

# The Criminal Injuries Compensation Scheme & Sexual Offences

## Research Briefing



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# Executive Summary

## The Problem

Since 2016, there have been a series of media reports criticising the Criminal Injuries Compensation Scheme (CICS) for its narrow rules on eligibility. In particular, there is debate about the withholding or reduction of claims made by some victims of sexual offences.

For example, Sammy Woodhouse became a prominent campaigner in 2017, after being denied compensation for sexual offences committed against her as a young person in Rotherham. Her decision letter stated that the compensation authority were “not satisfied that your consent was falsely given as a result of being groomed by the offender...”, despite Sammy being only 14 when the abuse started and her evidence being central to the criminal conviction of her perpetrators.

In response to concerns, the Victims’ Commissioner, Baroness Newlove, published a review of the CICS in January 2019. It concluded that while a State-funded compensation scheme was a fundamental part of justice for victims of violent crime, the current approach was re-traumatising.

## Research Summary

Until now, there has been no academic research that focused specifically on state compensation for sexual offences. The project therefore sought to answer the following questions:

- ❑ What are the potential benefits of providing compensation to sex offence victims?
- ❑ What are the perceived barriers to achieving these benefits through the CICS?
- ❑ How do support professionals experience the CICS application process?
- ❑ What attitudes do interested members of the public have towards state compensation and specific CICS eligibility rules?

Data were collected using qualitative surveys and semi-structured interviews with 40 support professionals (supporting around 22,360 victims each year) and a mixed-method survey of 171 members of the public (211 total).



## Key Messages

Both support professionals and the public presented consistent attitudes that suggest a need for fundamental CICS reform. Key themes were:

### **Compensation can be a significant source of justice for sexual offence victims.**

Respondents felt that state compensation was an opportunity for validation and reparation, which is known to be central to victims' ideas about justice. This was strongly supported in the public survey, with words such as 'pleased' and 'grateful' being the most frequent descriptors of the public's initial feelings about providing compensation for sexual offence victims.

### **Eligibility rules are a substantial barrier to the CICS fulfilling its core purpose.**

Despite the benefits that were identified, both practitioners and the public showed strong disapproval of the CICS current eligibility criteria in sexual offences. For example, 74% of the public respondents disagreed with the CICS focus on "blameless victims" and showed even stronger levels of disapproval around deadlines for applications, and limits based on unspent convictions or 'consent in fact'.

### **Current rules demonstrate a lack of understanding about sexual offences.**

In line with the above, both sets of data revealed concerns that the current CICS is inconsistent with established knowledge about the impact of sexual offences. For example, research has long shown that there are many reasons why victims may not immediately report to police or apply for compensation within two years, and have a history of substance use or unspent convictions.

### **The application process contradicts the Government's rhetoric on victims.**

Both the eligibility criteria and CICS application process reinforce stigmatising and misled beliefs about how victims of sexual offences 'should' behave. This is in stark contrast to the Government's repeated promises that victims are a priority and should be at the heart of justice responses to crime. The findings also reveal additional barriers faced by victims with more complex needs or pre-existing disadvantages, which were perceived as unfair and in breach of equality duties.

## Key Recommendations

We support Baroness Newlove's recommendations as set out in the *Compensation without Re-traumatisation* report. We also recommend that the review considers the following changes.

### Changes to the application process:

- Allow evidence from a wider range of medical professionals and specialist support services. This will avoid the authority paying for superfluous psychiatric reports that can cost a significant proportion of the tariff award being assessed.
- Create a designated team for claims that involve injuries under Part B (sexual and physical abuse). This team must be specially trained by experts on the context and impact of sexual and physical abuse.
- Review the impact of the *D v Victim Support Scotland* [2017] on para.8.6 of the Victims Code, which states that vulnerable or intimidated victims will receive support to complete applications. It is important not to simply remove this promise because of the risk of disproportionate impact on some groups of victims.
- Streamline information-sharing between criminal justice agencies so as to avoid victims having to retell their evidence multiple times, although consent for this is essential.
- Identify common characteristics in cases that are withheld but then accepted upon review, so as to clarify guidance and make the scheme more efficient.

### Changes to the eligibility criteria:

- Add "crime was of a sexual nature" to the list of considerations as to whether the claimant reported to the police as soon as reasonably practicable. The current considerations of age, capacity, and impact of the offence (22(a) and 22(b) of the 2012 Scheme) are not sufficient because they are being applied inconsistently.
- Adopt a similar approach to the Australian systems, whereby there are no deadlines for applications relating to childhood sexual offences and ten years for adult victims of serious sexual offences. Alternatively, cite "crime was of a sexual nature" as a clearly defined exceptional circumstances.
- Apply the 'no fault' approach of the New Zealand compensation scheme, whereby victims of serious sexual offences are explicitly exempt from eligibility rules around intoxication, 'bad character', and other forms of perceived 'precipitation'.



- Create an assumption that unspent convictions will not impact on claims for sexual offences, unless there is significant evidence to suggest that it would cause public outrage to do so. This is in order to recognise the well-established links between sexual victimisation, substance misuse, and criminalisation.
- Make clear in the guidance on 'consent in fact' that a criminal conviction should automatically be evidence of non-consent. Decisions to withhold an award on the basis of 'consent in fact' should require internal review by a specially trained case officer before being finalised.

