



BRIEFING PAPER

Number 07498, 16 May 2019

Criminal Injuries Compensation for victims of child abuse

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Summary

What is the Criminal Injuries Compensation Scheme?

The Criminal Injuries Compensation Scheme (CICS) is a State scheme to compensate people who have been physically or mentally injured because they were the blameless victim of a violent crime. The Scheme covers England, Scotland and Wales. The Criminal Injuries Compensation Authority (CICA) administers it. There have been four different schemes since criminal injuries compensation was put on a statutory footing in 1995. Which scheme applies depends on the date the CICA receives the application. This can be important in cases of historic abuse, where claims and appeals can take years to resolve.

Why is there a controversy about victims of child abuse?

The CICS has a range of specific awards for injuries related to sexual abuse and can also make awards for mental injuries. There are several aspects of the Scheme, outlined below, that can affect victims of historic child abuse.

The “same roof rule”

Under this rule, victims cannot get compensation if they were injured before 1 October 1979 by someone living under the same roof as themselves. The rule was changed in 1979, but the change was not made retrospective. Successive governments have decided not to change this “same roof rule” retrospectively, for cost and other reasons. The current Government said it will abolish the pre-1979 effect of the rule, following a 2018 Court of Appeal judgment, which held that the rule could lead to discrimination. This will require secondary legislation which is, at the time of writing, awaited.

The “two-year rule”

Generally, applications must be made “as soon as reasonably practicable” after the event and in any case within two years of the incident, although this can be extended. The 2012 scheme makes specific provision for victims of child abuse in relation to this rule, whereas the 2008 Scheme did not. Some claimants have successfully challenged refusals to extend the time limit. Some argue that the rule itself does not adequately reflect the reasons why victims of child sexual abuse do not report it promptly.

Reducing/withholding awards due to victims’ criminality

Criminal injuries compensation awards can be reduced or withheld because applicants have unspent convictions; campaigners argue that some child victims of grooming commit offences because they are pressured by the perpetrators.

“Consent” to sexual activity

Some organisations reported in July 2017 that the CICA was denying compensation to victims who had been sexually abused as children because they had “consented” to the sexual activity. The Government responded with revised (but unpublished) guidance in October 2017. Campaigners have welcomed the guidance but say that more far-reaching reform of the CICS is necessary.

Reform of the CICS

In September 2018 the Government [said it would review](#) the CICS examining, in particular, whether it could better serve victims of child abuse. Amending the CICS will require secondary legislation, which the Government [has said it will introduce](#) as soon as parliamentary time allows.

1. Criminal Injuries Compensation

1.1 What is the Criminal Injuries Compensation Scheme?

The Criminal Injuries Compensation Scheme (CICS) is a State scheme to compensate people who have been physically or mentally injured because they were the “blameless” victim of a violent crime. It covers England, Scotland and Wales.¹

1.2 How the CICS has changed over the years

The first criminal injuries compensation scheme was [introduced in 1964](#).² It was a non-statutory scheme which made *ex gratia* payments to victims. Four further non-statutory schemes were then introduced, in 1966, 1969, 1979 and 1990.

The *Criminal Injuries Compensation Act 1995* provided a statutory basis for the compensation schemes that followed. Copies of the rules that have been made under the statutory scheme since 1995 are available online.³ The rules that apply to an individual’s case are the ones in force when the Criminal Injuries Compensation Authority (CICA) received his or her application. The different schemes are:

- [The Criminal Injuries Compensation Scheme 1996](#) (for applications received on or after 1 April 1996)
- [The Criminal Injuries Compensation Scheme 2001](#) (for applications received on or after 1 April 2001)
- [The Criminal Injuries Compensation Scheme 2008](#) (for applications received on or after 3 November 2008)
- [The Criminal Injuries Compensation Scheme 2012](#) (for applications received on or after 27 November 2012).

The 2012 CICS is the current scheme (although it is being reviewed by the Government with a view to amendment – see below). It was introduced following a consultation on Coalition government plans to cut costs by reducing compensation payments to victims of crime, as part of a “rebalancing” exercise which saw increased spending in other areas of victims’ services. Background is in Library Briefing Paper 6451, [Changes to Criminal Injuries Compensation](#).

