

Compensation for the innocent victims of violent crime



The Criminal Injuries Compensation Scheme exists to compensate the blameless victims of violent crime in England, Scotland or Wales who have suffered physical or mental injury.

The Criminal Injuries Compensation Scheme 2012 applies to applications for compensation for injuries arising out of a crime of violence lodged on or after 27 November 2012. It has introduced a marked tightening of eligibility criteria. Since the scheme was first introduced its object was to provide compensation in circumstances where applicants could prove that they were innocent victims of violence. It was and remains a feature of the scheme that the victim had reported the crime to the police or a relevant authority (eg. a school or prison) and cooperated with the police or authority in bringing the assailant or abuser to justice. There has also always been provision for an award to be reduced because of the conduct of the victim, for example provocation at the time of the offence or unrelated but undesirable conduct, whether before or after the criminal injury was inflicted eg. previous convictions of the victim, or conduct such as not paying taxes.

Tightening the rules

The 2012 Scheme introduced stringent eligibility criteria in addition to a more draconian approach in terms of assessing compensation. For example:

There is a new condition of residency for eligibility (paragraph 10), supplemented by complex rules. Previously, if the incident had occurred within the UK, it did not matter whether the victim was a resident or not.

The condition of reporting has also been substantially restricted and a report must now be made to the police, not another appropriate authority. Therefore, an assault in a psychiatric ward, in prison or at a school must be reported to the police no matter how vulnerable the assailant or victim may be. If not, the sanction is not a discretionary reduction, but rather the claim will be refused.

Paragraph 22 does state that 'the effect of the incident on the applicant was such that it could not reasonably have been reported earlier' with the age and capacity of the victim to be taken into account in order to assist more vulnerable victims including those with acquired brain injuries.

More significantly, an award will not be made to an applicant who on the date of their application has a conviction for an offence which resulted in any sentence greater than a fine or a conditional discharge, unless there are exceptional reasons not to withhold or reduce it. It is not yet clear what may constitute an exceptional reason.

Brain injury and the 2012 Criminal Injuries Compensation Scheme

The connection between acquired head injuries and behaviour that may be impulsive, disinhibited, aggressive and occasionally unlawful is reasonably well documented and much will depend on the facts of each case. Similarly, victims of sexual and physical abuse, especially childhood abuse, often, for different reasons, engage in unlawful conduct, which they may not have committed were it not for their history of abuse. It seems likely that those least able to articulate the argument that their injury has affected their behaviour and may have led to offending behaviour post assault, will find themselves in the invidious position of having to try to persuade the CICA that their case is exceptional, or a solicitor that he or she should take their case on in such circumstances.

It remains to be seen if an attempt to define 'exceptional reasons' will be made in the victim's favour or whether a full attack on this or other provisions of the scheme by way of judicial review application will be made.

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