### **Other recommended changes:**

- Increase the flexibility of how awards held in trust can be spent, especially around payment of ongoing support.
- Strengthen performance monitoring and transparency by collecting and reporting on data about third party support, aggregated data on sexual offence claim outcomes, and equalities data about those whose claims are withheld or reduced.
- Publish the internal guidance on eligibility criteria in order to increase transparency, and reduce the number of applications made speculatively.

# 1. Background

## 1.1 The Criminal Injuries Compensation Scheme

The Criminal Injuries Compensation Scheme (CICS) is a mostly tariff-based system of compensation for 'blameless' victims of violent crime in England, Wales and Scotland. It was introduced in 1964 and has undergone a number of iterations, most recently in 2012. The aim of the scheme is to offer public acknowledgement of the harm suffered by victims of violent crime, and is recognised as an important part of the end-to-end support provided by the Government.

In 2017/18, the Criminal Injuries Compensation Authority (CICA), which administers the scheme, paid out over £154 million in compensation and made 40,827 claim decisions. The number of new applications have been steadily declining since the introduction of the 2012 scheme, and last year there were 32,280 new applications compared with 58,195 new claims in 2011/12. Similarly, the annual budget has declined significantly since before the 2012 scheme, when £449 million was paid out in compensation.

The upcoming review of the CICS will consider the scope of the scheme, eligibility rules, application process and decision-making, the awards available for various levels of injury, and the impact on particular groups of victims.

## 1.2 Methodology

As there has not previously been any focused academic study of state compensation for sexual offences, our research questions were aimed at gathering foundational information:

- What are the potential benefits of providing compensation to sex offence victims?
- What are the perceived barriers to achieving these benefits through the CICS?
- How do support professionals experience the CICS application process?
- What attitudes do interested members of the public have towards the broad idea of state compensation, and specific CICS eligibility rules?

Data were collected using qualitative surveys (28) and semi-structured interviews (12) with 40 support professionals and a mixed-method survey of 171 members of the public, leading to an



overall sample of 211. The public survey featured an even mix of those who had heard about the CICS and those who had not, although it was skewed towards English women aged under 45. The sampled support professionals all had extensive knowledge and practical experience of the subject matter, with the survey respondents having supported an estimated average of 559 victims each year (22,360 total each year).

The sample were self-selecting, as they responded to invitations disseminated online via professional networks and social media. While this approach can limit the generalisability of the findings, it was the most appropriate for the research questions as they focused on interested members of the public and practitioners with high levels of knowledge. Self-selection methods tend to attract people with strong views on a topic, which increases the likelihood of acquiring rich responses thus providing meaningful insight. Furthermore, we sought the views of those who were motivated to respond to a survey on compensation because this group of the population are also more likely to be politically influenced by policies and rhetoric around the topic.

Qualitative data were analysed thematically and each code was checked by at least two researchers for consistency and validity. Quantitative data were analysed using descriptive statistics and Fisher-Freeman-Halton exact tests, because the observed cases were  $5 <$  for several answers, making chi-squared inappropriate.



## 2. Key Findings

Our research suggests that the current iteration of the CICS is not fit for purpose in relation to victims of sexual offences. The key findings are outlined below, but an over-arching concern pertains to a lack of specialist sexual violence knowledge and a disproportionate impact of both the eligibility requirements and administration of the scheme on victims with complex needs or pre-existing disadvantages.

### 2.1 Compensation as a source of justice for sexual offence victims.

Both the support professionals and public survey respondents noted that financial payments were an important source of validation and practical help for victims of sexual offences.

#### 2.1.1 Source of Practical Support

Sexual offences are increasingly recognised as having very significant financial implications (Loya, 2015) and the CICS was praised by respondents for addressing this form of harm:

“[Service user] has incurred significant debt because of the emotional trauma that she has experienced over a long period of time... [Victims have] usually lost money through loss of work or mental health problems that have followed.” (Practitioner Interview, 1)

“It is good there is some kind of recognition of the cost of sexual violence and the cost of recovery” (Public Survey, 17)

“Someone's life has been changed by their experience: they may incur additionally medical costs and may not be able to work for a period of time so this allows them some support. It won't solve everything but it definitely acknowledges in some way the severity of the crime.” (Public Survey, 60)





This help was noted as especially important where the compensation enabled the victim to relocate away from the property in which offences took place (Practitioner Survey, 14). Although sexual violence does not discriminate between economic classes (Brown & Horvath, 2009), research has suggested that economically disadvantaged women are particularly at risk of being victimised (Breiding et al, 2017; Renzetti, 2009). These less financially stable victims may face pressure to return to work rather than focusing on their emotional needs in the aftermath of rape (Jordan, 2012). Compensation can therefore play a vital role in protecting survivors against further disadvantage by alleviating some of these financial pressures and enabling survivors to focus on their recovery.

## 2.1.2 Validation & Reparation

Another key reason that victims decided to apply to the CICS, according to support professionals, was a sense of being heard and believed. This was especially important where the case had not resulted in a criminal prosecution or conviction; for example practitioner respondents frequently made comments such as:

“[Sometimes people apply] out of pure anger... they didn’t get a court outcome at all so [compensation] was a way of closure” (Practitioner Interview, 2)

“Most people I work with want to apply for compensation because they feel let down by the legal system and feel it’s another chance to be believed.” (Practitioner Survey 1)

This reflects the aim of the CICS to provide public acknowledgement of harm, and was a principle supported by members of the public, including some with personal experience:

“If someone is badly affected by criminal offenses they should receive compensation, not made to feel partly responsible” (Public Survey, 136)

“I was able to get some justice by being believed by them, so I’m grateful” (Public Survey, 23)

Jordan (2012) has already highlighted how victims can feel silenced within the criminal justice system because they lose control of their own story. By contrast, compensation (at its best) can be a way to acknowledge the trauma caused and any resultant money enables victims to regain a sense of control over their future.

