

# The new Criminal Injuries Compensation Scheme: denial of justice for victims of violent crime in the workplace

Thompsons' briefing

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The Ministry of Justice consultation *Getting it right for victims and witnesses*, which ended in April, contained proposals seriously restricting the ability of workers injured in the course of their duties as a result of a criminal act to apply for compensation from the Criminal Injuries Compensation Authority (CICA).

Justice secretary Ken Clarke disregarded the opposition to these reforms by trade unions, lawyers and justice groups and laid a draft Statutory Instrument on 2 July 2012 to bring a new CICA scheme into force on 30 September, or within two weeks of it being passed by the House of Commons.

The new scheme was debated by the House of Lords on 25 July and went before a House of Commons delegated legislation committee on 10 September but the regulation to implement the new scheme was not moved after opposition from all sides. The government then claimed that it "had listened to the views expressed in Parliament" and would consider its next steps.

- By reintroducing the new scheme without amendment, ministers have not listened to the voices of victims or their representatives.
- The government is determined to push through these devastating cuts even though the savings to be gained are minimal.
- By the MoJ's own admission, removing the lower tariff bands from the scheme, halving the value of the middle bands and stopping train drivers who witness suicides on the track from claiming at all could "deliver savings to the taxpayer of about £50m a year".
- We believe it is substantially lower than that.

Below we set out the key reforms which will impact on workplace victims:

## **THE REFORMS**

### **1. Eligibility impact**

- Eligibility will depend on establishing that the victim is a victim of a crime of violence, the definition of which is changed in order to restrict claims.
- Eligibility will also be restricted by a number of new criteria including residency, reporting of the crime, conduct and unspent convictions.

#### *Definition of a crime of violence*

- The definition of a crime of violence (contained in Annex B of the new draft scheme) is:
  1. A physical attack;
  2. Any other act or omission of a violent nature which causes physical injury to a person;
  3. A threat against a person, causing fear of immediate violence;

4. A sexual assault to which a person did not consent;
  5. Arson or fire-raising.
- An act will constitute a crime of violence where it is done either intentionally or recklessly.
  - A crime of violence will not be considered to have been committed for the purposes of the scheme if an injury:
    1. resulted from suicide or attempted suicide (unless the suicidal person acted with intent to cause injury to another person);
    2. Resulted from the use of a vehicle (unless the vehicle was used with intent to cause injury to a person);
    3. Resulted from an animal attack (unless the animal was used with intent to cause injury to a person).
  - Train drivers traumatised by railway suicides will therefore be excluded from the new scheme.
  - Secondary victims must now have witnessed and been present at the immediate aftermath.

### *Residency*

- The victim must be “ordinarily resident” in the UK. This is a new eligibility criterion and is made more complex by rules about whether applicants are staying with a British family or have made an application for asylum or been the victim of human trafficking.

### *Reporting*

- Failure to report the crime of violence “to the police “as soon as reasonably practicable” or to cooperate as far as is reasonably practicable in bringing the assailant to justice, will disqualify the applicant.
- This is a significant change as the current scheme allows the crime to be reported to another “appropriate body”, such as the employer, and not only to the police.

### *Conduct*

- An award may be withheld or reduced if the conduct of the applicant before, during or after the incident giving rise to the criminal injury makes it inappropriate to make an award or a full award.

### *Unspent previous convictions*

- *Deductions for previous convictions will continue to be made and the Tribunal will no longer have discretion in this.*

## **2. Tariff**

- Significant changes to the tariffs mean that the vast majority of injuries involved in work-related claims will go uncompensated.
- Injuries in bands 1-5 (£1,00 - £2,000) have been removed. These are the majority of awards received by union members.
- Injuries in bands 6-12 (£2,500 - £11,000) are significantly reduced (approximately halved).
- The multiple injuries formula is unchanged (100% first injury, 30% second, 15% third).
- The maximum award cap remains £500,000.

### **3. Loss of earnings**

- Loss of earnings (LOE) provisions are dramatically changed.
- The applicant must be able to demonstrate that they have no or very limited capacity for paid work as a direct result of the injury.
- They must have been in paid work on the date of the incident which resulted in the injury (or throughout the period of a series of incidents).
- They must have been in regular paid work for at least three years immediately before the date of the incident which resulted in the injury.
- Therefore a victim who is able to continue to work, albeit on a reduced income, will be ineligible for a loss of earnings award.
- A victim who was not in regular employment for at least three years before the incident, or in full time study or caring responsibilities for that time.
- LOE claims will also be significantly reduced as they will refer not to pre-assault pay but to statutory sick pay which is currently £4,462.20 pa.

### **4. Special expenses**

- The definition of special expenses, such as medical treatment and care needs, is further restricted. They must have been “necessarily” incurred as a direct result of the injury, as opposed to being reasonably necessary under the current scheme.
- They must not be available free of charge from another source.

### **5. Fatal claims**

- Loss of financial dependency claims will be limited to age 18 and to the average SSP, divided equally between each dependent.

### **6. Time limits**

- Applications must be sent as soon as reasonably practicable after the incident and in any event within two years of the date of the incident.

### **7. Medical evidence**

- Applicants must now provide medical evidence in relation to the injury.
- The CICA will only fund the medical evidence where the applicant cannot get or afford it and it costs over £50.
- The CICA can deduct £50 from the award and any fee for appointments the applicant has failed to attend without reasonable excuse.

### **8. Review and appeal applications**

- Time limits for reviews and appeals are reduced from 90 to just 56 days. Applicants must give notice of acceptance of an award within 56 days or it may be withdrawn.