There is [general guidance](#) on the 2012 scheme on the Gov.uk website.⁴ Guides to the earlier schemes are also available.⁵

The amount of payment that victims of physical and sexual abuse can receive depends on the nature of the injury. There is a tariff of injuries in

¹ Section 13, *Criminal Cases Compensation Act 1995*

² HC Deb 05 May 1964 vol 694 cc1127-243

³ From a combination of [Her Majesty’s Courts and Tribunals Service Court and Tribunal Form Finder for Criminal Injuries Compensation Scheme](#), and the archived versions of CICA’s website

⁴ Criminal Injuries Compensation Authority and Ministry of Justice, [Criminal Injuries Compensation: A guide](#)

⁵ [Her Majesty’s Courts and Tribunals Service Court and Tribunal Form Finder for Criminal Injuries Compensation Scheme](#),

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Annex E to the 2012 scheme that provides special rates for sexual assault ([Part B](#)), including for historic sex offences where the victim was not compensated as a child. Levels of possible award for sexual assault range from £1,000-£44,000. Injuries can include mental injuries. Where the person has sustained a mental injury as a result of a sexual assault, they will be entitled the payment for either the sexual assault or the mental injury, whichever is highest.⁶

⁶ Paragraph 34

2. The “same roof rule”

2.1 The current rule

[Paragraphs 19 and 20](#) of the 2012 Scheme contain the current “same roof” rule:

An award will not be made in respect of a criminal injury sustained before 1 October 1979 if, at the time of the incident giving rise to that injury, the applicant and the assailant were living together as members of the same family.

An award will not be made in respect of a criminal injury sustained on or after 1 October 1979 if, at the time of the incident giving rise to the injury, the applicant and the assailant were adults living together as members of the same family, unless the applicant and the assailant no longer live together and are unlikely to do so again.

The “same roof” rule can affect child abuse victims who lived with their attackers where the injuries took place before 1 October 1979. It could also affect adult domestic violence victims where the injuries took place on or after 1 October 1979, unless the assailant and victim have stopped living together. A similar rule applied under the original non-statutory schemes, as well as under:

- [paragraph 7](#) and [paragraph 17](#) of the 2008 Scheme
- [paragraph 7](#) and [paragraph 17](#) of the 2001 Scheme
- [paragraph 7](#) and [paragraph 16](#) of the 1996 Scheme

2.2 The origins of the rule

The first CICS, introduced in 1964, set out that:

Offences committed against a member of the offender’s family living with him at the time will be excluded altogether.⁷

A 1964 Government White Paper said that the rationale for the same roof rule arose out of:

the difficulty in establishing the facts and ensuring that the compensation does not benefit the offender⁸

The rule preventing awards of compensation in domestic violence and other such cases was also contained in paragraph 7 of the *Criminal Injuries Compensation Scheme 1969*:

“Where the victim who suffered injuries and the offender who inflicted them were living together at the time as members of the same family no compensation will be payable. For the purposes of this paragraph where a man and woman were living together as man and wife they will be treated as if they were married to one another.”

The rule dates from 1964 when the Scheme was introduced.

⁷ Paragraph 7, cited in a judgement of the Upper Tribunal Administrative Court Chamber, [JTV-FtT and CICA \[2015\] UKUT 0478 \(AAC\)](#), 1 September 2015

⁸ Compensation for Victims of Crimes of Violence, Cmnd 2323, 19645

The “October 1979 rule”

Following a review by an interdepartmental working party which reported in 1978, a revised scheme came into operation in October 1979.⁹ The working party’s report set out the case for change and the difficulties to which cases of family violence gave rise. The report noted that in a family case there were problems of establishing the facts and of assessing the precise part that each party played in the circumstances leading up to the injury. It also noted that there was an additional problem caused by the possibility that the assailant might benefit from any compensation paid to his victim. This was particularly acute in cases of injury to children. However, following their recommendation, the 1979 scheme removed the complete exclusion of claims in respect of family violence. This change was not made retrospective; compensation for abuse predating October 1979 remained subject to the rule.

The ban was lifted in October 1979, but this wasn’t made retrospective.

2.3 Legal challenges

Successful legal challenge

On 24 July 2018 the Court of Appeal handed down judgment in [JT v First-Tier Tribunal](#)¹⁰ holding that the pre-1979 application of the rule discriminated against the appellant, referred to in the proceedings as “JT”.