## 2.2 The CICS eligibility rules do not reflect established knowledge about sexual violence

There was remarkable consistency in the criticism of the CICS eligibility rules, both by support professionals and the wider public. Indeed, there were very few differences in public opinion even when comparing across age and gender<sup>1</sup>. This was the most dominant theme throughout the data, and support professionals argued that applying generic rules to victims of sexual offences “*doesn’t reflect the lived reality of people who experience sexual harm and violence*” (*Practitioner Interview, 3*). In particular, the findings show support for removing the two year deadline for applications, as well as the limits on claimants with unspent convictions or who were perceived to ‘consent in fact’.

### 2.2.1 Delays in Reporting to Police or Submitting Applications

The 2012 iteration of the CICS allows discretion for case officers to ignore a delay in reporting to the police where there is ‘reasonable explanation’ because of their age or the impact of the offence. There does appear to be inconsistent practice on this, however. For example, Nyah\* was initially withheld compensation in 2017 because she had disclosed her rape to another institution approximately two months before going to the police. The decision letter stated that Nyah could therefore reasonably have reported to police earlier, however this contradicts research evidence which shows that the time of first disclosure is not a signal that a victim is able to talk freely about victimisation or that they are ready for interventions (Ahrens et al., 2010). Further, Kilpatrick & Calhoun recognised as long ago as 1988 that disclosure of sexual violence is not synonymous with being able to access support effectively.

The respondents were also concerned about the two-year deadline for applications. Section 87 of the 2012 scheme dictates that applications must be submitted within two years of the offence, or if the victim was under the age of 18 then the application must be submitted: before their 20<sup>th</sup> birthday, or two years after they report to police if they report after the age of 18. Of the 40 support

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<sup>1</sup> Respondents aged 16-24 were more likely to agree with reducing claims on the basis of ‘consent in fact’, while men were more likely to agree with reducing claims on the basis of ‘intoxication at the time of the offence’; however the majority of respondents from all backgrounds disagreed with the idea of reducing claims on these bases.



professionals who contributed to the research, 35 had direct experience of claims being withheld or reduced because of being submitted after the two year deadline.

### Case Study: Emily\* & Charlie\*

Emily\* reported her experiences of childhood sexual abuse when she 6 years old, but did not pursue compensation until after the perpetrator was convicted when she was an adult. Her brother, Charlie\*, was abused by the same perpetrator and during the same time period, but did not report to police until the case went to court over 25 years later. Charlie was 23 by the time he reported and made a compensation claim within 2 years, which was successful. Emily's claim was not successful because she had made an early report and so the compensation claim was outside of the allotted time period.

This deadline on applications disproportionately affects victims of sexual violence, which is widely known to be underreported<sup>2</sup>, as delays in telling the police or others are common due to feelings of shame, embarrassment, worthlessness, and fear of not being believed (Gillen, 2018). This was reflected comments that:

"We are all aware it is a traumatic crime to report or disclose. There are definite time boundaries – a client will disclose when they are ready and at their own pace, when they feel that they are well enough and safe enough to disclose experiences" (Practitioner Survey, 25)

"[The time limit] excludes lots of people or forces them into a situation that forced them to apply before they are ready" (Practitioner Interview, 8)

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<sup>2</sup> The Office for National Statistics (2017) estimates that only approximately 17% of sexual offences are reported to police.

This latter quote highlights the risk of further traumatising victims who are pressured into disclosure and applications too early, reflecting Baroness Newlove's (2019) findings that the CICS process can pose a barrier to the emotional and psychological recovery of victims. Eroding the victim's control over their own disclosure seemingly contradicts the Code for Crown Prosecutors and mirrors the loss of control felt during the offence.

### Case Study: Aaliyah\*

Aaliyah\* made a statement about her experience of abuse as a child, but her mother convinced her to retract the complaint. Later, Aaliyah and several victims of the same perpetrator were witnesses in the same trial, leading to his conviction. These other victims reported to police only in adulthood and so were all awarded compensation through the CICS. However, as Aaliyah had reported as a child, she was only able to submit a claim before the age of 20 and so her claim was refused.

The two year deadline is also complicated by delays to criminal justice proceedings, as victims appear to be routinely told to wait until after the case is completed before applying. This is due to fears that the application may interfere with the likelihood of criminal conviction, but delays in the case may then mean it is too late to apply:

"Victims are undermined in court if they apply for compensation, so they have to wait. They shouldn't be punished for the failure of the criminal justice system to work efficiently. Most especially when the police back the victims claim and explain the delay was at their request." (Public Survey, 15)

"There's this balance between the need to get a claim in but we don't want it to threaten any court proceedings" (Practitioner Interview, 2)



This does not appear to adhere to Article 18(2) of the 2012 Istanbul Convention<sup>3</sup>, which dictates that States should ensure appropriate mechanisms for effective co-operation between all state agencies (in this case Criminal Injuries Compensation Authority and the police and prosecution services) to protect and support victims. The unique nature of sexual violence - being an inherently legal activity made an offence by the absence of reasonable belief in consent - means investigations may take longer and prejudices relating to compensation are more easily invoked at trial. The two year limit on applications thus fails to accommodate the unique realities of sexual violence and leaves many victims without access to compensation.

