

Briefing by Usdaw – Cuts to Criminal Injuries' Compensation for Victims

Udaw is the Union for Shop, Distributive & Allied Workers. We have over 420,000 members working mainly in retail, but also in distribution and allied areas. We deal with hundreds of claims for Criminal Injuries Compensation on behalf of our members who are seriously injured by criminals, both at work and outside, and have amassed considerable experience of the Criminal Injuries Compensation Scheme.

Udaw have serious concerns about the Statutory Instrument reflecting the changes to the Criminal Injuries Compensation Scheme (CICS) that were detailed in the Government's response to the Ministry of Justice consultation 'Getting it right for victims and witnesses' which was published on 2 July.

Key Points – Cuts to Compensation for over 90% of Victims

The proposed changes to the Scheme (CICS) will cut between £40m and £60m a year from the £200m cost of the scheme. According to figures in the Impact Assessment for the average cases over 2008/09 and 2009/10, the effect of the changes will be:

- 50% of victims currently eligible for compensation would receive nothing in future, even for quite serious and permanent injuries (18,600 cases on average).
- Over 40% will see their compensation claim severely reduced (15,300 cases).
- Only 9% of victims (3,200 cases) with the most severe injuries or fatalities will be eligible for the same amount of compensation. These amounts have not increased at all since 1996.
- Payments for loss of earnings (for those off work for more than 28 weeks) are being drastically cut. Rather than the victim's average earnings, only the level of Statutory Sick Pay (£85 a week) will be paid to those with long-term and permanent disabling injuries, to those unable to work again, and to dependants of fatally injured victims.

Cuts to Compensation for 91% of Victims of Crime

The introduction to the Government's response to the consultation says that, "The revised scheme will ensure that where payments are made they are to blameless victims of serious crimes."

However the Government's proposals will abolish or cut payments to 91% of blameless victims who suffer significant injury by criminals so we do not believe that the proposals fulfil the Government's aims.

Why Compensation is Important to Victims

Compensation is very important to victims, both financially and emotionally:

1. **Recognition:** Victims who currently receive compensation under CICS undergo considerable suffering – both the trauma of a crime and attack, and also any physical injuries, which have to be significant and long-lasting to attract any award. As the scheme says, compensation gives recognition for the pain and suffering of the victim.
2. **Financial assistance:** most victims injured by criminals suffer financially. Statutory sick pay is often much less than their normal rate of pay and those who work part-time, including 35% of front-line retail staff, earn too little to qualify for SSP. Many victims of crime end up in debt and the compensation is essential to pay off this debt.
3. **Closure:** many victims suffer long-lasting emotional effects of an attack which can affect their ability to get back to work, where they can feel very vulnerable, and often affects their relationships. The receipt of compensation gives a sense of closure on an attack, and helps victims to recover from the trauma.

Criminal Injuries Compensation is far from Generous

The tariff payments were not generous when they were introduced in 1996 and they have not been increased since, even to allow for inflation which totals 48.5% since 1996.

Wherever possible, Usdaw will always pursue a claim against employers' liability insurance on behalf of our members who are victims of criminal attack in the workplace, as although the circumstances where this can be done are extremely limited, reasonable payments made tend to be between 2.5 and 4 times the amount receivable under CICS. (However recent judgements are limiting this option even more – see below.)

Victims Cannot Receive Recompense from any other Source

CICS already only makes awards to those who cannot receive recompense from any other source. They are unable to obtain compensation:

- **From an assailant:** assailants are often not apprehended. Even when they are caught, they usually have no means of making payment to their victim, so there is no purpose in pursuing a criminal or civil claim for liability.
- **From an employer:** it is virtually impossible to secure compensation from an employer in the civil court. Employers rely on their Employers Liability Insurance to cover any such claim, and insurance companies fight very hard against claims.

However, the Court of Appeal recently upheld that “no employer could be expected to go so far as to prevent any robbery taking place at all”, and

therefore employers did not breach their duty of care by not preventing robberies.

CICA remains the only option for most victims of violent crime to seek any recompense.

The Criminal Injuries Compensation Scheme

The Government's Impact Assessment states the CICS "makes payments to victims of violent crime with no recourse to other sources of compensation". The Scheme says this is "in recognition of a sense of public sympathy for the pain and suffering of the victim."

The compensation due to innocent victims of crime gradually increases with the severity and effects of their injuries, with the less serious in Band 1 and the most severe in Band 25. Only injuries that disable the victim for at least 6 weeks are compensated.

The scheme is already rigidly policed. In 2009/10, of 65,000 applicants, only around 37,000 (57%) received a compensation award.

Process

These changes will be introduced by Statutory Instrument in the House of Lords and come into effect on the earliest of 2 weeks after this, or on 30 September.

The Victims & Witnesses Unit of the MoJ stated on 6 July that: "The Government response (to the Victims & Witnesses consultation) was published on 2 July. On the same day the revised Scheme was laid before Parliament, where it must be debated and approved by both Houses before it can be implemented. It is for parliamentary business managers to decide when these debates will be timetabled so we do not at this stage know when they will be held."

