

# **Response to the Ministry of Justice's consultation on the Criminal Injuries Compensation Scheme**

**August 2022**

## **Introduction**

The Criminal Justice Alliance (CJA) is a network of over 180 member organisations working towards a fair and effective criminal justice system (CJS). Our members include organisations working to support people with a criminal record to overcome the barriers they may face, and to reform the criminal record disclosure system.

We welcome the opportunity to respond to the Ministry of Justice (MoJ)'s supplementary consultation on their review of the Criminal Injuries Compensation Scheme (CICS). The CJA recommend the removal of the exclusionary rule and for the return to a discretionary system which was in place prior to 2012. This would mean decision-makers in the Criminal Injuries Compensation Authority (CICA) can exercise discretion in order to compensate those with unspent convictions, where there are exceptional reasons for an award not to be withheld or reduced.

## **The unspent convictions rule**

### **1. What are your views about the exclusionary part of the rule being retained unchanged?**

It is the CJA's view that the exclusionary part of the rule should be removed, as it routinely denies compensation to victims of serious crimes.

- The government have published a draft Victims' Bill that aims to enshrine the Victims' Code (which includes a victims' entitlement to information about compensation) in legislation, so the Code is better adhered to and delivered. The draft provisions also include a duty on various criminal justice agencies to review their compliance with the Victims' Code. The exclusionary rule contradicts and undermines the government's aim to deliver better access to justice for victims.
- This blanket rule has been criticised by many independent victims' advocates, including the Victims' Commissioner. The Victims' Commissioner has expressed concerns about retaining the current rule, as it presents a binary view of criminality and victimisation at a time when the rest of the government and criminal justice system are becoming increasingly aware of the overlap.<sup>1</sup> For example, the MoJ's recent Victims Funding Strategy acknowledges there may be victims in prison and aims to improve outcomes for this group, including access to victims support services.<sup>2</sup>

- The rule negatively impacts on trust and confidence in the criminal justice system for some victims. Victims with criminal records have told CJA member Unlock that they would not report any further crimes to the police or come forward as a witness, as the exclusionary rule makes them feel as though they will always be seen as a 'criminal'.<sup>3</sup>
- The exclusionary rule does not consider that people who commit crime and have convictions can and do change, as completion of any sentence or attempts to make amends are never considered. Victims who have criminal records have told Unlock that they feel they are continuing to be punished.<sup>4</sup>

**3. Do you consider that exemptions should be considered only for some applicants? If so, what should the basis of the exemptions be and when should discretion be available?**

No. If the exclusionary rule is not removed, we do not agree that some applicants should be automatically exempt/rejected due to an unspent conviction. Instead, discretion should be available in all cases and every case should be considered on its merits. Applicants may still be exempt, but this should be determined after consideration by CICA decision-makers and not because of an exemption/exclusion related to any conviction.

Automatic or blanket exemptions are not an appropriate way to decide which cases will progress and which will be rejected, as exemptions can be rigid and may result in victims being excluded, simply because they do not fit the exact specifications given.

There are complex interconnected factors underlying a person's criminal record and history of victimisation. Research shows that victims of some serious crimes, such as child sexual abuse, are at an increased risk of offending and criminalisation. In addition, they are disproportionately likely to experience mental health issues, develop drug or alcohol dependency, and become victims of other kinds of crime. It would be extremely difficult to create a statutory system that could tell the difference between offences linked to previous victimisation and trauma, and those which are not.<sup>5</sup>

Arbitrary rules excluding some applicants will risk many victims who are deserving of compensation not receiving it, no matter how particular the exemptions are, as there is no simple way to tell how criminalisation and victimisation relate. We recommend decisions about awarding compensation are made on a case-by-case basis, with discretion.

**4. What are your views about any exemption and guidance on exercising discretion being set out in the Scheme?**

The CJA does not support the use of automatic or blanket exemptions for some applicants based on an unspent conviction (see response to question 3).

Any guidance on exercising discretion should be developed by CICA and co-produced with expert organisations, such as CJA members Unlock and Transform Justice. Individuals with lived experience of applying to the Criminal Injuries Compensation Scheme with an unspent conviction should also be involved. One

such person is Kim Mitchell, who won the CJA Outstanding Individual Award 2021 for waiving her right to lifelong anonymity as a victim of sexual assault to challenge the exclusionary rule.<sup>6</sup>

Any draft guidance should be publicly consulted on before being finalised and published, as well as an accompanying equality assessment that shows compliance with the Public Sector Equality Duty (PSED). Any guidance should be regularly updated and improved in a transparent, co-produced way.

**5. What are your views on amending the exclusionary part of the rule to reduce the number of claims that would be automatically rejected on the basis of a specified unspent conviction?**

If the MoJ chooses to amend the exclusionary rule rather than remove it, the CJA would welcome actions to minimise the number of applicants who will be automatically rejected based on a specified unspent conviction. However, we would be concerned that this does not go far enough to improve compensation for victims. For example, the length of time that any given disposal remains unspent for is not necessarily linked to the severity of the offence and/or may not reflect the trauma and harm a person has experienced. Victims also have no control over the specific offences that those who have committed crime against them are charged with. The suggested change in paragraph 49 does not take this into account. As such, we would recommend the exclusionary part of the rule is removed and a discretionary system is reinstated (see responses to question 1 and question 3).

**7. What are your views about removing the exclusionary part of the rule?**

It is the CJA's view that the exclusionary part of the rule should be removed, as this solution will allow the CICS to properly compensate *all* victims of crime (see responses to question 1 and question 3).

## **Equalities**

**9. Do you agree that we have correctly identified the range and extent of the equalities impacts for no change and each of the potential reforms set out in this consultation (Annex A)? Please give reasons and supply evidence of further equalities impacts as appropriate.**

The CJA agrees with the assessment made in the Annex that the exclusionary rule results in unequal treatment for young adults and those from Black or mixed ethnic groups. However, we would describe these outcomes as discriminatory and therefore they should be mitigated against, which the consultation document does not.

CJA member Unlock has raised concerns that by CICS and CICA relying on discriminatory decisions made earlier in the criminal justice process to award any compensation, such as sentencing outcomes, the CICS is maintaining and reproducing discriminatory decision-making.

***The views expressed in this response are not necessarily those of any individual CJA member or funder.***

For more information, please contact Hannah Pittaway, Senior Policy Officer, on: [hannah.pittaway@criminaljusticealliance.org.uk](mailto:hannah.pittaway@criminaljusticealliance.org.uk).

---

## **References**

- <sup>1</sup> Victims Commissioner, [Letter to Secretary of State regarding the Criminal Injuries Compensation Scheme](#) (2020).
- <sup>2</sup> Ministry of Justice, [Victims Funding Strategy](#) (2022).
- <sup>3</sup> Unlock, [People with criminal records speak out about the exclusionary rule](#).
- <sup>4</sup> Unlock, [People with criminal records speak out about the exclusionary rule](#).
- <sup>5</sup> Unlock, [Criminal injuries compensation](#). Loughborough University, [The Criminal Injuries Compensation Scheme and Sexual Offences: Research Briefing](#) (2019).
- <sup>6</sup> Criminal Justice Alliance, [Awards 2021. What excellence looks like](#) (2021).