The compensation authority have previously responded to calls to remove the time limits by reaffirming that claims will not impact on a criminal case and can therefore be made simultaneously. Such arguments are undermined by consistent evidence that defence lawyers do check whether an application has been made:

“Very often defence barristers ask victims ‘have you put in a claim for compensation’... that is a real issue, because the police and support agencies don’t want to even discuss compensation before court, so when compensation, when CICA are saying ‘oh there’s no reason why couldn’t have made this application much sooner’, they aren’t acknowledging or recognising that that is used against a claimant, when they are giving their evidence in court” (Practitioner Interview, 2)

In practice, support professionals noted that claims were regularly made after the two year limit. Such applications are often refused at first instance but granted on review, thus increasing the workload and costs involved for CICA to process the claim:

“There’s a hell of a lot of expense for CICA, and the tribunal service, if previous cases have been overturned on that two year rule... if it’s about saving money, then it’s backfiring because it must cost more for the reviews and the appeals” (Practitioner Interview, 3)

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<sup>3</sup> The Istanbul Convention is a legal framework which outlines minimum standards for a State’s response to Violence against Women and Girls. The Convention is already ratified in Wales and will be ratified in England under the forthcoming *Domestic Abuse Bill*, creating a legal obligation to ensure that support services are adequately funded and relevant legislation suitably enacted.

## Case Study: Stephen\*

Stephen\* was advised not to apply for compensation until after his criminal case was finished. After two adjournments that were not Stephen's responsibility, the case ended in conviction but his compensation was withheld. Stephen asked for a review of the decision and the police officer in the case wrote a statement that acknowledged it was his advice which led to the delay in application, however CICA's decision was upheld.

There is much that can be learnt from international comparisons here, as Australia demonstrates that a sustainable scheme can be maintained even where there is a ten year period for compensation claims in sexual offences, and no limit if the offence occurred before the age of 18 (Thompson Reuter Foundation, 2015).

Such an approach appears to be supported by interested members of the public, as only 9% of respondents agreed with the idea of taking delayed reporting to police into account, and only 12% agreed with having a two year time limit for sexual offences. It is also in line with a substantial body of research evidence that demonstrates the exceptional nature of sexual victimisation and the difficulty in a) reporting this victimisation, and b) seeking support or redress. Finally, it would address the risks highlighted in the Equality Impact Assessment of the 2012 Scheme, which acknowledged the potential for the two year time limit on applications to disproportionately affect female victims of sexual violence, particularly childhood sexual abuse. The Impact Assessment therefore highlighted the need to "look sensitively at the particular issues concerning the reporting of sexual abuse and rape" (para.366) and our research supports this.

### 2.2.2 Unspent Convictions

Another key theme was that respondents felt uncomfortable with the restriction of awards to claimants with unspent criminal convictions, as set out in Annex D of the 2012 scheme. Of the 40 support professionals in the data collection, 24 had direct experience of claims being withheld because of the victim's convictions even where the perpetrator was convicted at trial. The pre-requisite for victims to be 'blameless' was largely deemed by respondents to be inappropriate for cases of sexual offences because it does not minimise the harm experienced:



“A victim’s past offences or unspent convictions should have no bearing...it does not reduce the severity of the crime committed towards the victim” (Public Survey, 21)

Indeed, respondents to the public survey felt strongly that this restriction was unfair, with only 8% agreeing that unspent convictions should be taken into account. This went down to 5% when asked in the context of a specific example case (see Josie\*’s story).

### Case Study: Josie\*

Josie\* was abused as a child by a family member and eventually had the perpetrator’s baby. She suffered significant mental health problems as a result, and developed an alcohol dependency when the identity of her child’s father later emerged. Josie received an extended community order for drink-driving so that the court could offer her greater support, meaning that she had an unspent conviction when she applied for compensation. The judge, police officers, and probation all supported her application, but it was withheld even after appeal.

When asked about why they did not believe convictions should be considered in award decisions, respondents argued:

“This person’s life has been altered through their abuse and their later actions were likely to be linked to their experiences. Separate offences should not be taken into consideration when deciding whether to give out compensation” (Public Survey, 60)

“The compensation is for sexual assault, not for being the right sort of victim” (Public Survey, 130)

“CICA need to recognise that some victims of sexual violence who have a history of criminal behaviour do this because of what happened to them in the past” (Practitioner Survey, 11)

Indeed, research has shown that those involved in criminal activity are often the most at risk of sexual victimisation, for example women involved in sex work or who are gang-affiliated (Pitts, 2013; Deering et al, 2014; House of Commons, 2017). It is also widely accepted that the trauma



linked to one's sexual victimisation may trigger their involvement in criminal activity e.g. substance abuse (Miranda *et al.*, 2002; Sturza and Campbell, 2005; Ullman *et al.* 2013; Hannan *et al.* 2017).

The rigid eligibility rules therefore create a perpetuating cycle, whereby victims are refused compensation due to convictions, but then continue to rely on substances or involvement in criminal activity as a coping mechanism for ongoing trauma. This compounds the harm experienced by victims, and is also likely to result in further use of public resources for health, justice and welfare interventions.

