

#### About Thompsons

Thompsons is the most experienced trade union, employment rights and personal injury law firm in the country with 28 offices across the UK.

Thompsons only acts for the victims of injury, never for employers or insurance companies. The firm has responded to all the previous consultations on reforming the CICA scheme.

We act for the majority of trade unions whose members may be injured at work through acts of criminal violence. We have represented 384 such members in 2011-2012. Over half of the successful claimants were awarded £2,000 and below, with the majority of the rest receiving awards of £8,200 and below.

#### Introduction

Thompsons is opposed to the proposed abolition of the lower tariff bands of the Compensation Scheme (CICS). This move will remove from eligibility the majority of people injured as a result of criminal violence during the course of their work.

The vast majority people we represented in the last year who were injured at work as a result of crime were public sector workers, mainly in the health service, education and local government.

Seeing the consequences of criminal injury on those simply trying to carry out their job, Thompsons has always argued that victims of crime should be given a wider range of support and that support should be targeted at those who need it most. However, the firm believes that abolishing the lower levels of compensation and reducing awards in the middle ones will only punish and alienate victims.

Emotional and practical support for victims is important. But practical support, if it does not extend to financial support for, say, loss of earnings due to the injuries caused by the criminal act, runs the risk that the most practical issue, how to pay the bills, is left out and victims are financially punished.

If someone is injured at work due to employer negligence, they can claim compensation for loss of earnings and other losses on their employer's insurance. Under these proposals, someone who is assaulted at work and left with exactly the same injuries as a colleague with a civil claim, but who cannot pursue a civil claim because it is not possible to prove that their employer could have prevented the assault, will be unable to claim a penny.

We accept that supporting victims is about more than simply providing them with financial assistance. But an award under the scheme should represent both an acknowledgement by society of what has happened to them as well as leaving them in a position financially as if the incident never happened.

Even in these straitened times, it cannot be right to restrict compensation to injuries that are "more severe" and thus disregard other injuries that society would judge as worthy of compensation.

We consider the proposal that offences connected with trespass on the railway, including suicide or attempted suicide, be removed from the scheme is particularly objectionable. We set out our reasons in our response to Q33 below.

Please note that in responding to this consultation, we have addressed only those questions which are directly relevant to claimants injured in the course of their duties.

## Response to the questions

### **Q33. How should we define what a “crime of violence” means for the purpose of the Scheme? What are your views on the circumstances we intend to include and exclude from the definition?**

The government’s justification for removing offences connected to trespass on the railways, including suicide or attempted suicide, is that these are not crimes of violence.

In the 1980’s, on an instruction from the train drivers’ union ASLEF, Thompsons went to court to establish that those killing themselves in front of a train were committing a crime of violence. Even though the House of Lords was not convinced that suicide was within the CICS, the government was persuaded that railway workers should be able to claim compensation for the trauma of seeing someone use their train as a way to commit suicide or from having to deal with the aftermath of the suicide.

It was accepted in 1990 that the best way to compensate those who suffered from the consequences of suicide was to allow payments to be made under the CICS.

It is a train driver’s job to concentrate on the line ahead and but this means they will often see a suicide some way off either kneeling down and putting their neck on the track or preparing to jump from a bridge. As they have plenty of time to take in the horror of the situation. They apply the emergency brakes knowing it is futile they have plenty of time to take in the horror of the situation. They hear a sickening thump on impact and will see blood and body parts thrown up as they hit the body.

It is an experience that drivers remember for their rest of their lives often in flashbacks and nightmares and whenever they have to pass the spot again. It can mean the end of their driving career.

Drivers are required to stop the train in case the individual needs urgent medical attention. Already in shock, they are likely to be traumatised by what they see. The driver has been exposed to a violent and traumatic event by an individual who will almost always have trespassed in order to gain access to the track. It is an insult to suggest that they have not been the victim of crime and do not deserve recognition for what they have been through.

We have numerous examples of drivers who have suffered nightmares and flashbacks for months and years after a suicide. Many struggle to return to driving duties, or are unable to drive again on the line where the suicide happened.

