

## REPORT

## Criminal injury compensation: from B to A

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A scheme for compensating victims of crimes of violence was announced in both Houses of Parliament on 24 June 1964. The scheme is loosely based on the precept that society has a moral responsibility to protect its citizens, and therefore a moral duty to compensate them should it fail in that responsibility. On 1 August 1964 the Criminal Injury Compensation Board (CICB) began operating.

The latest annual report (year end 31 March 1997) shows that a total of £1 619 092 569 has been paid in compensation since the scheme began.<sup>1</sup> Some 950 148 applications have been received during this period.

In 1996, the calculation of the amount of compensation changed from one based on common law damages to a tariff based scheme and a new body, the Criminal Injury Compensation Authority (CICA), was set up. This article chronicles the working of the scheme and the changes to the scheme from its inception to the first report of the CICA.

**Terms of reference**

Under the rules of the scheme, compensation is available if personal injury is suffered as a direct result of a crime of violence. This includes<sup>2</sup>:

- (1) Arson or poisoning.
- (2) Attempting to stop someone from committing a crime, or apprehending someone after a crime has been committed, or assisting the police to do so.
- (3) Mental injury from the violence or threat of violence (but not from loss of possessions).
- (4) Compensation is also available to a dependant or relative of someone who has died from criminal injuries and (reasonable) funeral costs can be claimed even when paid by someone not related to the victim. (For example, Wilf Ball received £6000 after his son Jonathon was killed by the Warrington IRA bomb.<sup>3</sup>)
- (5) Trespass on a railway line\*.

**Limitations**

There are strict rules as to who is eligible to be paid compensation. This helps to screen out a proportion of applicants without having to obtain reports from police and others.

(A) The injury must have been sustained in Great Britain. This includes:

- (1) British hovercraft, aircraft and ships, light-houses, and
- (2) "On, under or above an installation in a designated area within the meaning of section 1(7) of the Continental Shelf Act 1964 or any waters within 500 metres of such an installation".
- (3) The Channel Tunnel if "incorporated into England under section 10 of the Channel Tunnel Act 1987", unless "caused by a non-UK officer acting in the exercise of his functions". However, injuries caused by a UK officer in exercising his/her functions within French territory are eligible unless he/she injures a non-UK officer exercising his functions. (What all this means is that if there is a "punch up" between French and British custom officials on French soil, no compensation is allowed!)

(B) Injury caused by accidents is not covered, for example road traffic accidents, and nor is injury by animals unless it can be shown that the animal was being used as a weapon.

(C) Because of the difficulties of investigating claims when original documentation may not be available, there is a time limit of three years for receipt of applications unless there are exceptional circumstances. The CICB will always waive this rule in respect of children.

(D) The CICB will go to considerable lengths to ensure that the assault is truly unprovoked, and that the perpetrator will not benefit from any compensation. Thus applications in which the police are not informed, or only as an afterthought when compensation is being applied for, will normally be rejected. This is to safeguard against fraud when there is no corroborating evidence that a criminal injury has occurred. Similarly, not cooperating completely with police investigations will also rule an applicant ineligible. Fear of the consequences of cooperating is not a reasonable defence. Subsequent cooperation may lead to a reduced award being made.

*For example "An argument developed between the applicant and the owner of a shop about an unexpected charge over and above the price agreed between them for the installation of a secondhand*

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\* This came about because the CICB were in the habit of making awards to train drivers who suffered post-traumatic stress disorder after their trains struck people who deliberately threw themselves into their path. The CICB took the view that anyone stepping in front of a train endangered anyone on the train and therefore a crime of violence had been committed. This was later challenged in the courts and was ruled unlawful in that "of violence" applies to the act and not the consequences. The scheme was therefore amended by the government to specifically include this clause and restore the entitlement of railway drivers to claim.

car radio. When the applicant tried to prevent the shop owner from removing the radio from his vehicle, he was allegedly struck with a crowbar and a small screwdriver causing a fracture to the applicant's hand and a number of lacerations. The applicant subsequently advised the police that he did not wish to proceed with criminal charges against his assailant or to attend court for fear of reprisals. As a result his application was refused".<sup>4</sup>

(E) "Conduct before during and after the event" is also taken into account especially if it is shown that the victim struck the first blow or willingly took part in a fight, or if, because of drink or drug intoxication he/she behaved in a way that they would not otherwise have done.