The Cuts

1. Scrapping all Compensation for Injuries in Bands 1 – 5 (50% of all awards)

Injuries in Bands 1 to 5 are currently eligible for between £1,000 and £2,000 compensation. If these bands are scrapped, some very serious injuries and conditions would no longer qualify for any compensation, including:

- Permanent speech impairment
- Partial deafness lasting more than 13 weeks
- Multiple broken ribs
- Post traumatic epileptic fits
- Burns and scarring causing minor facial disfigurement

- Victims of needle attacks by assailants brandishing hypodermic needles are unlikely to receive compensation at all without lasting physical or psychological injury, despite the circumstances of the attack and the stress of waiting for test results.

2. Cutting compensation for Bands 6 – 12 (41% of awards)

Bands 6 – 12 include very serious, permanent injuries and currently attract compensation between £2,500 for band 6 to £8,200 for band 12. These rates will be slashed by between £1,500 and £2,000 each, for injuries including:

- Significant facial scarring
- Permanent brain injury resulting in impaired balance and headaches
- Penetrating injury to both eyes
- Fractured joints including elbows, both knees and vertebra, resulting in continual significant disability
- Punctured or collapsed lung

3. Payment for Loss of Earnings Limited to rate of Statutory Sick Pay

Payments for loss of earnings for those off work for more than 28 weeks are being drastically cut. Rather than the victim's average earnings, only the level of Statutory Sick Pay (£85 a week) will be paid to those with long-term and permanent disabling injuries, to those unable to work again, and to dependants of fatally injured victims.

Only a few victims are off work for long enough to qualify for compensation for loss of earnings – only around 1,000 a year. These victims can find it takes many months or years before they are able to return to work, both because of their physical injuries and for some the mental trauma sustained.

Victims who do not receive full sick pay (as many don't) will already have been trying to survive on SSP or less for 28 weeks. SSP is usually much less than the normal rate of pay and those who work part-time, including 35% of front-line retail staff, often do not earn the requisite £107 a week to qualify. Limiting payment for loss of earnings to the rate of SSP will push victims of serious injury who have to take a long time off work into serious poverty through no fault of their own.

It will also penalise those striving to return to work on reduced hours or in a different capacity and so suffer a partial loss of earnings. Currently this would be compensated, but not under the new scheme, which will penalise those who are striving to return or remain in work following injury. This is incompatible with aims of rehabilitation.

Case Studies of Usdaw Members who were Victims of Violent Crime

Frankie, a customer services advisor aged 28, was attacked on a woodland path on his way to work in a large supermarket on the southside of Glasgow. Frankie suffered two stab wounds and was left with 8 scars on his face, hands and forearms after one of his attackers held him down whilst the other slashed at him with a sharp object before robbing him. His assailants were never identified.

Frankie was off work for almost a year and says the incident turned his life upside down because of the trauma. He still gets anxiety and panic attacks. He was diagnosed with post traumatic stress syndrome, for which he has received counselling.

"There was more worry on the financial side than anywhere else, because of having to pay for my house and children," he said. "General household bills were more of an issue. But it made life a wee bit easier knowing that I was gong to get some sort of compensation."

The £2,500 he received in compensation would be reduced to £1,000 under the government's proposals, which he said would leave him homeless.

Ashley, a part-time cashier aged 27 from Milton Keynes, feared for her life after a gun was held to her head during an armed robbery.

"It was very, very frightening. I was working on the cigarette kiosk, it was about 10.30pm, when suddenly three hooded men burst into the store. One of them had a gun, he pulled me by the back of the hair, and held the gun to my head screaming 'give me the money and cigarettes.'"

Ashley was off work for 3 weeks and says "The incident is still very fresh in my mind, at times I get very anxious and impatient. I have good and bad days. Loud noises make me jump and I'm very wary in public places, especially when I see someone wearing a hooded top."

Ashley received £1,000 compensation for the 'temporary mental anxiety' that she suffered. Under the new rules, she would receive nothing.

Simon aged 33 was the manager of a convenience store in Stoke-on Trent who risked his own safety when he disarmed an axe-wielding man during an attempted robbery.

"I saw a man at the till waving an axe and shouting at the checkout assistant. As I went to grab the handle of the axe there was a bit of a tussle and it fell to the floor. I managed to kick it out of the way. Two customers came to my aid and we held him down until the police arrived. He became more aggressive and started lashing out, then he bit my leg."

The man was arrested and detained indefinitely under the Mental Health Act. Simon received a £1,250 award from the CICA for his injuries and the mental trauma he suffered. He also received a Public Bravery Award from the local police.

Under the changes to the CICS, he would receive nothing.

Victims of violent criminals like Frankie, Ashley and Simon have suffered enough.

They should not suffer more from abolition or cuts to their only means of recompense. Please oppose cuts to the Criminal Injuries Compensation Scheme.