We are currently representing a driver who explains in his CICA statement: “This incident has caused me and my family an enormous amount of upset and stress. I am having continual flashbacks to the event, which is making my normal daily life at home and work impossible. I am struggling to have a good night’s sleep. I am tired and irritable and have been unable, at this time, to resume my normal duties. My wife and children have also been affected by this event and the stress and upset it has caused. I am currently having counselling sessions.”

We recently appealed an award of £1,000 for a driver who was so badly traumatised that he could not return to work or normal duties for several months. He had been driving his train at around 100mph when he saw a man standing in the middle of the track. He sounded his horn and tried to stop the train, but was unable to do so. The man on the track was killed instantly. A psychiatrist’s report confirmed the extent of the driver’s psychological injury and he was awarded £6,689 on appeal.

The majority of claims (and statistically there are relatively few – we ran 150 claims on behalf of ASLEF members and 63 for RMT members last year) are awarded £1,000. As a money saving measure, removing railway suicides from eligibility has little to offer.

No reference is made in the consultation document of incidents in which drivers are left injured and traumatised by vandalism – most commonly where bricks are thrown from bridges or from the side of the track at the driver’s windscreen.

This is clearly a crime of violence. The perpetrator can be in no doubt that their act will affect the driver. It must be the intention of the person throwing the object to cause damage and they must have in their minds that the driver will be a victim left severely injured or even killed. By the time the police arrive the assailants will have fled. There is little prospect that their identity will be ascertained or that anyone can be sued - even if they had the money to pay. The employer cannot be held liable so the CICS is the only means the driver has of obtaining compensation for what they have been through.

We seek an assurance that this sort of act carried out as a result of trespass on the railway will continue to be eligible as a crime of violence.

**Q34 What other circumstances do you believe should, or should not, be a “crime of violence” for the purposes of the Scheme?**

We refer to our response to Q33.

**Q35. To be eligible for compensation, should applicants have to demonstrate a connection to the UK through residence in the UK for a period of at least six months at the time of the incident?**

We find this proposal offensive. It is also contrary to the Rule of Law and discriminatory.

If someone is resident in the UK and are the victim of a crime in the UK then they should be entitled the same support as any other resident, irrespective of length of residence. Anything else implies somehow that individuals “forum shop” to get attacked or that they are a second class of victim.

**Q36. What are your views on our alternative proposal to exclude from eligibility for compensation only those who are not legally present in the UK at the time of the incident?**

We do not agree that anyone who is a victim of crime in the UK should be denied support and compensation because of their status as a UK resident. However, if the government is determined to exclude some foreign nationals from the scheme, then this is the least worst option.

**Q37. What are your views on our proposal not to make any award:**

- **Where the crime was not reported to the police as soon as reasonably practicable?**
- **Where the applicant has failed to cooperate so far as is practicable in bringing the assailant to justice?**

The current scheme allows a crime to be reported to another body, such as an employer who can, crucially, take immediate steps to deal with the issue to avoid a repeat. This is particularly important in cases involving assaults on staff by mental health patients in hospitals, inmates in prisons or pupils in schools where a prosecution is unlikely and the immediate involvement of the police may be unhelpful and/or a waste of their time.

In our experience, when employees report violent crimes to the police in these situations, the police show little interest because it unlikely they will prosecute.

Prison officers face being assaulted in the course of their duties by prisoners on a daily basis. The types of injuries they suffer vary but typically are as a result of the prisoner kicking, hitting out or pushing. Crucially, the injuries are rarely just physical. The psychological injuries that can result from such incidents can be as, and sometimes far more, serious.

With prison assaults, on prison officers and other prison workers, changing the rule and forcing victims to report the incident to the police, irrespective of the circumstances, including that the assailant was already in prison and would probably be reprimanded for the attack, is likely to deter genuine victims from claiming. This may be the government’s intention, but it discriminates against these workers.