For example "The applicant was playing in a pub pool competition and became involved in a scuffle with an opponent who had accused him of cheating. A fight ensued outside the pub in the course of which the upper third of the applicant's ear was bitten off. Although plainly he had come off worse in the dispute with his assailant, the application was rejected".<sup>1</sup>

(F) "Character as shown by previous convictions" means that the CICB can take into account any convictions on record. Convicted terrorists are always refused compensation but other convictions are judged on their merits and relevance to the current case.

For example "The applicant, a young man, had had an argument in a licensed premises with a woman who threw a tumbler causing injury to his eye and facial scarring. The applicant had several convictions from the age of 15. The police advised that he had initially refused to speak to them about the incident but was persuaded finally to do so by his father. There were reports also of the applicant later boasting about the amount of money he would be paid. The application was disallowed because of his numerous convictions".<sup>4</sup>

Because of the necessity of ensuring that the perpetrator does not gain from the assault, no compensation is payable to victims of domestic violence unless the attacker has been prosecuted and the victim and the attacker have permanently stopped living together.

This does not apply to child abuse, but it may be against the child's best interests to make an award, for example if he/she has no awareness of the abuse by reason of age.

For example "A 28 year old woman submitted four separate applications alleging repeated assaults by her common law husband. The attacks included wounding with a machete and ramming her head into a glass fish tank causing multiple lacerations. Although the incidents had occurred over a period of eight months, they were all reported simultaneously to the police at the end of the period. All four applications were disallowed because of delay in reporting and because there was doubt as to whether the two parties were still co-habiting".<sup>1</sup>

### Dealing with applications

The CICB has produced an application form to be completed for claims. There is a separate form for fatal cases. Its 11 pages are designed to collect as much information as possible to enable a claim to be verified. There is included a form authorising the CICB to collect

information from any source deemed necessary to substantiate claims.

Initially the CICB concentrates on the eligibility of the claim under the terms of reference. Guides produced by the CICB, and information from Citizens Advice Bureaux and solicitors, ensure that relatively few applications are rejected at this stage. The commonest reason for rejection is that the injury does not reach the threshold of £1000.

Evidence is then sought from the police, doctors, employers, etc. Fees are payable to medical staff for this information as it is outside the usual medical management of the patient. No fees are due to the police.

Approximately 60% of applications receive awards, with around 5% of applications being abandoned by the claimant and the remainder receiving no award. Because of the enormous number of cases received and the necessity of obtaining reports, only about 60% of cases are resolved within 12 months.

### Structure of the CICB

Appointments to the CICB are made by the Secretary of State and only practising lawyers are eligible. The CICB is responsible for deciding what compensation should be paid and its decisions are not subject to appeal or ministerial review. However, the general working of the CICB is kept under review and it is required to submit an annual report and accounts.

The CICB was originally based in London at Alfred Place but this office has more recently moved to Morley House, Holborn Viaduct. In 1987 a second office was opened in Glasgow to cope with the steadily increasing workload, which had doubled in the previous 10 years (fig 1) This office originally dealt with cases arising in Scotland with some English and Welsh cases but has since expanded to become the major branch dealing with most cases north of Birmingham.

The CICB is divided into seven case work offices (hence the prefix on the familiar form).

### Legal changes

The scheme itself has undergone several changes since 1964. The first revision in 1969 introduced the term "crime of violence" to replace the original "criminal offence" as this also included such things as industrial injuries, which were clearly not intended to be compensated for by this scheme. In 1979 family violence was included for the first time as a basis for a claim, allowing child abuse to be compensated. In 1983 a working party met to draft legislation to put the scheme on a statutory footing. The recommendations of this working party were incorporated into the Criminal Justice Act which came into force in 1988. The provisions of that act were never brought into force, however, because of the backlog of work.

"European Victims Day" on 22 February 1990 coincided with the government's decision to publish its "Victim's charter: A statement of the rights of victims of crime". Later that year, a House of Commons Home Affairs

