

A GUIDE TO  
CRIMINAL INJURIES COMPENSATION AUTHORITY (CICA)  
CLAIMS

➤ **What is the CICA?**

The CICA is a government-funded Scheme, designed to compensate blameless victims of violent crime, which includes sexual and physical assaults and child abuse offences.

In addition, secondary victims are also eligible for an award under the Scheme if they sustain an injury which is directly attributable to being present at and witnessing an incident, or the immediate aftermath of an incident, as a result of which a “loved one” sustained a criminal injury. A “loved one” is defined in the Scheme as a person with whom the applicant:

- (a) at the time of the incident had a close relationship of love and affection; and
- (b) if the loved one is alive at the date of the application, continues to have such a relationship.

This may be applicable in cases of physical assaults but is unlikely to apply in cases of sexual assaults where there are usually no witnesses.

The minimum award which may be made under the Scheme is £1,000 and the maximum is £500,000.

➤ **What is a “violent crime”?**

A violent crime is defined in Annex B of the CICA Scheme as a crime which involves:

- (a) *a physical attack;*
- (b) *any other act or omission of a violent nature which causes physical injury to a person;*
- (c) *a threat against a person, causing fear of immediate violence in circumstances which would cause a person of reasonable firmness to be put in such fear;*
- (d) *a sexual assault to which a person did not in fact consent; or*
- (e) *arson or fire-raising.*

It is important to note the reference at 1(d) to consent “in fact”, which appears to preclude claims by those who consent in fact to sexual activity where they could not consent as a matter of law.

➤ **Necessary considerations**

In order to make an application, the crime must have been reported to the police as soon as reasonable practicable and the applicant must have co-operated with any prosecution which arose as a result.

An application can be made even if no one has been caught or convicted, as long as a crime has taken place and the applicant has suffered a personal injury as a result.

The applicant’s injuries must be serious enough to merit the CICA’s minimum payout of £1,000.

➤ **Time limits**

An application should be made as soon as possible and not later than two years after the incident.

Where a victim is under 18 at the time of the incident, and it is reported to the police, an application can be made on their behalf by a parent or guardian. Where this was not done, the victim has until their 20<sup>th</sup> birthday to make an application.

Where an incident occurred before the victim turned 18, but it was not reported to the police at the time, an application must be made within two years from reporting to the police.

The CICA does have discretion to extend these time limits but will only do so if:

1. due to exceptional circumstances an application could not have been made earlier; and
2. the evidence provided in support of the application means that it can be determined without further extensive enquiries by a claims officer.

*1. Exceptional circumstances*

There is not much guidance on what amounts to “exceptional circumstances”. Through successful appeals to the CICA, we have learnt that the CICA will consider (i) whether the applicant could have applied earlier (ii) if not, what are the reasons and (iii) do the reasons amount to exceptional circumstances. It may also consider how long it took the applicant to come to terms with what happened, when he/she disclosed the incident to his/her family and the police

and whether any factors identified in the evidence on the above were sufficiently exceptional that the application could not have applied earlier.

Where the applicant is suffering from some mental trauma or psychiatric injury as a result of the incident, this can be used as evidence to successfully argue that this effectively acted as a bar mentally in the applicant making the application earlier.

Most applicants find it very difficult to go through the police investigation and, in cases where the perpetrator pleads not guilty, have to deal with the trauma of attending a trial. In cases where the perpetrator is not convicted this can be even more traumatising. This too should be used as evidence of exceptional circumstances.

The best way to explain why the applicant was unable to apply earlier due to exceptional circumstances is by way of a detailed witness statement from the applicant.

This is a subjective test rather than objective, which means each application is assessed on its own particular facts and the circumstances have to be exceptional to the particular applicant.

## *2. Evidence*

The main evidence in support of the application to show that it can be determined without further extensive enquiries by a claims officer would be police documents.

Newspaper articles, medical articles relating to psychological impact on victims following a violent crime, therapy records, psychiatric report and statements from friends and family who know about the incident can also be used to support the application.

### ➤ **How compensation is calculated**

The CICA Scheme contains a tariff system for awarding compensation for physical and/or psychiatric injuries. Within that tariff is a special category for sexual offences. The lowest awards of compensation under the CICA tariff for sexual assault are for one off episodes of non-penetrative sexual acts over clothing, amounting to a Level 1 category award of £1,000. The highest level of compensation for sexual assault is £44,000 which is awarded for repeated episodes of rape, over a period exceeding 3 years.

If an applicant suffers a mental injury as a result of a sexual assault, the CICA will pay either the tariff value for the type of assault or the value of the mental injury, whichever has the highest value; the applicant will not receive a payment for both. This is because the tariff for a sexual assault takes account of the mental trauma.