We question whether, at a time of deep public sector cuts affecting the police, whether being required to investigate all such incidents reported to them in order to assign crime references to enable the victim to apply to the CICA, this is the most effective use of police time.

**Q38. What considerations should be taken into account in determining what is reasonably practicable for the applicant with respect to reporting the incident and co-operating with the criminal justice system?**

We refer to our response to Q37 above. Consideration should always be given to whether it is reasonably practicable for someone who is a victim of crime during the course of their duties to report the incident to the police and co-operate with the criminal justice system.

**Q39. Do you agree that there should be an exception to the rule that the incident should be reported as soon as reasonably practicable in certain cases? What should those cases be?**

Yes, for the reasons and in the circumstances stated above.

**Q41. What are your views on the options for limiting eligibility to the scheme for those with unspent convictions?**

- **Option A, our preferred option, to exclude from the Scheme all those with unspent criminal convictions? Or**
- **Option B, to exclude those with unspent criminal convictions for offences that could lead to an award under the Scheme (ie violent and sexual crimes) with a discretion to withhold or reduce an award in the case of other unspent convictions.**

Option A could result in someone who is very seriously assaulted being unable to claim if they had any unspent conviction even, say, for a minor motoring offence, at the time of the assault.

No one chooses to be the victim of a crime of violence, there is no “good time” for it to happen, but for someone who is the victim of a very serious, life changing assault to not qualify for an award because they were three days, weeks or months away from a conviction with no relevance whatsoever to the incident being spent seems particularly arbitrary.

If the government is determined to exclude some claimants with unspent criminal convictions, then Option B would be the fairer option.

**Q42. Under Option A, what circumstances do you think are exceptional such that it might be appropriate for claims officers to exercise their discretion to depart from the general rule on unspent convictions?**

We oppose Option A for the reasons given above.

**Q45. What are your views on our proposed reforms to the tariff:**

- **Removing awards for injuries in bands 1 to 5 from the tariff except in relation to sexual offences and patterns of physical abuse?**
- **Reducing awards in bands 6 to 12 of the tariff except in relation to sexual offences, patterns of physical abuse, fatal cases and for loss of a foetus?**
- **Protecting all awards in bands 13 and above?**

Removing awards for injuries in bands 1 to 5 will exclude a great many injuries of the type typically suffered by working people who are the victims of violent crime in the course of their duties.

This proposal creates the deeply unjust situation where, if someone is injured at work due to employer negligence, they can claim compensation for loss of earnings and other losses on their employer's insurance whereas someone who is assaulted at work (never something one would seek or wish for) and left with

exactly the same injuries as a colleague with a civil claim will be unable to claim a penny however severe the injury or great the loss, unless they can prove their employer was responsible for the assault.

Bands 6 to 12 represent serious injuries. They would be worth a considerable amount as a civil claim and are already awarded significantly less by the CICA. These include eye injuries, scarring to the limbs and torso, moderate burns and injuries resulting in continuing significant disability such as fractured collar bones. To arbitrarily halve the awards in these bands goes against the whole notion of supporting victims of violent crime.

The consultation paper states that “a significant proportion of the [CICS] budget is spent on payments for those who suffer relatively minor injuries, such as a sprained ankle”. Firstly we would note that the government concedes these are not minor but rather “relatively minor”. Secondly there is already a de minimis award level. Thirdly, awards in bands 1 to 5 can be significantly more serious than a sprained ankle.

Take the paramedic assaulted by a patient while answering an emergency call and suffers broken teeth. They will have no access to justice if injuries in these bands are removed. Making a claim to the CICA in these circumstances isn't simply about getting some money for the sake of it for a relatively minor injury. The award is a contribution to the cost of dental treatment to fix the damaged teeth. Without it, and without any prospect of a civil claim because the assault was not foreseeable by the employer, the victim will have to pay for costly dental treatment themselves. They will be doubly impacted – a victim of violence and financially worse off.