JT argued that compensation was property within the meaning of Article 1 Protocol 1 of the European Convention of Human Rights, and that the rule was discriminatory on the basis of birth, contrary to Article 14 of the Convention. The discrimination point relied on the fact someone abused by the same person at the same time, but who did not live under the same roof due to the fact they were not in the same family, would not be subject to the rule.

The effect of the judgment was to disapply [in JT’s case](#) the relevant rule of the [Criminal Injuries Compensation Scheme 2012](#). The judgment, thus, applied only to the case before the court, leaving the Scheme itself intact. Nonetheless, the Government did not appeal to the Supreme Court and announced later in the year that it would abandon the same roof rule (see below section ‘Government policy’).

Previous legal challenges

The rule has provoked several other legal challenges. In 1999 a victim of familial sexual abuse sought to challenge the rule at the European Court of Human Rights; the Court declared her claim to be inadmissible.¹¹

In June 2007 a woman challenged the decision of the Criminal Injuries Compensation Appeal Panel refusing her compensation in respect of sexual abuse inflicted by her father before 1971.¹² She was refused compensation due to the same roof rule. She sought a declaration that the rule was incompatible with her human rights but was unsuccessful.

⁹ M J Moriarty, *Review of the Criminal Injuries Compensation Scheme : report of an interdepartmental working party*, SOP (Home Office) NS 35, 1978

¹⁰ [2018] EWCA Civ 1735

¹¹ *Stuart v UK* 6 July 1999 Application no. 41903/98

¹² *S v Criminal Injuries Compensation Appeal Panel* [2007] CSH 49;

In another case a man appealed unsuccessfully against refusal of compensation for injuries inflicted by his foster parents.¹³

2.4 Government policy

Current policy

In September 2018, following the Court of Appeal's judgment in *JT*, the [Government said](#) it would review the CICS and scrap the pre-1979 application of the same roof rule:

we will remove the pre-1979 rule and we will consider further changes to the remaining 'same roof' rule and previous failed applications. In July 2018, the Court of Appeal decided that the pre-1979 'same roof' rule had unfairly denied a claimant who was abused as a child by her stepfather the right to compensation. The government agreed with the judgement and has decided to abolish the pre-1979 'same roof' rule and will not appeal the decision.¹⁴

The commitment to abolish the rule was reiterated in the Ministry of Justice's *Victims Strategy* ([page 19](#)), also published in September 2018. Terms of reference for the broader review of the CICS [were published](#) in December 2018, with the Government indicating "We intend to publish a full consultation on the reform proposals in 2019".¹⁵

Previous policy

Previous Conservative Government policy

In March 2016, Mike Penning, then Minister of State at both the Home Office and the Ministry of Justice, set out the Government's position as it then was:¹⁶

Asked by [Andrea Jenkyns](#) (Morley and Outwood)

30135

To ask the Secretary of State for Justice, whether juvenile victims of incestuous sexual abuse are eligible to claim criminal injury compensation; and what limitations apply to that eligibility.

Answered by: [Mike Penning](#)

Answered on: 15 March 2016

We deeply sympathise with anyone who has been a victim of crime. Some victims of incestuous sexual abuse may be eligible for compensation under the Criminal Injuries Compensation Scheme which awards taxpayer-funded payments to victims who are seriously injured as a result of violent crime.

From 1964 to 1979 the scheme did not allow compensation to be awarded where the offender and victim lived in the same household as members of the same family. The so called 'same roof rule' was part of the original scheme and was introduced to stop offenders benefiting from compensation paid to victims who lived with them. It was amended in 1979 so the restriction only

¹³ [R \(On the Application of M\) V the Criminal Injuries Compensation Appeals Panel \[2003\] EWHC 243 Admin](#)

¹⁴ Justice Secretary announces victim compensation scheme review, scraps unfair rule, Gov.uk, 9 September 2018 [accessed 2 April 2019]

¹⁵ [Victims update: Written statement - HCWS1198](#)

¹⁶ [PQ 30135 \[on Criminal Injuries Compensation: Young People\]](#), 15 March 2016

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applied to adults who remained living together after the incident. This was to protect payments to the most seriously injured victims of crime, while reducing the burden on the taxpayer. The changes to the 'same roof rule' were not applied retrospectively. This decision was consistent with the general Government approach that rule changes apply to future claimants, rather than in respect of historical claims.