The CICA will pay for up to three injuries if each is so serious that it would qualify for an award on its own. This is calculated as:

- 100% of the tariff value of the most serious injury
- 30% of the tariff amount for the injury with an equal or second highest value
- 15% of the tariff amount for any additional injury with an equal or third highest value

There are additional tariff payments which can be awarded if, as a direct result of the injury or assault, the applicant:

- becomes pregnant;
- loses a foetus; or
- contracts a sexually transmitted disease.

➤ **Additional losses to be claimed**

*Loss of earnings*

If an applicant is unable to work as a direct result of a criminal injury, he/she may be eligible to claim loss of earnings.

The applicant must provide evidence to show that:

- he/she was in work at the time of the incident; or
- he/she has an established work history, or a good reason for not having such a history, during the three years immediately prior to the incident. This may include those in full time education or those who are unable to work by reason of their age or caring responsibilities; and
- the loss lasted longer than 28 full weeks. The period of 28 weeks will usually run from the date of the injury. An applicant cannot get loss of earnings for the first 28 weeks of loss.

Loss of earnings can be awarded up until the day the applicant is no longer incapable of working, or until the pension age or the expected end of life where the injury has shortened that period – whichever is the earliest.

### *Special expenses*

The CICA will consider claims for certain costs referred to as 'special expenses' which an applicant may have incurred as a result of the injury.

In order to qualify for a special expenses payment, the applicant must be able to prove that the goods or services, or something similar, is not available free of charge from another source. The expense must also be:

- necessary;
- incurred as a direct result of the criminal injury; and
- reasonable.

Claims for special damages may include, but are not limited to, the following:

- damage to property or equipment, relied on as a physical aid, caused in the incident (e.g. walking stick, glasses, dentures)
- costs arising from treatment under the NHS
- special equipment (e.g. wheelchairs, walking aids, kitchen implements)
- adaptations to the applicant's home, which can include changes both inside and outside the home (e.g. a ramp, a stair lift)
- cost of care
- costs of appointing someone to administer a mentally incapacitated applicant's affairs, and the costs of ongoing administration of those affairs

Any payment for special expenses will be reduced to take account of social security benefits an applicant receives or could receive to meet any of the same expenses. If the benefit is available to the applicant, the CICA will take it into account, irrespective of whether or not the applicant claims it. The CICA may defer making a decision until the applicant has taken steps to claim the relevant benefits.

### *Other payments*

A qualifying relative of a person who has died as a direct result of sustaining an injury may be eligible for:

- Bereavement payments – maximum of £11,000
- Child's payments - £2,000 per year, until the age of 18
- Dependency payments – weekly rate of statutory sick pay

- Funeral payments – maximum of £5,000

➤ **Accepting an award or requesting a review**

Where an award is made, the applicant has 56 days to accept this by returning the acceptance form. A request can be made in writing to extend this time limit by a further 56 days. Where an award is not accepted and no extension is sought, the award will be withdrawn.

Where an applicant disagrees with the award made, he/she must send a written application for a review within 56 days of the original decision, enclosing any additional evidence he/she wants the CICA to consider. This time limit can be extended by up to a further 56 days where it is likely to take longer to collect the evidence needed to support the claim.

The review decision can be more or less favourable than the original decision, or the original decision may be unchanged.

➤ **Appeal to the First-tier Tribunal**

Where an applicant disagrees with a review decision, an appeal can be made to the First-tier Tribunal. This must be done within 90 days of the date of the review decision. This period can be extended by the First-tier tribunal, provided the extension is sought within the 90 days.

The CICA will send the applicant the form to be used for an appeal. The applicant must explain what he/she believes the review decision was wrong and provide any extra evidence which supports the appeal.

➤ **Time frame**

It can take the CICA up to 12 months to process an application and make an award. This period is likely to be much longer where an applicant seeks a review of the CICA's decision and makes an appeal.

## **BARRIERS TO COMPENSATION**

➤ **The '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.

The reason for this is that before 1 October 1979, awards were not possible where the victim and the offender were living together as members of the same family. But in 1979 the rules were changed to allow for awards involving intra-family violence.

In historic abuse claims, this precludes large numbers of applicants from applying for compensation.

Where a period of abuse falls into both pre and post 1979 rules, it may be possible to claim for the latter part of this period.

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 reason behind this is that an award will not be made if an assailant may benefit from it.

➤ **Criminal record**

The CICA may refuse or reduce an award if the applicant has a criminal record.