Thompsons recently dealt with a claim for a prison officer who suffered a knee injury when he was assaulted trying to de-escalate an aggressive situation. He was also traumatised by the incident as he and his colleague had no idea if the prisoner was armed or not. The CICA denied the claim, advising a law enforcement officer had to be exposed to “an exceptional risk” to qualify for an award. We appealed and he was awarded £2,000.

Under the proposed reforms neither the officer's physical or psychological injuries would qualify for any award at all.

We act for the Fire Brigades Union. FBU members are often exposed to exceptional risk and can claim from the CICA for injuries sustained in the course of their duty if they are the result of attending a fire caused by arson and they act to save lives.

We acted for a firefighter who attended a fire where people were reported to be trapped. He dragged someone out of the burning building, injuring his back as he did so. He was awarded £1,000 by the CICA. There was no civil claim. Under the government's proposed reforms he would not qualify for an award.

Another firefighter, in similar circumstances, sustained burns to their neck and torso and have permanent scarring. He was awarded £5,075 by the CICA. Under the government's proposed reforms he would receive roughly half that amount.

We wonder how denying or halving compensation to a victim of crime who has been injured saving a life is providing that victim with support?

We have acted for many care workers employed in secure mental units who have been the victim of violent assaults by patients. We estimate that over 90% of patient assault cases end up as CICA claims – there is prospect of a civil claim against the employer because most attacks are not foreseeable, especially where the patient is suffering from a mental illness and risk assessments have been thorough.

Innocent victims of violent crime will be denied the right to justice.

For example:

Our client had both her wrists bent violently backwards by a patient. Both wrists were severely strained and the pain lasted up to two months. She was awarded £1,000 by the CICA. Under the proposals she would not qualify for an award.

A client suffered a dislocated thumb as a result of a patient bending it sharply backwards. She was awarded £2,000. Under the proposals she would not qualify for an award.

A patient tried to suffocate a care worker by putting a bag over her head. This was a terrifying experience and, unsurprisingly, the victim is suffered from mental anxiety. The CICA offered £1,000 but an appeal is ongoing and the final award is likely to be around £4,400 – band 9. Under the proposals this victim would get no more that £2,400 for a serious assault, if their appeal is successful.

A victim who suffered a fractured wrist and a neck injury was awarded £4,700 in total. This represented £4,400 for the fractured wrist and £1,000 for the neck injury lasting 6-13 weeks, paid at 30% ie £300. Under the proposed new tariffs the victim would get around half of the award for the fractured wrist and nothing at all for the neck injury.

**Q.47 What are your views on the options for changes to loss of earnings payments:**

**Option A, to cap annual net loss of earnings at £12,600 and continue to reduce payments to reflect an applicant's other sources of income?**

**Option B.1, to pay all applicants a flat rate equivalent to Statutory Sick Pay and not reduce payments to reflect an applicant's other sources of income?**

**Option B.2, as option B.1 but we would not make payments in any year where the applicant had employer-funded income in excess of £12,600?**

Option A represents a huge reduction from the current cap of approx £39k. To cap at £12,600, the current full-time minimum wage, will have a significant impact on those who lose earnings as a result of an assault and have commitments based on their income.

Option B is significantly below the minimum wage. Not taking into account other sources of income means that the payment is completely arbitrary.

**Q48. What are your views on our proposal that applications must demonstrate that they have no capacity to earn, or very limited earning capacity, to qualify for a loss of earnings payment? What should be taken into account when deciding whether an applicant has very limited earning capacity?**

In our view, this proposal places an unreasonable onus on an applicant's to qualify for a loss of earnings payment. This could be very difficult to adequately demonstrate and is dependant on issues such as medical opinion, qualifications, work history and job prospects. To prevent applicant's from recovering a loss of income where they could still be significantly worse off financially as a result of an assault is both unjust and disproportionate.

The proposal does nothing to assist victims who cannot return to the work they were doing before the incident and have to take lower paid jobs. We acted for an RMT member who was the victim of a terrifying armed robbery. He and a colleague were threatened at gunpoint by a serial armed robber as they closed a station for the night. Our client was struck over the head with the gun, while his colleague was forced at knifepoint by the robber's accomplice to hand over thousands of pounds of cash. They were both convinced they would be killed.