The Government puts the highest emphasis on the needs of victims, which is why the Ministry of Justice has given them more rights and increased funding for specialist support to help victims of such heinous crimes.

In a Written Answer on 26 April 2016, Mike Penning confirmed that he had “no plans to review the rule”.¹⁷ On 20 September 2017, Dominic Raab, Minister of State at the Ministry of Justice, said in response to a PQ that since 1 January 2015, 180 applications from victims of sexual abuse have been refused compensation by CICA as a result of the same roof rule; CICA does not hold information for before that date.¹⁸

Coalition Government changes in 2012

The Coalition Government reviewed criminal injuries compensation and introduced a new scheme which came into force on 27 November 2012. Background is in Library briefing 06451, [Changes to Criminal Injuries Compensation](#).¹⁹

The Coalition Government reformed the scheme, but

In its [equality impact assessment](#) for the review of the scheme, the Ministry of Justice set out the policy towards claims where the assailant might benefit and argued that, following the consultation, the policy would be maintained (although provisions requiring a prosecution to have been brought would be removed):

154. We proposed to retain these rules designed to prevent an assailant benefiting from an award, both in relation to incidents before, on and after 1 October 1979. In respect of incidents on or after 1 October 1979, an award will not be paid in the case of adults, unless the assailant and victim have stopped living together and the claims officer is satisfied that they are unlikely to do so again. However, we proposed to remove the provision (which is set out in paragraph 17 (a) of the current Scheme) which states that an award will not be paid unless a prosecution has been brought (or there are good reasons why not). We considered that in the light of the reporting and cooperation requirements in the Scheme removal of this paragraph was proportionate.

(...)

“166. However, we will retain our policy in the historic rules relating to injuries prior to 1 October 1979. In these cases, awards will not be made where the victim and assailant were living together as members of the same family. This rule was changed in 1979 to make it easier for victims of crime in their own homes to claim compensation. However, at that time the decision was taken to change the rules prospectively rather than retrospectively. This was a legitimate choice made at the time, and was in line with the general approach that changes are ordinarily

¹⁷ [PO 904678 \[on Sexual Offences: Compensation\]](#), 26 April 2016

¹⁸ [PO 10039 \[on Criminal Injuries Compensation: Sexual Offences\]](#), 20 September 2017

¹⁹ 16 November 2012

made going forward, rather than in respect of historic claims. The rule has therefore been a feature of every Scheme since 1979.

167. In the light of the potential impacts of retaining the rule, we have considered whether the Secretary of State should amend the rule in relation to injuries sustained before 1 October 1979. We have concluded that it is justified to retain that rule on the basis that one of the aims of the reform of the Scheme is to reduce the burden on the taxpayer and make the Scheme sustainable in the long term. On that basis, and taking into account the policy reforms to reduce elements of compensation in the Scheme in the future, and restrict its scope, we will not change this rule as it would have the effect of increasing the Scheme's potential liability in an uncertain way in respect of injuries sustained between 1964 and 1979, more than 30 years ago. To open the Scheme up in this way would also involve a significant administrative burden for CICA and could present difficulties for claims officers in establishing the link between the offence and the injuries."²⁰

The 2012 scheme was approved by the House of Commons on 12 November 2012.²¹

The Labour Government

Under Tony Blair, the Labour Government considered changing the rule, but decided not to, as this response to a Parliamentary Question from Hilary Benn (then a Home Office Minister) describes:

Hilary Benn [*holding answer 18 June 2002*]: We conducted a thorough review of the criminal injuries compensation scheme following a public consultation exercise launched in 1999, and made a number of significant changes to the scheme with effect from 1 April 2001. As part of that exercise we considered whether to change the rule which precludes payment of compensation for intra-family sexual abuse which occurred before 1 October 1979. However, we decided for a number of reasons that the rule should not be changed.²²

Like Conservative governments before it, the last Labour Government decided not to change the rule.

