approximately £5,000 compared to £4,000,<sup>31</sup> a move to a flat rate funeral payment may have a greater impact on these religious groups. Whereas previously, an applicant may have received up to £5,000 for funeral costs, the removal of the discretionary amount for additional costs will mean that some applicants receive a smaller award than previously.
20. There are also significant regional differences in the cost of a basic funeral.<sup>32</sup> Within England and Wales, this ranges from £3,816 in the North West of England to £5,963 in London. Whilst geography is not a specific protected characteristic, the spread of religious minorities across England and Wales suggests that those concentrated in urban centres and larger cities will be disproportionately affected by the proposed change. London, for example, has the largest Muslim and Jewish populations

<sup>31</sup> SunLife: Cost of Dying Report – 2020

<sup>32</sup> SunLife: Cost of Dying Report – 2020



compared with other regions in Great Britain.<sup>33</sup> Similarly, urban centres are more likely to have a larger proportion of young people and a younger average age overall, as evident in cities like Oxford, Nottingham, Manchester and Cambridge.<sup>34</sup> These groups are therefore likely to face higher funeral costs which will not be covered by the proposed flat rate. However, as the intention of this proposal is to benefit the majority of applicants by making the process less onerous and quicker, and to bring funeral payments closer in line with the average costs of funerals, we do not consider that this change would result in any unlawful indirect discrimination.

*Terrorism – Consider establishing a separate compensation scheme for victims injured in domestic and overseas terrorist attacks:*

21. Whilst studies<sup>35</sup> show that Muslims suffer disproportionately from terrorist attacks globally, there is little data regarding the demographics affected by terrorism within the UK. Northern Ireland has historically suffered a significantly higher level of terrorist activity than mainland Britain, and those affected have been overwhelmingly white.
22. When compared with the CICS caseload dataset, applications made in relation to domestic terror incidents were disproportionately from female (70%) and white (73%) individuals. The most prevalent age ranges are 10-19 (25%) and “40s” (23%).
23. The caseload dataset used for the review relates to a relatively small number of major events that took place within the timeframe and are shaped by the demographics affected. 86% of all claims in relation to terror attacks in the caseload dataset are from the bombing of the Ariana Grande concert at Manchester Arena. Resulting applications to the Scheme were 75% female and 60% white, and the age distribution suggests a high prevalence of teenage female fans accompanied by, or being collected by, their mothers. An attack of the magnitude suffered in Manchester may be seen as distorting the data, and further consideration should be taken with regard to this.

*Homicide abroad – Consider establishing provision for compensation for families bereaved by homicide abroad:*

24. Research conducted by the UN suggests that, globally, males are 4 times more likely to be victims of homicide than females. This research also highlights that males aged 15-29 face the highest risk of homicide globally, at a rate of 16.6 per 100,000 males, closely followed by males aged 30-44, at a rate of 14.7 per 100,000. In contrast, rates of female homicide are markedly lower.<sup>36</sup>

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<sup>33</sup> Religion in England and Wales 2011 (latest release) – Office for National Statistics

<sup>34</sup> Resolution Foundation 'Ageing, Fast and Slow' report – 2019

<sup>35</sup> Such as the 2011 report from the American National Counter-Terrorism Center

<sup>36</sup> Global Study on Homicide 2019, United Nations Office on Drugs and Crime

25. This suggests that establishing a new separate Scheme for families bereaved by homicide abroad would be of greatest benefit where the victim was male, particularly in the 15-29 age group, as this group is most likely to suffer homicide. However, as the proposal is considering making provision for a group where there currently limited support from the state, we do not consider that it would result in any unlawful indirect discrimination.
26. The consideration is limited to making provision for homicide abroad in a new Scheme; it would not encompass other forms of violent crime that take place abroad. In effect, this means that sexual violence that occurs overseas, a crime type for which females are far more likely to be victims, would not, as now, be in scope for compensation. The Crime Survey for England and Wales showed that women were four times more likely than men to have experienced sexual assault in the past year, at a rate of 3.4% compared with 0.9%.<sup>37</sup>
27. If it could be shown that people with the above protected characteristics are put at a particular disadvantage by the Scheme, we believe it is a proportionate means of achieving our legitimate aim of compensating victims of crime.

## **Harassment and victimisation**

28. We do not consider there to be a risk of harassment or victimisation as a result of these policy proposals.

## **Discrimination arising from a disability and duty to make reasonable adjustments**

29. We do not consider that these policy proposals will result in any unlawful discrimination on the grounds of disability. Reasonable adjustments will continue to be made for claimants with disabilities in line with existing practice within the Scheme.

## **Advancing equality of opportunity**

30. We believe the policy proposals may advance equality of opportunity for certain protected characteristics. The removal of the same roof rule will address a small existing discrimination against victims who sustained a criminal injury from someone with whom they live. In doing so, this change is likely to advance equality of

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<sup>37</sup> Crime Survey of England and Wales, Office for National Statistics – December 2018

opportunity for victims of violent crime through removing the disadvantage suffered by claimants most likely to be impacted, primarily women.

31. Similarly, the proposal for the Hardship Fund aims to remove the difficulties faced by some in accessing assessment and referral to the Fund through local support services.

## **Fostering good relations**

32. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the policy proposals.

## **Additional consideration of protected characteristics and potential impacts of proposals**

33. There is evidence to suggest that crime affects the population disproportionately, and this can be especially true for violent crime. These disproportionalities are generally reflected in applications to the Scheme, but where applicants do not volunteer protected characteristics it is difficult to assess whether there are certain groups who are less likely to make claims.

## **Race**

34. The Crime Survey in England & Wales (CSEW) found that, in 2017/18, 14% of people aged 16 years and over in England and Wales said they were victims of crime at least once in the last 12 months – down from 17% in 2013/14. That proportion is higher for every BAME population group – with the highest for mixed race at 22%.<sup>38</sup>
35. The difference between the ethnicity demographics of the CICS caseload data and for England and Wales as a whole<sup>39</sup> is similar in most respects, other than a significantly lower proportion of white claimants as compared to the general population (57% to 86%). This is, however, offset by a large proportion of applicants stating “other” for their ethnicity or not providing details in CICS applications (36%). If those applicants are non-white, then that demographic group may be demonstrated as disproportionately injured in crimes of violence and affected by changes to the Scheme.

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<sup>38</sup> <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/crime-and-reoffending/victims-of-crime/latest#main-facts-and-figures>

<sup>39</sup> <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/>

## Sex

36. CSEW data shows that men are more likely to be victims of violent crime than women (2.3% of men compared with 1.2% of women),<sup>40</sup> and so may be disproportionately affected by changes to the Scheme. This was true for all types of violence, with the exception of domestic violence.

## Age

37. On average in the 3-year period 2014/15 to 2016/17, younger people were more likely to say they were victims of crime than older people.<sup>41</sup> Children who experience violent crime are more likely to be injured, with victims aged 10 to 15 years sustaining an injury in 92% of incidents in the year ending March 2018 (CSEW).<sup>42</sup> There is only limited data on this, and we do not anticipate that these policy proposals are likely to disadvantage specific age groups.

## Decision making

38. In conclusion, we do not consider that the proposals outlined above are likely to result in unlawful discrimination. However, the impact of the proposed changes to the Scheme on the nine protected characteristics will continue to be carefully monitored and considered where data is available. Responses to equalities questions in the consultation paper will also be taken into consideration.

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<sup>40</sup> ONS (2019), The nature of violent crime in England and Wales: year ending March 2018

<sup>41</sup> <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/crime-and-reoffending/victims-of-crime/latest#main-facts-and-figures>

<sup>42</sup> *ibid*

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