The CICA will not award compensation to those applicants who have an unspent conviction for an offence which resulted in:

*(a) a sentence excluded from rehabilitation;*

*(b) a custodial sentence;*

*(c) a sentence of service detention;*

*(d) removal from Her Majesty's service;*

*(e) a community order;*

*(f) a youth rehabilitation order; or*

*(g) a sentence equivalent to a sentence under sub-paragraphs (a) to (f) imposed under the law of Northern Ireland or a member state of the European Union, or such a sentence properly imposed in a country outside the European Union.*

Under the Rehabilitation of Offenders Act, a conviction becomes spent after a period of time from the date of conviction. Whilst the conviction is within that period of time, it is known as “unspent”. The rehabilitation period varies according to the sentence given, not to the offence committed.

The table below sets out when a conviction becomes spent:

Sentence	Rehabilitation Period	
	Over 18 when convicted	Under 18 when convicted
Prison sentence (including suspended sentences) 6 months to 2.5 years	10 yrs	5 yrs
Prison sentence (including suspended sentences) 6 months or less	7 yrs	3.5 yrs
Fines, probation, compensation, community service, reparation orders, curfew orders	5yrs	2.5 yrs
Absolute discharge	6mths	6mths
Custodial sentences of more than two and a half years never become spent. A custodial sentence, also known as a sentence of imprisonment, or detention, is where the offender is detained in custody for a period of time.	Never	Never

Where a conviction is spent at the time of making the application, the CICA may reduce an award.

The CICA decides how much of a reduction to make using a penalty point system. The more recent the conviction and the more serious the sentence, the more penalty points the conviction will attract. The lowest penalty point is 1, which leads to a 10% reduction of an award and the highest penalty point is 10, which leads to a 100% reduction i.e. no award. However, the CICA is not bound by the penalty point system and, depending on the facts of the case, can make a greater or lesser reduction.

The CICA does have discretion not to reduce an award, if there are exceptional reasons not to do so.

➤ **Conduct and character**

Before making a payment, the CICA will consider if the applicant’s behaviour before, during or after the incident caused or contributed to the incident in which he/she was injured, e.g. if he/she



was acting in an aggressive or threatening way, intended to provoke an assault, has a history of violence.

Conduct does not include intoxication through alcohol or drugs to the extent that such intoxication made the applicant more vulnerable to becoming a victim of a crime of violence. However, the use of alcohol or drugs will be taken into account if it played a direct role in provoking the incident that led to the assault.

The CICA will also consider any evidence about an applicant's character which makes it inappropriate for a full or reduced award to be made. This may include involvement or association in illegal drugs or crime, tax evasion or benefit fraud, antisocial behaviour orders or any simple cautions or reprimands.

#### ➤ **Consent**

As stated above, a violent crime includes *a sexual assault to which a person did not in fact consent*. The CICA will consider carefully the circumstances surrounding the incident(s) of sexual assault and the issue of consent.

In this country, under criminal law, the age of consent is 16. To have sex with someone under the age of 16 or to engage someone under the age of 16 in a sexual activity is a crime. But in the civil courts/CICA claims, consent is a question of fact not age.

This is best illustrated by reference to caselaw:

In the case of *R v Criminal Injuries Compensation Appeals Panel, ex parte August* (2001), a 13 year old boy was said to have consented *in fact* to sex, even though he was clearly under the age of consent (which in those days was 21). August was born in 1976, placed in care in 1985, and was a psychologically damaged child. At the age of 13, he was also a male prostitute. In 1990 he went to some public toilets where he met a 53 year old man, who over the next four months paid him to participate in various sexual acts, including buggery. That man was later successfully prosecuted. However, the CICA held that August was not entitled to compensation for what was done to him because he had consented, notwithstanding the fact that the acts were clearly criminal because of his age. As such, the acts complained of were not 'crimes of violence', and therefore August could not be compensated by the CICA.

In *R v Criminal Injuries Compensation Appeals Panel ex parte JE* (2003), the vulnerability of the victim was considered. A prisoner with learning difficulties was groomed for sexual activity by an older prisoner and he was said to have 'submitted' to the older prisoner's sexual demands. It was

held that submission is not the same as consent and the claimant was able to recover compensation because he was 'vulnerable'.

We argue that all cases of sexual assault and abuse fall under the latter case because the victims are groomed and manipulated into submission.

➤ **Costs**

The CICA will not meet the costs of legal or other representation incurred by the applicant in connection with an application.

The CICA will meet the reasonable cost of obtaining evidence necessary to support the application and the losses claimed, such as medical records and medical report from an expert, where it is satisfied that the applicant cannot afford to obtain it or the cost exceeds £50.