Another PQ response given by Home Office minister Paul Goggins in November 2004 showed that the reasons were to do with cost:

(...). Proposals to admit cases involving intra-family violence occurring before the 1 October 1979 rule change have been considered whenever amendments to the scheme have been mooted. However, successive administrations have decided not to change the rule because it would add a large and unacceptable burden to the costs of the scheme.²³

2.5 Parliamentary debate

On 23 November 2017, Iain Stewart raised the issue of the same roof rule in an adjournment debate titled [Same Roof Rule: Familial Sexual Abuse Cases](#), highlighting the case of his constituent, Alissa Moore, who was sexually abused by her father along with her sisters. Because her abuse stopped before 1 October 1979, she was not able to get compensation, whilst her sisters were able to. Mr Stewart argued that

²⁰ Ministry of Justice, [Reform of the criminal injuries compensation scheme.: Equality impact assessment](#), July 2012, p37 and pp39-40

²¹ HC Deb 12 November 2012 cc141-3

²² HC Deb 1 July 2002 c183W

²³ HC Deb 11 November 2004 c892W

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the rule should be relaxed in such cases and that he did not believe there could be many cases “so the administrative and financial consequences would be minimal”.²⁴ He went on to argue for wider reforms of the rule:

Over many years, Governments of all colours have been asked to review the rule. When they have done so, the defence for maintaining the status quo has been that change would cause a disproportionate financial and administrative burden. Those are not factors that we should dismiss lightly, but I remain to be convinced that such a burden would result. I have yet to see definitive figures from the Government for the number of cases that would be expected to arise. Andrew Perriman’s research suggests that it would be about 80 a year, and that the compensation per case would probably be less than about £20,000. That does not strike me as a disproportionate burden on the public purse, but if my figures—or Mr Perriman’s—are wrong, I should be grateful to be told why that is the case.

Mr Perriman also proposes a solution to the funding issue, if there is one. He has established that the Ministry of Justice has an annual £500,000 hardship fund which is barely touched in any one year; in one recent year, the amount spent was less than £2,000. Could that pot of money not be reallocated to the small number of cases involved? As the charity Women Against Rape has pointed out to me, achieving justice and compensation is seen by the victims as a proper and official recognition of the wrong that has been done to them, and it is often a crucial step on their path to recovery.²⁵

Responding, the then Under-Secretary of State for Justice Sam Gyimah highlighted a 2005 Labour consultation on victims *Rebuilding Lives: Supporting victims of crime*²⁶ and the Coalition Government’s 2012 consultation on wider reforms to the Criminal injuries Compensation Scheme, *Getting it right for victims and witnesses*.²⁷ Neither explicitly referred to the Same Roof Rule, but Mr Gyimah highlighted more general principles:

The change to the scheme in 1979 was not made retrospective. The Labour Government reviewed this approach in 2005 in the consultation paper “Rebuilding Lives: supporting victims of crime”, which proposed major changes to the scheme. It stated:

“We recognise that changes to the scheme mean that some cases would be dealt with differently in the future and that some applicants who have already received their compensation would have received more under a new scheme. However, we do not believe that it would be fair or workable to apply changes retrospectively.”

The most recent scheme was introduced on 27 November 2012 following a consultation exercise called “Getting it right for victims and witnesses”. The Government considered that to open the scheme up in this way could present difficulties for claims officers in establishing a link between the offence and the injuries

²⁴ [HC Deb 23 November 2017 c1285](#)

²⁵ *ibid*

²⁶ Criminal Justice System, Cm 6705, December 2005

²⁷ Ministry of Justice Consultation Paper CP3/2012, January 2012; see also the Government’s response, Ministry of Justice *Getting it right for victims and witnesses: the Government response*, July 2012

in individual cases. The rule does not exclude victims who were abused in an institutional or public setting such as a school, hospital or care home prior to 1979. However, the Government understand that the same roof rule may affect some victims of abuse who were children at the time.²⁸

Mr Gyimah went on to highlight the forthcoming strategy for victims which, he said, would look at the compensation scheme:

Hon. Friends will be aware that the independent inquiry into child sexual abuse is looking closely at the issue of compensation for victims of child sexual abuse, and the Government await its recommendations. The Criminal Injuries Compensation Authority, my officials and interested groups have an ongoing dialogue about the scheme in the context of victims of child sexual abuse. We are determined to ensure that victims get the compensation to which they are entitled under the rules of the scheme. That is why the Criminal Injuries Compensation Authority has reviewed its staff guidance to ensure that every instance where grooming could be a factor is identified. The authority is also improving staff training to help to get decisions right first time, every time. The compensation scheme will also be looked at as part of the Ministry of Justice's work to develop a strategy for victims, which we aim to publish next year.²⁹

Petition in the Scottish Parliament

A campaigner, Graham McInley, whose late wife was sexually abused by her father has submitted a [petition](#) to the Scottish Parliament to have the rule changed.³⁰ The Scottish Parliament Information Centre produced a briefing for the Scottish Public Petitions Committee.³¹ Mr McInley gave oral evidence to the Committee on 10 November 2016.³² The CICA wrote a letter to the Petitions Committee on 7 December 2016, which included the following:

I should also make the committee aware that the same roof rule provisions (and in particular the exclusion of claims for injuries occurring before 1 October 1979) have been the subject of a number of legal challenges both in Scotland and in England. Most recently, decisions have been made by the Outer House of the Court of Session and by the Upper Tribunal (see undernote) rejecting those challenges. However, the legal proceedings remain ongoing.³³

On 14 July 2017, the Second Division of the Inner House of the Court of Session gave judgment on one of the cases which the CICA referred to. The petitioner had sought judicial review of the decision to withhold compensation because of the same roof rule, arguing that it was discriminatory. The Court rejected this, holding that the discrimination was proportionate and the rule was "a prudent policy decision".³⁴

²⁸ [HC Deb 23 November 2017 c1287](#)

²⁹ [Ibid](#), c1288

³⁰ [PE1612, logged 29 July 2016](#)

³¹ SPICe, [Briefing for the Public Petitions Committee](#), Petition Number: PE1612, 25 July 2016

³² [SP OR PPC 10 November 2016 \(draft\)](#)

³³ Criminal Injuries Compensation Authority, [Letter to the Public Petitions Committee](#), 7 December 2016

³⁴ MA v Criminal Injuries Compensation Board 2017 Scot (D) 17/7

3. The “Two Year Rule”

Generally speaking, applications for Criminal Injuries Compensation have to be made “as soon as reasonably practicable” after the event and in any case within two years of the incident. However, this can be extended.

The [Criminal Injuries Compensation Scheme 2012](#) makes specific reference to claimants who were under 18 when the incident which caused the injury took place. [Paragraph 88](#) says that in these cases, the application must be sent so that CICA receives it:

- by the time the person was 20 (if the abuse was reported to the police when they were still under); or
- within two years of the date it was reported to the police if this happened once they were 18 or over

Even if this one of these criteria are met, the claims officer would still have to be satisfied that “the evidence presented in support of the application means that it can be determined without further extensive enquiries by a claims officer. ”

[The Criminal Injuries Compensation Scheme 2008](#) which, as noted above, is still the relevant for some claimants, did not make special provisions for those who were injured as children. Under this scheme, the two year rule applies in the same way to all claimants, but can be waived if:

- it is practicable for the application to be considered
- in the particular circumstances of the case, it would not have been reasonable to expect the application to be made within the two year period.

It is for the applicant to make out the case for waiving the limit.³⁵

Some claimants have successfully challenged refusals to extend the time limit at judicial review. Once such case, which centred on the 2008 scheme, found that CICA should not simply have ruled the application as being “irredeemably out of time because it was made 20 years after the last of the incidents”:

To take such a stance would ignore the very real reasons such an individual will have for not disclosing either the abuse itself or the full extent of such abuse in the first place and the time that it takes to begin to come to terms with such traumatic experiences.³⁶

Individuals wishing to challenge decisions by CICA to withhold compensation under the two year rule would need specific legal advice based on the circumstances of the case. Library Briefing Paper, [Legal help: where to go and how to pay](#), may be helpful.