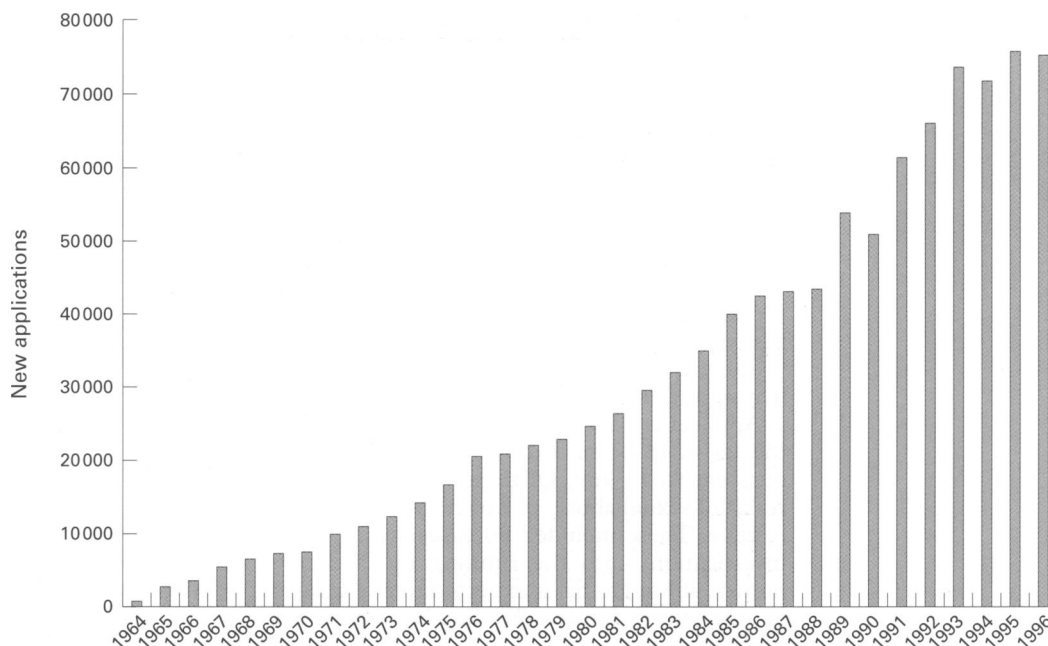


Figure 1 Workload from 1964 to 1996.

Committee expressed concerns over delays in processing the increasing numbers of applications. The scheme was revised in the light of these reports leading to a more streamlined and efficient method of dealing with claims although the scheme remained substantially the same.

The move to a tariff based scheme was introduced in 1994 which separated assessment of payments from the common law damages comparison which had been in effect since the inception of the scheme. However, the next year, the tariff was ruled unlawful by a judicial committee of the House of Lords because it was felt to be substantially different from the provisions contained in the 1988 Act and the 1990 scheme had to be reapplied to all cases that had been processed that year. Some 72 000 applications had to be re-evaluated. The Criminal Injury Compensation Act of 1995 successfully (and lawfully) introduced a tariff scheme. A new body was set up under this scheme: the Criminal Injury Compensation *Authority*. The Criminal Injury Compensation *Board* continues to deal with applications received before 1996 but this workload is finite and dwindling and when complete, the CICB will cease to exist.

#### Request for medical information

One of the first tasks of the newly created CICB was to design the various forms needed to obtain the information on which to base their decisions. Medical information is central to calculation of awards which is based on the severity of the injury and treatment required, including duration of treatment. With the creation of the CICA and the change to a tariff based scheme, the form was redesigned, as many doctors will remember.

A list of the injuries sustained is the most important information required from the doc-

tor, but the effects of the injury are also taken into account with an increasing scale depending on the length of disability. This includes disabling mental injury from an assault, if medically verified. For example, tinnitus lasting 6–13 weeks is assessed at level 1 (£1000) and over 13 weeks at level 7 (£3000). Multiple minor injuries may qualify but only if at least three separate injuries are present and the effects of the injuries are still present after six weeks, with at least two medical consultations during this time.

It can be seen that many patients with injuries from assaults that are treated in accident and emergency departments will not qualify for compensation unless there is a fracture or severe soft tissue injury. An exception to this is concussion, which is considered significant if it lasts for over seven days.

The medical report is not automatically sent to the claimant, but is made available if they appeal against the CICA's decision.

Since the creation of the CICA and the design of the new form, every effort has been made to settle invoices within 30 days. Medical fees in the last financial year comprised £3 827 079 or approximately 2% of the total expenditure of the CICA.<sup>4</sup> The level of fees is by discussion with the British Medical Association.

#### Applications to the CICB

The CICB received 554 applications in its first financial year (August 1964 to March 1965)<sup>5</sup> and the numbers have increased steadily in each year since then (fig 1). The last report of the CICB registers 75 667 new applications,<sup>4</sup> an increase of 5.5% over the previous year. No award was made in 28 072 cases (37%) and 4117 (5%) were abandoned by the claimant, leaving 44 036 (58%) in which payment was made. (These figures include some claims from

Table 1 Reasons for refusal of compensation

Below lower limit	28%
Delay/non-cooperation	26%
No crime of violence	13%
Applicant's conduct	12%
Character and way of life	12%
Others	9%

the previous financial year settled in this financial year, hence the total of final decisions (76 225) is higher than new claims received in that year.)