In past reviews, the discretion over reducing or withholding an award was removed, with the official justification being the potential outrage if public funds went to victims who had cost taxpayers money through criminal justice expenses. This argument falters, however, because previous convictions do not exempt people from other public funds such as universal credit, or compensation for harm incurred while in prison. It is also notably in contradiction with the Government's Victim's Strategy (2018: 8), which explicitly states that victims will be supported "regardless of their circumstances or background".

The recent decision in *R v Secretary of State for the Home Department and another (Appellants)* ([2019] UKSC 3) asserted that it was disproportionate not to have discretion over the disclosure of previous criminal records. This suggests that the CICS should reinstate case officer discretion over the impact of convictions on award decisions. In addition, Article 1 Protocol 1 of the European Convention of Human Rights (right to peaceful enjoyment of property) when combined with Article 14 (non-discrimination) may suggest that withholding awards on the basis of offending linked to victimisation could be a discriminatory. While the decision in *A and B v Criminal Injuries Compensation Authority and Secretary of State for Justice* ([2018] EWCA Civ 1534) might seem to allow withdrawal of awards based on previous offending, it is notable that the convictions in these claims had pre-dated the victimization.

Appeals such as *RT v First Tier Tribunal* ([2016] UKUT 0306 (AAC)) have acknowledged that the long-term impact of sexual and domestic violence can amount to the exceptional circumstances outlined in Annex D (4) para.26. Academic research has also demonstrated the causal relationship between sexual violence and offending behaviour. For example, David Farrington, Emeritus Professor in Psychological Criminology at the University of Cambridge, identifies childhood sexual abuse as a central risk factor in later criminal behaviour. This impact of sexual victimisation on



offending has been widely established for several decades, for example Dr Mary Gilfus wrote in 1993 on the diverse criminal behaviour that can emerge as a survival strategy after sexual victimisation. Psychiatric research has also long established the link between sexual victimisation and indirect risk factors for criminal offending, such as substance abuse, low self-esteem, and aggression (Browne & Finkelhor, 1986). Experts in the fields of law, criminology, psychology, psychiatry, and childhood development have all agreed that sexual victimisation can lead to a range of criminal convictions. Once more, the Equality Impact Assessment of the 2012 Scheme highlighted that this presented a risk of gender discrimination, and our research suggests that this may indeed have occurred.

### 2.2.3 Misunderstandings about ‘Consent’

Despite extensive public and academic discourse that victims should not be held responsible for ‘inciting’ sexual victimisation, support professionals argued that the CICS regularly promotes victim-blaming attitudes. For example, survey respondents noted:

“The CICA kind of refused her claim straight away. In her letter it stated that the reason they had refused was because she had willingly had gone back to the perpetrators house on the evening of question so they were suggesting within that, that in some way that meant she was consenting to sexual activity” (Practitioner Interview, 5)

This focus on precipitation of consent seemingly misinterprets the *Sexual Offences Act 2003*, as Lady Hale noted in *R v C* ([2009] UKHL 42) that consent is specific to each act and not ongoing, meaning that there is no legal basis for perceiving consent to some sexual activity as reducing the harm of subsequent non-consensual abuse.

The respondents were even clearer on their discomfort with the CICS interpretation of consent when it related to those under the age of 16 who had been groomed:

“Compensation in respect of sexual offenses will not be paid unless the victim was a non-consenting victim of the offence, compensation is not payable to a victim to a victim who consented in fact, even if they could not have consented in law” (Practitioner Interview, 3)

Here, the campaign by Sammy Woodhouse in the wake of her claim being withheld despite wide-reaching recognition both in the criminal justice system and elsewhere that she was indeed a victim of child sexual exploitation. When asked about Sammy's case, only 4.7% of the public survey respondents agreed the claim should have been reduced or withheld as a result of perceived 'consent'. When asked to expand on their reasons for thinking that Sammy should have received a full award, respondents stated:

"Under 16s cannot consent, to say that Sammy Woodhouse appeared to consent is ridiculous, she was groomed! It shows a complete misunderstanding or disregard of how grooming works." (Public Survey, 14)

"The law recognises that a vulnerable under age person must be protected from coercion, control and manipulation, so why doesn't the CICS?" (Public Survey, 145)

It therefore appears that the public agree with the CICS guidance notes, which state that "even if it appears that the minor expressed consent to the acts in question, the surrounding circumstances may indicate the situation was abusive and the consent was not true consent" (para.3). Further, the revised guidance states in para.7 that "you should be mindful that an application may not realise they have been abused at the time of the incident due to the effects of grooming... you have a responsibility to look at the complete picture".

### Case Study: Safiye\*

Safiye\* was groomed and sexually exploited at the age of 12. The perpetrator, then aged 18, admitted intercourse with a minor but the compensation claim was withheld because Safiye could not remember the rape and the decision letter stated that she consented.

Despite both guidance and public opinion clearly supporting a presumption of non-consent for those under the age of 16, the practitioner responses demonstrate a clear lack of training and awareness of sexual offending amongst CICA staff, whereby the complex social relations and the power and control associated with sexual offending were completely disregarded. Under Article 15 of the Istanbul Convention, States should provide or strengthen appropriate training for all relevant professionals dealing with victims and so it may be useful to review the current level of specialist training for case officers.



## 2.3 The application process is not conducive with the Government's rhetoric on victims.

The Government has repeatedly stated that victims of crime are a priority and promised to “make it easier for people who have suffered a crime to cope, recover, and move on with rebuilding their lives” (HM Government, 2018:6). Despite this, the data from support professionals suggested that the CICS application process was unnecessarily drawn out, resource-intensive, and sent mixed messages about whether or not victims were being believed.