³⁵ [Paragraphs 18-19](#)

³⁶ [\(R \(MJ\) v First-tier Tribunal and Criminal Injuries Compensation Authority \(No 3\) \(CIC\) \[2014 UKUT 279 AAC\] \[JR 553 2012\]](#)

Some argue that the rule still does adequately reflect reality of victims' experience in coming to terms with such events.³⁷

3.1 Current government policy

As part of the broader review of the CICS (see above) [announced](#) in September 2018, the Government has indicated that it will review:

time limits for applications – the scheme's time limit requires that applications be made by a person over 18 as soon as practicable and no later than 2 years after the date of the incident. It is suggested that victims of child sex abuse disproportionately delay reporting such crimes and applications for compensation, and therefore miss out on compensation.³⁸

³⁷ See for example, Thornton's Solicitors blog, [Is the Criminal Injuries Compensation Scheme Fit for Purpose?](#), August 2017 The Library cannot endorse any individual firm or organisation

³⁸ Justice Secretary announces victim compensation scheme review, scraps unfair rule, Gov.uk, 9 September 2018 [accessed 2 April 2019]

4. Criminal convictions

As noted above, the Criminal Injuries Compensation Scheme is designed to compensate “blameless” victims of crime. Under the Scheme, compensation can be withheld or reduced because the applicant has previous unspent convictions. Details are in [Annex D: Previous Convictions](#) of the 2012 Scheme.

Under the Rehabilitation of Offenders Act 1974, eligible convictions or cautions can become spent after a specified period of time known as the “rehabilitation period”, the length of which varies depending on the nature of the conviction or caution imposed. Library Briefing Paper 1841, [The Rehabilitation of Offenders Act 1974](#) contains more detail

[The guidance to the scheme](#) says:

We may refuse or reduce a payment if you have a criminal record, even though you may have been blameless in the incident which resulted in your injury.

Annex D of the Scheme says that we must take account of your unspent criminal convictions at the date of application and before we make a final decision. In general, the more serious the sentence you receive, and the more recently it was given, the longer the conviction will take to be spent.

For types of convictions not listed in Annex D, the guidance states that the Scheme “will reduce the payment if you have unspent convictions unless there are exceptional reasons not to do so”. Reduction depends on how recent the conviction was and its severity.

Campaigners have argued that can be wrong to apply this rule in cases where child victims of sexual abuse have been groomed and possibly coerced into committing crimes:

Other flaws in the CICS scheme which prevent blameless victims of violent crime being compensated for the crime they have suffered include the rule stating that victims who have unspent criminal convictions should have their awards reduced or withheld; and the ‘same roof rule’ which prevents any victim who was living with their attacker as a member of the same family at the time of an assault, from claiming compensation if the offence took place before 1 October 1979. Over the past five years 159 victims aged sixteen or under have had an award for a sexual offence refused due to having unspent criminal convictions, many of these offences would have been committed as part of the child’s exploitation.

Over the past ten years, 1,484 victims have had their claims rejected due to the ‘same roof rule.’ These victims are those who have suffered the most serious and appalling of crimes, including child abuse. Many have endured years of violence in their own homes, yet are denied compensation because the abuse took place before an arbitrary cut-off date. The ‘1979 same roof rule’ should be abolished and the ‘unspent convictions’ rule must be made more proportional to ensure that the Criminal Injuries

Compensation Scheme(CICS) fulfils its aim of compensating blameless victims of violent crime in Great Britain.³⁹

4.1 Current government policy

As noted above in the discussion of the Same Roof Rule, the Government [announced](#) in September 2018 that it would review the CICS considering, in particular, its effect on victims of child sexual abuse. Among the matters to be considered by the review is the effect of unspent convictions:

the scheme automatically excludes an award if the applicant has an unspent conviction which resulted in a specified sentence (custodial sentence, community order or youth rehabilitation order). It is suggested the rules disproportionately impact vulnerable victims of child sex abuse who may have offended in response to being abused/exploited/groomed.⁴⁰

³⁹ NWG, [Government "denying sexually abused children compensation"](#), 17 July 2017

⁴⁰

5. "Consent" to abuse

[Annex B](#) to the *Criminal Injuries Compensation Scheme 2012* defines what a "crime of violence" means for the purposes of the scheme, and includes in its definition "a sexual assault to which a person did not in fact consent".

In July 2017, a coalition of organisations including the [National Working Group](#), Victim Support, Barnardo's, Rape Crisis England and Wales and Liberty wrote a letter to the Justice Secretary, David Lidington saying that CICA was turning down applications for compensation on the grounds that the child victim had "consented" to the abuse:

While the law states it's a crime to have sexual activity with someone under the age of 16, this is not reflected in compensation decisions. Payment rules are being interpreted to suggest children can consent to their abuse.

