

Communication Workers Union

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Secondary Legislation Scrutiny Committee
House of Lords
London
SW1A OPW

Dear Sirs ,

'Draft' Criminal Injuries Compensation Scheme 2012 - CWU Submission to the House of Lords Secondary Legislation Scrutiny Committee

The Communication Workers Union which represents 222,000 Employers in the postal and telecommunications industry wishes to make a submission to the Secondary Legislation Scrutiny Committee regarding the above.

In early 2008 when we had reached the point whereby 6,500 Postmen and Women were attacked by dogs that year and 2 were nearly killed. Since then we have gained cross-party support in England, Scotland, Wales and Northern Ireland for change, we have achieved the introduction of new laws in Scotland and in Northern Ireland and gained commitments to do likewise in Wales and England.

We have gained the backing of the Trade Union movement, all the leading Animal Welfare Charities, the Vets, Medical profession, Police, Dog Wardens., employers, parents of child victims and the medical profession amongst others.

As an aside and to our surprise, the Ministry of Justice launched a Public Consultation "Reform the Criminal Injuries Compensation Scheme (CICS)" Consultation Document entitled Getting It Right For Victims & Witnesses" Ministry Of Justice Consultation Paper CP3/2012, issued January 2012.

In Paragraph 186 of the Consultation Document, it listed the things that the Minister proposes or intends to exclude in future. The 6th bullet point states

"Where a person has been the victim of an animal attack, unless the animal itself was used deliberately to inflict an injury on that person. This is a tightening of current

policy under which claims have in some cases been considered from applicants attacked by dangerous dogs not kept under proper control." The CWU is totally opposed to this proposal for very important reasons and strongly requested that the Minister reviewed and withdrew the proposal.

23,000 Postal Workers have been attacked By Dogs in the last 5 Years. 12 Postal workers on average are attacked by dogs every day, amounting to around 5,000 injured every year in dog attacks and two were nearly killed in 2007 and 2008. Many are never able to return to their job due to the physical and psychological effects of the attack.

Many are scarred and receive facial disfigurement for life. Many have lost fingers through dog bite amputations and many others have sustained dog bite injuries leading to painful lacerations and puncture wounds, nerve, ligament, tendon damage, fractures, serious infections, disability, and disablement.

This group of workers who suffer the disproportionate majority of violent dog attacks now need the support of the Law, the Enforcing Authorities the Judges and Courts in dealing with the problem as well as the support of the **Criminal Injuries Compensation Scheme (CICS) which in many cases is the only remaining avenue for obtaining Personal Injury Compensation for many Postal and BT workers** who have suffered personal injury through a violent Dangerous Dogs Act crimes, caused by irresponsible, reckless and negligent Dog Owners who are both uninsured and are individuals who do not have the financial means to pay any compensation and cannot therefore be obligated in law to do so. This is known as the doctrine of the "Man of Straw". The injuries to Postal workers may be physical or mental, or both and in some cases have resulted in near-death.

Despite calls from the CWU and other organisations, the Government has repeatedly rejected the introduction of Compulsory Third Party Insurance for Dog owners to protect themselves as defendant's in such circumstances where personal injury compensation is appropriate to be paid to a successful victim, plaintiff. Until such time as Dog Owners are obliged to own a suitable policy of insurance to protect themselves in such Dog Attack injury circumstances the Criminal Injuries Compensation Scheme must in our view remain open to claims from victims in circumstances where an offence is caused by irresponsible ownership and leads to a dog attacking and injuring an innocent individual worker going about their job or an innocent child or member of the public.

At a time when the UK Dog Population has reached 9 to 10 Million and continues to rise, along with the significant increase in Dog Attacks, (around 250,000 a year in the UK) it would be totally wrong of the Government to close the door in the face of Dog Attack victims. The proposal, if not withdrawn will totally eliminate the last avenue for dog attack victim's injury compensation claims.

Although the Criminal Courts have the ability to issue Compensation Orders to the value of thousands of pounds, they are rarely ever given and in most cases if Compensation Orders are made, they are small amounts at most reaching several hundreds of pounds. The Ministry of Justice's view is that Compensation Orders should be linked to the ability to pay. The combined effect of the Government and its Ministers decisions is therefore that a Dog Attack victims ability to obtain compensation will be determined by the Owner's substance which is grossly unfair.