Perhaps the most embedded challenge was that of informing victims about the scheme. Under the Code of Practice for Victims of Crime (Ministry of Justice, 2015), there is a promise to inform victims of their rights and the ability to claim compensation is set out extensively in the Code. Despite this, it was estimated that only between 10 and 25 percent of service users had been aware of the CICS before their discussion with a support worker. This reflects the findings of the Newlove review (2019), which showed that third sector support workers were one of the key routes to awareness of compensation. In light of Rape Crisis and other charities' decisions not to support victims through the CICS in light of the successful legal action against Victim Support Scotland in 2017, there is a real risk that victims will go unaware of their ability to get reparation. This is particularly true in Scotland, where Victim Support and Rape Crisis no longer even inform the victim of the Scheme. It is essential that the review considers how to ensure victims are routinely informed about their rights in this new context, so as to maintain adherence to the Istanbul Convention.

There were also several practical considerations in the application process that were perceived as needing immediate change. For example, support practitioners noted that the online form often gives only limited word counts with which to answer questions, but sexual offences are very complex and require more free text responses. Another example was that education is not included in the application form where there are questions related to the impact on work, ignoring the experiences of younger victims (Practitioner Interview, 6).

A repeating pattern in the responses was that victims who seek higher tariff claims for sexual offences that caused disabling mental injury must provide evidence from a narrow range of sources which carry large fees (e.g. a clinical psychologist assessment, see section 3.4.1). It also

involves having to tell their story in depth to several different professionals, which has been evidenced to hinder trauma recovery, and the incremental requests for information were a common source of frustration (Practitioner Interviews, 2, 3, 4, 8, 9).

Further, this requirement for medical intervention in order to establish mental injury was perceived as removing the victim's control over their own healthcare and impinging on the rights to self-determination and bodily integrity. It was also noted that the medicalization of harm undermined the knowledge held by specialist practitioners who have been central to the Government's violence against women strategies for over a decade:

"CICA will not accept reports from specialist sexual violence providers only from medical professionals – this is outrageous as specialist providers are often more qualified and more experienced in terms of sexual violence impacts and recovery. Victims often do not want to tell their family GP about what has happened." (Practitioner Interview, 6)

"You know this client that's going to have to go and see this unknown psychologist, and it could be male, which would be a problem for my client, I just think they don't take any of these things into account really." (Practitioner Interview, 2)

One of the key wishes expressed by the participants was therefore that specialist providers of sexual violence support services could be included on the list of acceptable evidential sources (Practitioner Interviews 6, 8; Practitioner Survey, 25). This was also noted as having the benefit of reducing demand on NHS staff (for example GPs, psychologists or psychiatrists).

### **Case Study: Bianca\***

Bianca\* was sexually assaulted and then knocked unconscious by an intruder to her house. When she regained consciousness, she saw her daughter repeatedly raped by the same perpetrator and experienced significant psychological distress. Her claim was withheld because she did not have the formal medical evidence, and the case was going to tribunal at the time of data collection.



### 2.3.1 Application process is slow and difficult to navigate

Another prominent concern raised by support professionals was that it often takes a long time from initial application to final decision, particularly as some cases are delayed by reviews and tribunals. For example, many of the respondents estimated that cases can take between one and two years to reach resolution, but some gave examples of cases taking four, five, and eight years (Practitioner Surveys 3, 5, 6). An attempt to streamline claims for sexual assault has been introduced by CICA whereby victims can claim for sexual assault without disabling mental injury. This is set at a lower tariff and does not require evidence beyond the police report, but there is not yet enough data to evaluate whether the new option.

The public survey respondents agreed that the claims process should be quick, straightforward and avoid re-traumatising victims. For example, they commented that:

“These people have suffered severe trauma: The process of applying for compensation should not re-traumatise them. It should put the victim at the centre of the process.”

(Public Survey, 7)

“I feel it should be straightforward and simple process. A victim should not be judged.”

(Public Survey, 135)

While it is acknowledged that resource constraints and difficulty accessing police and medical data can add to the investigation time, the length of the process was perceived as a significant barrier for victims who had initially wished to access reparation through the CICS:

“Her life was turned upside down. She had a really prolonged, erm, experience with CICA and we had to go to tribunal” (Practitioner Interview, 3)

“A victim feels that they are re-living what had happened to them each time a document would arrive from the CICA” (Practitioner Survey, 3)

One key cause of lengthy application times was having claims withheld and then accepted upon submission of an appeal letter, something which two support practitioners suggested occurred very frequently around the end of the financial year. This has the potential to disadvantage victims who apply without third party support, as they are unlikely to know that this is a routine part of the



process. Indeed, estimates from support practitioners were that around 30 percent of cases were initially withheld and around 10 percent of these were then accepted on review. Baroness Newlove's (2019) report similarly found that in all types of offences, some lawyers estimated that 50-60 percent of their cases went to review.

The principle of validation is featured in all existing conceptualisations of victim justice (see McGlynn et al.'s 2017 kaleidoscopic justice, Herman's 2010 parallel justice, and the extensive literature on restorative justice). As already stated, the sense of being heard and believed is the core reason for many sexual violence victims applying to the CICS, and acknowledgement of harm is a key purpose of the scheme. The relatively high proportion of unnecessary rejections is therefore concerning, as they are not based on sound reasoning (as shown by the subsequent acceptance of awards) and yet have significant impacts on victim wellbeing and the ability for the CICS to fulfil its purpose.

