



**PUBLIC PETITION PE1612 – CRIMINAL INJURIES COMPENSATION SCHEME
EVIDENCE TO THE PUBLIC PETITIONS COMMITTEE**

Victim Support Scotland (VSS) is a national charity that supports people affected by crime through the provision of practical help, emotional support and essential information. VSS welcomes the opportunity to provide evidence to the Public Petitions Committee on the Criminal Injuries Compensation Scheme.

The criminal injuries compensation scheme as originally established in 1964 did not allow compensation to be awarded to any victims of intra-family violence. It is our understanding that the rule change in 1979 was to ensure that victims of abuse within a family setting could be awarded compensation whilst at the same time preventing any circumstance in which the perpetrator could benefit from the award. It is clear that changing the rule was the right decision to make at this time. The problem lies however, in the approach of applying the change of rule prospectively, instead of retrospectively.

A recent Judicial Review has revealed the reasons for this approach:

“When criticism was made of the rule in 1972 as being unjust, the government’s response was to make a prospective change but to retain the rule for injuries inflicted before 1 October 1979. That was done because of the difficulty in estimating the cost of wholesale abolition...The change meant that victims of family violence inflicted after that date would be eligible for compensation and thus extended the scheme... The rule does impose a “bright line” rule which excludes claims for injuries occurring before the relevant date. It thus does discriminate. But it was done in that way because it was not thought possible to estimate the cost of abolition.”¹

VSS agrees that the prospective application of the 1979 ‘same roof rule’ is discriminatory. The current application of this rule is arbitrary as it creates superficial categories against which victims of historic abuse are judged, with significant consequences for their recovery and wellbeing. The rule creates a system in which victims are denied compensation because of **where** the abuse happened (within versus out with the family home) and/or **when** it happened (pre- or post- 1 October 1979). These details should be inconsequential as to whether the abuse is recognised and the harm acknowledged through an award of criminal injuries compensation.

¹ Opinion of Lord Burns in the petition MA for Judicial Review of the withholding of criminal injuries compensation to the petitioner on the basis that the injuries suffered by her were inflicted by a family member of the same household before 1 October 1979, [2016] CSOH 115 P243/15 29 July 2016

For example, we have supported families where abuse has been perpetrated against several individuals as children, but only some have been awarded compensation due to the abuse spanning a number of years (across 1979). In addition, individuals who were abused within in-care settings are currently eligible for compensation whilst those who were abused within the family home are not. It is understandable that this is often perceived by victims of intra-family abuse to mean that their experience is not as valid or as important as those abused in care. It should be recognised that this rule affects not only those affected by sexual abuse, but physical and domestic abuse also.

We draw attention to the fact that the opportunity to change this rule through the reform of the criminal injuries compensation scheme in 2012 was not taken due to the financial and administrative burden that would be put on the scheme. VSS questions the validity of the position to award compensation to some victims of historic abuse, but not to others, based on financial or administrative concerns.

VSS believes that the current approach goes against the CICA's commitment "to provide a compassionate, efficient and fair service to blameless victims of violent crime" and the aim of the scheme in being "society's way of recognising that [they] have been a victim of crime."² In fact, denying compensation to victims of intra-family historic abuse that occurred before 1 October 1979 can re-traumatise many victims. The Scottish Parliament, in passing the Victims and Witnesses (Scotland) Bill (now 2014 Act), has recognised the significance of protecting victims from secondary victimisation, with this as one of the general principles of the Act. As part of the state's response to victimisation, we would like to see the criminal injuries compensation scheme reflect this principle.

Although we recognise the difficulty in estimating the cost of abolishing this element of the rule, we believe the issue to be fundamental to the scheme's integrity and to the Scottish and UK Governments' commitment to recognising the harm caused by this abuse. We understand that different approaches have been discussed as to how the change could operate, such as separate schemes for victims currently excluded under the existing criminal injuries compensation scheme. Our preference would be for all victims to be eligible to claim through one scheme to allow for clarity, consistency and fairness.

A scoping exercise would be required to estimate the cost of changing the rule so that those abused between 1964 and 1979 would be eligible to apply for compensation. It should be acknowledged that only victims of abuse who are otherwise eligible to apply for the scheme would be awarded compensation (i.e. the victim has reported to the police as soon as reasonably practicable, has cooperated in bringing the assailant to justice, has evidence of physical injuries if applicable; the victim's character, as defined by previous criminal convictions, also affects whether and to what extent an award is given).

² CICA Customer Charter, <https://www.gov.uk/government/organisations/criminal-injuries-compensation-authority/about/about-our-services>

VSS would like to see victims who are currently excluded from the scheme be awarded the same amount as other victims of similar abuse. The process of claiming for compensation for a criminal injury should be the same for all victims to avoid discriminatory practices of any kind.

Conclusion

Victim Support Scotland believes the denial of compensation to victims of family violence that occurred before 1979 under the criminal injuries compensation scheme's 'same roof rule' to be arbitrary and discriminatory. We support the petitioner in his aim to see a change to the rules to enable victims of historic abuse to be treated equally, and agree with Mr McKinlay that "the issue is not just about money; it is about recognition for what happened to all those who still suffer, many years after they were abused."³ We would prefer for all victims to be covered by the same scheme, and to be awarded comparable sums of compensation regardless of where or when the abuse took place.

³ Scottish Parliament Official Report, Public Petitions Committee Meeting, 10th November 2016, col 16