This can and regularly does result in cases where an irresponsible dog owner's vicious aggressive and uncontrolled dog severely injures a Postal Worker. The Owner has no Third Party Insurance so no compensation there, the owner has no Money in the bank and no

possessions so no compensation there, the owner goes to court but has no ability to pay a criminal compensation order so no compensation there, the victim goes finally to the Criminal Injuries Compensation Scheme as a last resort but the proposals before parliament will result in no compensation there either if the Government/Ministry of Justice's proposal is not changed.

It's also worth noting that Pay-outs from the Criminal Injuries Compensation Scheme contrast starkly with the amounts awarded by the civil courts, which often run into five or six figures. Many people who have suffered physical and psychological harm as victims of dog attacks receive substantially reduced compensation payments in comparison with compensation paid by Insured Dog Owners. The proposed change will restrict access to a form of justice for those who have been injured in dog attacks through no fault of their own."

Additionally compensation payouts to most of those currently eligible for compensation will receive nothing in future even for serious or permanent injuries or will see their compensation claim severely reduced.

Payments for loss of earnings are also being drastically cut and in future will be based on SSP (£84 per week) instead of the victims average earnings. This will apply to those with long term permanent disabling injuries as well as to those unable to work again and to dependants of fatally injured victims.

Most victims of serious dog attacks suffer financially with sick pay often much less than normal rate of pay and again these proposals will penalise those unfortunate victims.

The public would not welcome the proposal to stop CICS claims for Dog Attack victims and the government should instead be introducing changes that rebalance the law in favour of the victim not the offenders which is what is being proposed. We had hoped that our response to the Criminal Injuries Compensation Scheme consultation document would have been taken into account and the proposed exclusion of Dog Attack Victims Claims from the CICS Scheme withdrawn.

In Part two of the government response to the Ministry of Justice consultation CP3/2012 entitled "Compensation for victims of violent crime in Great Britain - The scope of the Scheme" on Pages 40 and 41, paragraphs 156 and 160 state as follows:-

A small number of respondents expressed concern about the proposal to expressly exclude injuries resulting from an animal attack (unless the animal was intentionally used with intent to cause injury). Those respondents argued that the circumstances in which victims (such as postal workers) who sustain injuries from an attack by an animal are compensated should be broader, not narrower. We have considered all of the responses and acknowledge the complexity of defining a crime of violence. We believe that eligibility should be tightly defined and should not allow for payments to be made outside the core purpose of the Scheme, which is to make awards to those who suffer serious physical or mental injury as the direct result of deliberate violent crime. We have considered again injuries resulting from a trespass on the railway, those injured or killed in road accidents and those injured as a result of an animal

attack (unless the animal was used with intent to cause injury), but we believe that these cases involve injuries sustained in incidents outside the core purpose of the Scheme and that the proper redress in these circumstances would be found elsewhere – through an insurance claim, a compensation order as a result of criminal proceedings or a civil claim.

The government therefore intends to go ahead and implement their proposals. As stated above the government has consistently opposed "compulsory third party insurance" for dog owners but this response states that victims should get redress 'through an insurance claim' it also suggests that other avenues would be a civil claim or a criminal compensation order. Civil Claims only succeed if you are suing a person with money and likewise criminal compensation orders are based on the ability to pay and therefore if the owner of a dog that has injured a victim has no money then the compensation order will be a pittance. Therefore the government are facing both ways and are in a complete mess. As a result dog attack victims who have to settle for CICS payments (which are far lower than Insurance payments) are now facing losing the last available avenue for personal injury compensation.

A further suggestion made by the Ministry of Justice is that postmen and women injured in dog attacks could sue their employer Royal Mail and hold them to account for failing in their duty of care. This suggestion is however, preposterous as Royal Mail can demonstrate that they have worked closely with CWU to reduce the risks so far as so reasonably practicable by way of information, instruction, training, supervision and provision of PPE and therefore highly unlikely that a Court would hold Royal Mail responsible for the irresponsible actions of a blasé dog owner.

Additionally, CICS claimants cannot receive recompense from any other source. The CICS already only makes awards to those who cannot receive compensation from any other source that is in respect of dog attacks, from (A) The Dog Owner as in many cases they have no means of making payment to the victim, so there is no purpose in pursuing a civic personal injury claim (B) From the Employer as it virtually impossible to secure personal injury compensation from an employer in a civil court with employer liability insurers resisting such claims vigorously and the courts when tested holding that the employers are not liable.

The draft scheme has to be laid before Parliament under section 11(1) of the Criminal Injuries Compensation Act 1995 for approval by resolution of each House of Parliament. The CWU calls upon the House of Lords to restore the "Draft" Criminal Injuries Compensation Scheme 2012 as currently proposed.

Yours Sincerely

Dave Joyce

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