### 2.3.2 Communicating with victims

Another theme to emerge was that communication between the claimants and Criminal Injuries Compensation Authority is often limited or inappropriate. For example, it was noted that victims felt more anxious because there had not received updates:

"Even though the perpetrator was convicted, she, the application process with CICA was so long almost two years, she was convinced that someone was gonna knock on her door and accuse her of lying and that was the impact of the wait really was that she felt that she hadn't been believed" (Practitioner Interview, 5)

The negative impact of victims being left un-informed about case progress has been widely recognized in relation to the criminal justice system (e.g. Stern, 2010), leading to policy initiatives such as the Independent Sexual Violence Advocate, or ISVA. The role of the ISVA includes liaising with agencies and updating victims of sexual violence so that they feel regularly informed about their case. This role arguably mitigates the risk of re-traumatisation caused by a lack of communication, but since the *D v Victim Support Scotland* [2017] decision to award £100,000 for wrong advice, many ISVAs will no longer support the victim in the process because they are based in charities which do not have adequate insurance. It is unclear what this will mean for





Para. 8.6 of the Victims' Code (Crown Prosecution Service, 2015), which states that vulnerable or intimidated victims will be assisted by a support service when completing their application.

Where there is contact between the victim and compensation authority, there was also concern about inconsistencies in the empathy and understanding shown by call handlers (see also Newlove 2019). Partly, this was suggested to be due to limited knowledge of sexual offences:

"They don't appear, or the people who are processing the application, don't appear to have a good understanding of the impact of a crime of a sexual crime on a victim"  
(Practitioner Interview, 9)

This is perhaps best exemplified by a seemingly innocuous request for information that actually demonstrated a failure to check even basic case details and which exacerbated the stigma felt by victims:

"Ensure requests for information are more tactful e.g. a child was sent a form asking if she was still married to her perpetrator. The perp was her father." (Practitioner Survey, 9)

Enhanced training for all case officers should equip them with a solid understanding of the complexities and impacts of sexual violence so that the workforce is better able to deliver a consistently victim-friendly.

## 2.4 The current CICS fails to provide equality of access to all victims.

Throughout the interviews and practitioner surveys, there was a consistent theme of the CICS being ill-equipped for victims with more complex needs. Many of these issues overlap with the findings above, but given the implications for the ability of the scheme to comply with Public Sector Equalities Duty<sup>4</sup>, it is worth briefly delineating the concerns specifically.

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<sup>4</sup> This Duty applies to all organisations fulfilling a public function and is aimed at clarifying the duties created by the *Equality Act 2010*.

## 2.4.1 Victims of Lower Socio-Economic Status

A key theme from practitioner respondents was that the CICS application process and awards could disadvantage those from lower socio-economic backgrounds. For example, 15 of the 40 support professionals had known means-tested benefits to be stopped or reduced after a successful claim:

“I think it’s unfair that somebody, the money is being paid to them because of abuse they’ve suffered so that’s just not, they should not have to use that money for everyday living” (Practitioner Interview, 1)

“It’s a really ‘classist’ sort of thing, because if you are set up, this money is your spending money, if you are not you have to use it as money to live on and that just is not fair” (Practitioner Interview, 4)

Only one of the practitioners knew about personal injury trusts, which enable victims to keep their award without any impact on benefits<sup>5</sup>. This highlights the need to raise awareness of such trusts, for example within the decision letter from the compensation authority. It also reveals a potential disadvantage for victims on means-tested benefits, as they are forced to pay for the help of personal injury lawyers in setting up a trust while other victims can receive their full award<sup>6</sup>.

Another consideration was that of the cost of medical records and assessments during the application process (see section 3.3). Victims are expected to cover the costs of providing this evidence up to £50, although they can apply for advanced funds in order to pay for larger fees. However, this was noted as inappropriate for victims with particularly limited finances, as they are not able to cover the initial outlay:

“Having to pay for medical records from GP often in the region of £50 per time (this is a whole week’s benefit money), it is not affordable.” (Practitioner Interview, 6)

Accepting evidence from specialist sexual violence services would lessen the financial burden on victims. The *Data Protection Act 2018* states that charges cannot be made for subject access

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<sup>5</sup> Although there are limitations in when and how they can then access their money. Newlove (2019) unpacks this in detail and calls for greater flexibility in the way that trust money can be spent.

<sup>6</sup> Baroness Newlove (2019) found that some victims are losing up to 25 percent of their award to legal fees.



requests, but ‘reasonable’ administration costs can be charged by GP surgeries if they deem a request to be ‘manifestly unfounded or excessive’, however there is no definition of what these terms mean in practice.

The additional disadvantages faced by victims from lower socio-economic backgrounds is particularly significant given that poverty is gendered (Fawcett Society, 2012) and women are also more likely to be raped or sexually assaulted (Office for National Statistics, 2018). This means that the Public Sector Equality Duty may be invoked, as it covers gender equality. In particular, there is a duty to “advance equality of opportunity between people who share a protected characteristic and those who do not” and also “taking steps to meet the needs of people from protected groups where these are different from the needs of other people”.