Table 1 shows a breakdown of the reasons why applications were rejected.

Applications by or on behalf of those under the age of 18 decreased by 9% from the previous year to 11 969. Of these, 5500 were as a result of sexual abuse, of which 2176 were by a relative. These included 80 cases arising from investigations into the running of children's homes, although this is expected to rise greatly in the near future (K Baddon, personal communication).

### Assessing the size of awards

When the scheme began, levels of compensation were commensurate with those set in civil claims for comparable injury. The first annual report of the CICB shows that payments averaged £227, with a total of £33 430 14s 6d being paid to 122 claimants.<sup>5</sup> A threshold to the value of the compensation of £50 was set, below which no compensation was paid.

The number of claims and the amount of compensation rose rapidly during the first few years of the scheme (fig 2) with average amounts roughly keeping pace with inflation. In 1977, the lower limit was raised to £150 and has been raised in increments since, to its current limit of £1000 in 1992. Payments now average £2444 per case.<sup>4</sup>

Table 2 Examples of compensation levels (£)

Level 1 (minimum)	1000
Level 25 (maximum)	250 000
Fractured/loose tooth requiring treatment	1000
Sprained ankle disabled for 6-13 weeks	1000
Disabling temporary mental anxiety (medically verified)	1000
Undisplaced nasal fracture	1000
Dislocated digit, full recovery	1250
Minor facial scarring	1500
Displaced nasal fracture	2000
Malar fracture	2000
Mandible fracture	3000
Significant facial scarring	3500
Partial loss of ear	4000
Bilateral pneumothorax	6000
Serious facial scarring	7500
Fatal injury	10 000
Hemiplegia	50 000
Quadriplegia	250 000

Since 1996 a tariff has been used to assess levels of compensation. The tariff is a comprehensive list of injuries divided into body regions. Examples are given in table 2. Injuries not contained in the scheme can be added, with the appropriate level of compensation as decided by the CICA, subject to approval by the Secretary of State.

The amount of compensation also takes into consideration any state benefits received and any compensation that may be awarded by a court after successful prosecution. In practice, compensation awarded by courts is often not received by victims and compensation is paid by the CICA with the proviso that any monies subsequently received into the court from the offender are repaid to them.

### Other compensation

#### MULTIPLE INJURIES

The levels of compensation described above are the standard levels as per the tariff. Separate injuries that all qualify are calculated

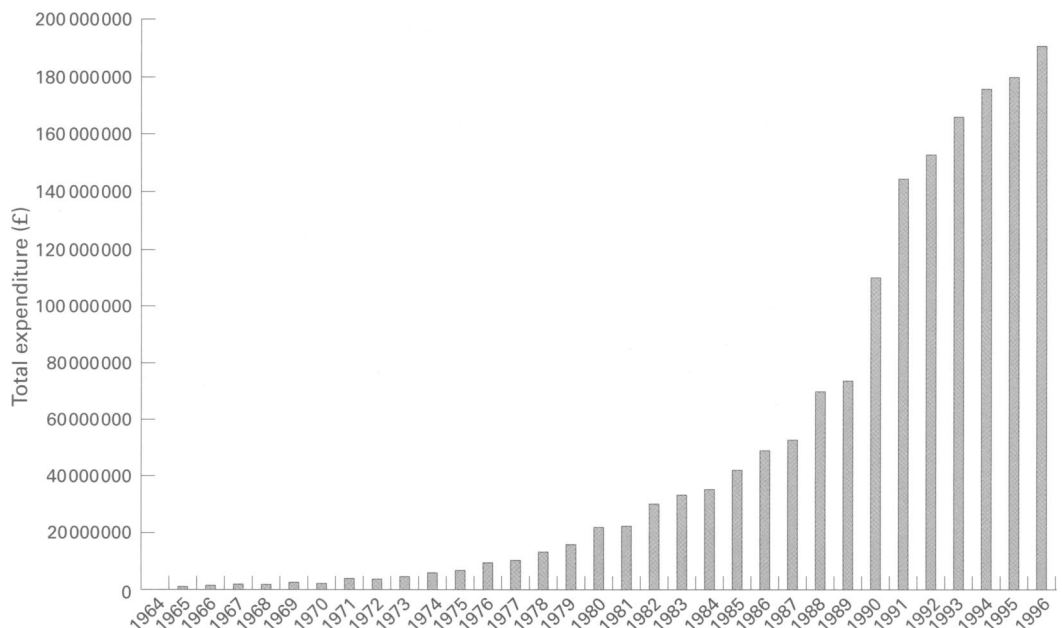


Figure 2 Compensation paid from 1964 to 1996.

as: the highest injury, plus 10% for the second injury and 5% for the third.