Our client was so traumatised by the incident that he was forced to take a long period off work and he will never be able to return to work as station staff. The job he has finally been able to return to pays a lower salary that he was previously on.

The substantial payment this victim of a violent crime received from the CICA included a loss of earnings award which will go some way to mitigating the impact of his losses both while he was off sick and now that he has returned to work on a lower salary. However, it is not clear if, under the proposals, he would qualify for a loss of earnings award.

To penalise someone who has been the victim of a violent crime in their workplace and who cannot return to their job as a direct result of that crime, but who is able to continue to work, albeit on a reduced income, is unreasonable and unfair.



**Q49. Should we retain all categories of special expenses other than for private medical care?**

Yes.

**Q52. Should we retain dependency payments and pay them in line with loss of earnings proposals?**

Yes they should be retained and they should not be limited. The proposal takes no account of how much the deceased person was earning and contributing to a household. If, for example, a father is murdered then the dependency claim would be just £8,400 or so, and half of that if it is based on SSP.

These are derisory payments which further punish the ultimate victims of the most severe crime.

**Q54. What are your views on our proposals to require applicants to supply the information set out above?**

Given that the CICA does not pay legal costs this proposal seems very onerous on vulnerable members of society who may still be traumatised and who are already under strict time limits. It seems designed to lead to claims being rejected on technicalities ie because the correct information has not been provided by the applicant, often through no fault of their own.

In our experience, obtaining relevant information from the Inland Revenue and other bodies can take a great deal of time. We suggest there should be a 2 stage process in which applicant's can provide required information after their application has been accepted.

**Q55. Please let us have your views on our proposal that applicants should pay a small cost (up to a maximum of £50) to obtain the initial medical evidence to make out their claim?**

This proposal is clearly intended to deter low paid victims from claiming. It is very far from the claimed intention of these reforms to give victims of crime more support.

**Q56. Where CICA continues to cover the initial medical costs, should this be deducted from the final award (up to a maximum of £50)?**

No. We are opposed to any deduction from awards. CICA awards are significantly less than civil compensation so someone who is assaulted at work and left with exactly the same injuries as a colleague with a civil claim would, if they were able to apply to the CICA at all, be penalised still further by a deduction. This is not giving support to the victims of crime.

**Q58. What are your views on our proposal to reduce the time available for applicants either to accept the claims officer's decision, or seek a review, from 90 to 56 days, with a further 56 day extension for exceptional reasons?**

In our view, this is an attempt to disqualify claimants from seeking a review. We see no advantage to be gained by it otherwise.

It is crucial that claimants have 90 days to accept or seek a review. The CICA rarely send the evidence they have obtained in order to make their decision. Thompsons always has to request the evidence and it can take some time to arrive.

Only if the CICA commit to providing the evidence with the decision would reducing the time limit be acceptable, although that in itself would not justify a reduction.

**Q60. What are your views on our proposal to remove the option to request a reopening of a case on medical grounds?**

In our experience, re-opening of cases is rare. Re-opening requests are made only when there is a serious deterioration in a claimant's condition. In our view, in those few cases where the medical evidence is unclear, or there is a serious risk of relapse/deterioration of the condition, then the claimant should be entitled to return to the CICA for additional compensation should such a deterioration happen. Removing this provision denies justice to a victim who suffers a serious deterioration in their condition.

**Q61. What are your views on our proposal for deferral of Scheme decisions?**

We do not agree with the proposed time limit of four years. As said above, there should be a provisional damages provision for conditions or deterioration which may develop many years after the incident.

**Q62. What are your views on our proposal to enable claims officers to withdraw a review decision under appeal and issue a decision in the applicant's favour?**

This proposal is long overdue. At Thompsons we see many cases which have to proceed to an appeal hearing unnecessarily because of the absence of this provision. Often at appeal the CICA offers no argument as they do not dispute the appeal. This only increases delays and costs for both sides and incurs Tribunal costs. This could all be avoided by this provision.

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