## 2.4.2 Victims who are Digitally Excluded

The CICS has been streamlined and made more efficient by the move to online applications, but the practitioner respondents noted this was not possible for all victims because they did not have the resources or knowledge to apply digitally:

“For people who are very vulnerable – with mental health problems, learning, language or literacy difficulties, or those with head injuries (often due to assault) the online or phone process will defeat them” (Practitioner Survey, 6)

“We find that the system currently discriminates against those [who] are not IT literate” (Practitioner Interview, 5)

“For a lot of elderly people applying on line is alien to them” (Practitioner Survey, 39)

It is estimated that so-called digital exclusion affects 20% of the UK population, approximately three quarters of whom are thought to represent the most vulnerable in society (Centre for Social Justice, 2017).

The Code of Practice for Victims of Crime (Ministry of Justice, 2015) states that vulnerable victims are able to apply for compensation via telephone, and the Criminal Injury Compensation Authority’s Customer Charter notes that victims’ preferred method of communication will be respected. It is therefore surprising that the respondents did not feel this promise was translated

into practice. For example, there was evidence that call operators deter victims from initiating their claims over the phone:

“Victims are being told they are unable to apply by phone and must complete on line. This is sometimes very difficult for a client and not always possible.” (Practitioner Survey, 3)

“Straight away the call handlers will try and get people to make a claim online, and then they try and put them off, saying ‘oh well it’s going to take a long time if you do it [on the telephone]’” (Practitioner Interview, 1)

Such practical barriers to applications is contrary to the Public Sector Equality Duty as it does not have due regard to the impact of age and disability on access to the CICS. It is therefore crucial that the development of the online portal does not prevent victims from initiating claims in the ways that best suit their needs.

## 2.5 Summary of Findings

In light of the findings outlined above, it is clear that the current iteration of the CICS has a disproportionate impact on sexual violence victims and in particular, victims with more complex needs or pre-existing disadvantage. There is support from both interested members of the public and practitioners for a change in relation to sexual offences; particularly adopting the New Zealand model which has no eligibility restrictions for rape and serious sexual assault. Indeed, the complex needs which emerge from criminal convictions and substance misuse are reframed in the New Zealand scheme as being a social problem and therefore a reason to provide financial support rather than remove it.

In light of the upcoming review into the CICS, there is an opportunity to ensure that both the scheme itself and the case officers implementing it are rooted in established understandings about sexual violence. The unique nature of such violence means that the generic eligibility rules cannot be justified and to continue to maintain them appears to contradict both the Government’s promise to “make it easier for people who have suffered a crime to cope, recover, and move on with rebuilding their lives” (HM Government, 2018:6). It is recognized that this widening of access to compensation may require more financial resources, but it is clear that it would also save on other Government resources through healthcare and criminal offending interventions, and could



increase productivity by enabling victims to access counselling services and return to work. While some may argue that free counselling is provided already, this belies the reality of long (and sometimes closed) waiting lists and a limitation on the number of sessions available.

## 3. Key Recommendations

We support Baroness Newlove's recommendations as set out in the *Compensation without Re-traumatisation* report. We also recommend that the review considers the following changes.

### 3.1 Changes to the application process:

- Allow evidence from a wider range of medical professionals and specialist support services. This will avoid the authority paying for superfluous psychiatric reports that can cost a significant proportion of the tariff award being assessed.
- Create a designated team for claims that involve injuries under Part B (sexual and physical abuse). This team must be specially trained by experts on the context and impact of sexual and physical abuse.
- Review the impact of the *D v Victim Support Scotland* [2017] on para.8.6 of the Victims Code, which states that vulnerable or intimidated victims will receive support to complete applications. It is important not to simply remove this promise because of the risk of disproportionate impact on some groups of victims.
- Streamline information-sharing between criminal justice agencies so as to avoid victims having to retell their evidence multiple times, although consent for this is essential.
- Identify common characteristics in cases that are withheld but accepted upon review, so as to clarify guidance and make the scheme more efficient.

### 3.2 Changes to the eligibility criteria:

- Add "crime was of a sexual nature" to the list of considerations as to whether the claimant reported to the police as soon as reasonably practicable. The current considerations of age, capacity, and impact of the offence (22(a) and 22(b) of the 2012 Scheme) are not sufficient because they are being applied inconsistently.



- Adopt a similar approach to the Australian systems, whereby there are no deadlines for applications relating to childhood sexual offences and ten years for adult victims of serious sexual offences. Alternatively, cite “crime was of a sexual nature” as a clearly defined exceptional circumstances.
- Apply the ‘no fault’ approach of the New Zealand compensation scheme, whereby victims of serious sexual offences are explicitly exempt from eligibility rules around intoxication, ‘bad character’, and other forms of perceived ‘precipitation’.
- Create an assumption that unspent convictions will not impact on claims for sexual offences, unless there is significant evidence to suggest that it would cause public outrage to do so. This is in order to recognise the well-established links between sexual victimisation, substance misuse, and criminalisation.
- Make clear in the guidance on ‘consent in fact’ that a criminal conviction should automatically be evidence of non-consent. Decisions to withhold an award on the basis of ‘consent in fact’ should require internal review by a specially trained case officer before being finalised.

### 3.3 Other recommended changes:

- Increase the flexibility of how awards held in trust can be spent, especially around payment of ongoing support.
- Strengthen performance monitoring and transparency by collecting and reporting on data about third party support, aggregated data on sexual offence claim outcomes, and equalities data about those whose claims are withheld or reduced.
- Publish the internal guidance on eligibility criteria in order to increase transparency, and reduce the number of applications made speculatively.



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