

14 September 2018

Rt. Hon. David Gauke MP
Secretary of State
Ministry of Justice
102 Petty France
London
SW1H 9AJ

Our Ref: AG/GUES01001/01180224

Your Ref:

Dear Secretary of State

We are writing to bring your attention to a number of concerns that we have with the Criminal Injuries Compensation Scheme (CICS) that we believe should be urgently addressed as part of your Department's forthcoming victims' strategy.

As you will be aware, the Ministry of Justice fulfils its statutory duty to compensate blameless victims of violent crime through the CICS. As such, the Scheme makes a valuable contribution to the recovery of victims and has undoubtedly made life easier for countless people. However, a number of the rules governing the CICS cause significant difficulties for victims, particularly children and victims of sexual offences, and are in urgent need of review.

Consent

As it is currently drafted, the Scheme compensates only those survivors who did not 'in fact' consent to the crime. This has been interpreted to mean that even the very youngest of children who have been victims of sexual abuse can be denied compensation if there is any evidence to suggest they complied with their abuse, even if their purported compliance was through fear or lack of understanding.

This is wholly inconsistent with the law which is clear on this matter – where a person is under the age of 16 sexual activity is automatically criminal, unless the victim is over 13 and the defendant reasonably believed he or she was over 16. The scheme should explicitly state that in certain cases victims are automatically entitled to compensation- for example: anyone under 13, any cases where there has been a conviction, any cases where there has been a conviction for grooming and/or sexual abuse/assault.

In July 2017, Sarah Champion MP and a number of organisations wrote to your predecessor, David Lidington MP, outlining concerns with the Criminal Injuries Compensation Scheme, including the issue of consent 'in fact'. Following this, we are very grateful that the Criminal Injuries Compensation Authority (CICA) conducted an urgent review of their guidelines and produced fresh guidance for staff in October 2017.

The revised guidance is a welcome improvement and we are pleased that CICA and the Ministry of Justice listened to these concerns. CICA now approach cases involving under 16s from the presumption that they did not consent and specialist training is being provided to staff.

However, while the guidelines are a step forward and should make a positive difference to many survivors, they can only interpret the flawed Criminal Injuries Compensation Scheme. The current Scheme does not acknowledge grooming as a crime of violence and until the Scheme as a whole is amended a risk of injustice will remain. These changes to the Scheme are backed overwhelmingly by the public, with YouGov polling finding that two thirds of people (66%) think the rules should be amended so a child cannot be found to have 'consented' to activities involved in their sexual exploitation.

Grooming

Consideration needs to be given to the definition of a "crime of violence" within the scheme because as drafted, it arguably excludes child victims of sexual exploitation if that conduct does not involve physical sexual contact. As such, very serious crimes such as grooming and/or exploiting children to perform sexual acts online are not compensated, even for children under the age of 13. These children are no less victims of child sexual exploitation, and the effects for them can be just as serious as for those who have been physically abused. The definition of a crime of violence must be expanded to include all acts of child sexual exploitation, regardless of physical sexual contact.

The 1979 'same roof rule' rule

The 1979 'same roof rule' prevents any survivor who was living with their abuser as a member of the same family at the time of an assault from receiving compensation if the offence took place before 1 October 1979. The reason for this cut off is that prior to this date, no victim who had lived with their abuser was eligible under any circumstances.

Those impacted by this rule have often suffered the most serious and appalling of crimes, including child sexual abuse. Many have endured violence in their own homes yet are denied compensation merely because the abuse took place prior to an arbitrary cut-off date.

In a reply to a written question by Sarah Champion MP, Dominic Rabb MP confirmed that since 2015, 180 applications from victims of abuse have been refused compensation by CICA under the "same roof" rule.¹

Following representations from his constituent, Alissa Moore, Iain Stewart MP has raised both on the floor of the House of Commons and in private meetings with Ministers, the particularly unfair case of siblings who endured abuse by their father receiving different compensation outcomes because some abuse happened before the cut-off date and others after. Without prejudicing the wider reforms of the Criminal Injuries Compensation Scheme, we urge a relaxation of the Same Roof Rule, especially in the very small number of cases where this unfair differential treatment of siblings occurs.

Unspent convictions

The Scheme states that victims and survivors who have unspent criminal convictions must have their awards reduced or withheld.² This results in victims of child sexual abuse being denied compensation for even very minor crimes. Additionally this rule particularly affects victims of child sexual abuse and exploitation, who are often targeted because they are vulnerable and lacking in adequate support and supervision or may go on to offend either as part of the abuse or as a result of the abuse.

We are pleased at the High Court ruling on 2 March 2018 that found that three women forced into prostitution as teenagers will no longer have to disclose related

¹ <http://www.parliament.uk/written-questions-answers-statements/written-question/commons/2017-09-12/10039>

² This article is worth noting as an example of how unfair this can be: <http://www.independent.co.uk/news/uk/crime/sex-assault-victims-refused-compensation-criminal-convictions-a8012011.html>. She was raped by a minicab driver and so understandably no longer felt safe in taxis. A year later she was convicted of a drink offence and as a result had her payment from CICA was reduced by 30%.

convictions to potential employers. ³ We consider it is high time that the CICS took a similar sensible approach to the award of compensation to victims of crime who have unrelated criminal convictions.

We the undersigned are calling on you to update the Criminal Injuries Compensation Scheme to ensure that it is fit for purpose and that survivors and victims receive the redress that they deserve. The definition of consent must be clarified so that no child victim of abuse or sexual exploitation is denied compensation on the grounds that they complied with their abuse. The '1979 same roof rule' should be abolished and the 'unspent convictions' rule must be made more proportional to ensure that the Criminal Injuries Compensation Scheme (CICS) fulfils its aim of compensating blameless victims of violent crime in Great Britain. We believe that the Ministry of Justice's forthcoming victims' strategy presents an opportunity to ensure that the Scheme truly works for victims look forward to hearing from you.

Yours sincerely



Sarah Champion MP
Member of Parliament for
Rotherham



Iain Stewart MP
Member of Parliament for
Milton Keynes South



Martha Spurrier
Director
Liberty

Barnardo's

³ R (QSA and others) v Secretary of State for the Home Dept and Secretary of State for Justice [2018] EWHC 407 (Admin). Two of the women were groomed into prostitution aged 14 and 15, the other was aged 18.

Diana Fawcett

Diana Fawcett
Chief Officer
Victim Support

Diane Whitfield

Dawn Thomas

Diane Whitfield and Dawn Thomas
Co-chairs
Rape Crisis

Sheila Taylor OBE
Chief Executive
NWG