The coalition is calling for the rules to be changed so no child groomed and manipulated into sexual abuse is denied compensation because they complied with their abuse through fear, lack of understanding, or being brainwashed into believing their abuser loved them.⁴¹

Sarah Champion raised this issue, together with the "same roof" rule and the problem of coercion to carry out criminal activities

Asked by: Sarah Champion

Will the Secretary of State commit to updating the guidance in three specific areas? First, children cannot be complicit in their own abuse. Secondly, as part of a grooming process, children are coerced into carrying out criminal activities. Thirdly, will he look at compensation for victims of family abuse under the same roof before 1979? At the moment, CICA is denying compensation on those grounds.

Answered by: David Lidington | Ministry of Justice

I am happy to look further at all those three issues. Following some of the concerns expressed earlier this year, CICA decided to mount an urgent re-examination of its own internal guidelines—in particular, to make sure that there is no risk that a child could be disqualified from compensation because they had given consent when that consent had, in effect, been forced from them by a subtle process of grooming. The Department is also aware of concerns that have been raised about how the rules of the scheme work more generally in relation to cases of child sexual abuse. We are talking to organisations such as Barnardo's and Victim Support in detail about those concerns and the reforms that they propose to deal with them.⁴²

Ms Champion reported on her website that she had met Mr Lidington to discuss these and related issues⁴³

⁴¹ NWG, [Government "denying sexually abused children compensation"](#), 17 July 2017

⁴² [HC Deb 5 September 2017 c7](#)

⁴³ [Sarah Champion MP Meets Secretary of State to urge review of Criminal Injuries Compensation Authority \(CICA\)](#), 12 October 2017

On 31 October 2017, the *Guardian* reported exclusively that fresh guidelines had been issued to ensure that child victims of sexual abuse would not be denied compensation on “the mistaken grounds that they had consented to a relationship”.⁴⁴ The article quotes from the text of the guidelines, which do not appear to have been published elsewhere:

The new guidance for staff states: “Even if it appears that the minor expressed consent to the acts in question, it cannot be assumed that this was given because the child wanted to engage in sexual activity as this may actually be a symptom of coercive control.

“The surrounding circumstances always require to be investigated as these may indicate that the situation was abusive and the consent was not true consent.

“You should be mindful that an applicant may not realise they have been abused at the time of the incident due to the coercive effects of sexual grooming or child sexual exploitation. Victims may be tricked into thinking that they are in a loving, consensual relationship when the reality is that they are being subjected to the abuser’s coercive control.

“Only where it is clear that the sexual activity was of the applicant’s genuine free will should it be found that no crime of violence has occurred and that the sexual activity should not attract compensation under the scheme.”

A letter from David Lidington to the chair of the Justice Committee said:

The new guidance has been shared by CICA with stakeholders, including those who made vital contributions to the review.⁴⁵

Liberty, Barnardo’s and Victim Support welcomed the changes, but said that the scheme was still “broken”:

We hope that clearer instructions for CICA staff and specialist training will mean survivors will no longer be denied compensation on the grounds that they complied with their abuse.

This should make a huge difference to many and give survivors the recognition and compensation they need to be able to put the abuse behind them and start rebuilding their lives.

We are pleased CICA has listened to our concerns, but while these guidelines are a huge step forward in protecting the rights of innocent victims, they can only interpret a broken scheme. It is scandalous there is no legal definition of grooming, compensation is not available for non-physical sexual abuse, and the ‘same roof’ rule still denies compensation to victims abused prior to 1979 by someone they lived with.

No child can consent to abuse. Until the Criminal Injuries Compensation Scheme as a whole is amended, a risk of injustice will remain.⁴⁶

⁴⁴ “[Child sexual abuse victims to be granted compensation following criticism](#)”, *Guardian*, 31 October 2017

⁴⁵ [Deposited Paper \(DEP2017-0613\)](#), 31 October 2017

⁴⁶ Liberty [Changes are welcome, but risk of injustice remains - Liberty, Barnardo's and Victim Support respond to new compensation guidelines for victims of grooming](#), 31 October 2017

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