#### LOSS OF EARNINGS

Compensation for loss of earnings can also be claimed if the period of loss extends beyond 28 weeks as a direct consequence of the injury. The calculation is fiendishly complicated and is designed to produce a lump sum which, if invested, will provide compensation equal to the continuing earnings should the injury not have occurred. The government's actuarial tables are used to determine the multiplication factor for the initial amount. For example, for five years of loss the multiplier is 5 but for 25 years of loss it is 15. A worry for higher earners is that a limit of 1.5 times the gross average wage is set as the maximum level of earning when calculating compensation.

*For example "A 15 year old schoolboy was subject to an unprovoked attack by a group of youths, in which he sustained brain injury. Specialist neuropsychological reports indicated that his academic performance was likely to be impaired. An interim award of £5000 was made pending his examination results. He subsequently progressed to university. At a hearing to establish final damages, documentary evidence including an employment consultant's assessment of prospective loss of earnings resulted in a full award of £30 000".<sup>4</sup>*

#### FATALITIES

Payments are available to spouses, parents, and children of the deceased. If only one claimant qualifies, the level of compensation on the tariff is 13 (£10 000), if more than one it is level 10 (£5000) each.

Since the introduction of the tariff scheme, there is now a limit on all payments of £500 000. Previously there was no upper limit and the figures in the latest annual report record 14 awards over £500 000 of which the highest was £1 136 584.<sup>1</sup>

#### Appeals

Approximately 20% of decisions are appealed against. Appeals must be received within 90 days of the original decision. The appeals are considered by a member of the CICB (old scheme) or a claims officer (new scheme) and may be upheld or rejected. If the applicant is still dissatisfied, under the old scheme an oral hearing was convened before three (after 1990 two) members of the CICB. Under the tariff scheme, a more senior member of staff reviews the papers and if the applicant is still dissatisfied, an oral hearing is convened before at least two members of the CICA panel.

Appeals panels now consist of only two members. After its formation, the CICA adver-

tised widely in the medical and national press to recruit approximately 300 members to these appeals panels.

In the last financial year, 7530 appeals were heard resulting in awards in 3976 (54%) of cases.

*For example "The applicant was approached by two men in the toilet of a disco, one of whom struck him in the face with a glass and robbed him of £7. The applicant sustained a large perforation of the left eyeball and despite several operations was left with no useful vision in that eye. The applicant's right eye had been densely amblyopic since birth and he was therefore been rendered effectively blind by this assault. An award of £60 000 was rejected and at oral hearing the applicant's solicitor presented further evidence about loss of earning and care requirements resulting in a revised award of £220 000".<sup>1</sup>*

#### First report of the CICA

The CICA began dealing with all new applications from April 1996. The first annual report documents 75 032 applications.<sup>5</sup> Of these 13 566 (18%) have been resolved. Compensation was paid in 8432 (62%) of these with 5134 (38%) disallowed, which is similar to the original scheme. The highest award was for £30 000 but decisions on higher awards tend to be more complex and thus only relatively straightforward cases have been decided in this first year.

#### Summary

Since its inception some 34 years ago the CICB has dealt with over 1 000 000 applications and paid out over £1.6 bn to victims of violence. The recent changes to the scheme and the formation of the CICA have streamlined the process and resulted in a slight reduction in average payments, but with more consistency in the amounts paid. There is no indication that the steady increase of around 5% per annum in the numbers of applications will fall and the service will continue to be in great demand.

I wish to acknowledge the very great help provided by Mr Ken Baddon of the CICB in Glasgow without which this article would not have been possible.

- 1 Criminal Injuries Compensation Board. *Thirty third report*. London: The Stationery Office, 1997.
- 2 Criminal Injuries Compensation Authority. *A guide to the criminal injuries compensation scheme*. London: The Stationery Office, 1996.
- 3 Crime victims lose out. *Daily Mail* 11 December 1997.
- 4 Criminal Injuries Compensation Board. *Thirty second report*. London: The Stationery Office, 1996.
- 5 Criminal Injuries Compensation Board. *Third report*. London: The Stationery Office, 1967.
- 6 Criminal Injuries Compensation Authority. *Annual report 1996-7*. London: The Stationery Office, 1997.