



30th August 2023

**Response to the Criminal Injuries Compensation Scheme Review: Additional
Consultation 2023**

About Us

FOCIS members act for seriously injured Claimants with complex personal injury and clinical negligence claims, including group actions. The objectives of FOCIS are to:-

1. Promote high standards of representation of Claimant personal injury and medical negligence clients;
2. Share knowledge and information among members of the Forum and further better understanding in the wider community of issues which arise for those who suffer serious injury;
3. Use members' expertise to promote improvements to the legal process and to inform debate;
4. Develop fellowship among members.

See further www.focis.org.uk

Membership of FOCIS is intended to be at the most senior level of the profession, currently standing at 24 members. The only formal requirement for membership of FOCIS is that members should have achieved a pre-eminence in their personal injury field. Seven of the past presidents of the Association of Personal Injury Lawyers are members or emeritus members of FOCIS. Firms represented by FOCIS members include:

Anthony Gold	Hugh James
Switalski's	JMW
Ashtons Legal	Irwin Mitchell
Balfour + Manson	Leigh Day
Bolt Burdon Kemp	Moore Barlow
Dean Wilson	Osbornes Law
Digby Brown	Serious Law
Fieldfisher	Slater and Gordon
Fletchers	Stewarts
Freeths	Thompsons NI
Hodge Jones & Allen	

Abbreviations used in this response

APPG – The All-Party Parliamentary Group on Adult Survivors of Child Sexual Abuse

CICA – Criminal Injuries Compensation Authority

IICSA – Independent Inquiry into Child Sexual Abuse

Introduction

FOCIS is grateful for the opportunity to respond to this latest consultation on the scope and operation of the Criminal Injuries Compensation scheme (“the Scheme”). In summary, we agree with IICSA that in the light of (a) recent trends in abusive offending, and (b) the time it is taking for criminal cases to reach court, both the scope and time limit for child sexual abuse cases being assessed by the CICA should be extended.

Consultation Questions

Question 1: What are your views about the scope of the Scheme remaining unchanged?

The scope of the scheme should change to reflect IICSA’s recommendations in its final report. This in turn is supported by the APPG and the Victims’ Commissioner. It is noted that this is the third government consultation on the Scheme in three years, which would suggest that earlier scrutiny did not go far enough. Whilst not covered by the questions in this consultation, we consider it is imperative that the status of previous convictions are also considered. The correlation between childhood abuse and subsequent adult offending is well documented. This was discussed in the case of *Kim Mitchell v Secretary of State for Justice* [2021] EWHC 2248 (Admin). Discretion should be re- introduced in relation to previous convictions to enable appropriate cases to be compensated.

The fact that the government is consulting again would appear to be a recognition that the public have an appetite for further reform, and this is to be welcomed.

Question 2: What are your views about amending the definition of a crime of violence to include other forms of child sexual abuse?

We prefer the alternative idea to bring certain non-contact offences within the scope of the Scheme (questions 4 and 5) and to abandon the idea that the Scheme effectively only compensates for violent offences under the current definition. A new Scheme should instead compensate victims of crimes against the person which cause demonstrable physical or mental harm.

Question 3: If you agree that the definition should be extended in this way, which non-contact forms of child sexual abuse should be brought in scope of the Scheme?

If it is felt that amending the definition of a crime of violence to include non-contact offences is the way to meet the objectives of IICSA, then we would expect the following crimes to be included:

- Inciting a child to watch sexualised images, or be involved in the production and/ or sending of sexualised images of themselves or others;

- Inciting a child to watch sexual activities;
- Encouraging a child or children to behave in sexually inappropriate ways;
- Grooming a child in preparation for abuse, including via the internet;
- Other coercive and manipulative exploitation of children, including modern slavery offences;
- Image- based sexual abuse (“revenge porn”);
- Stalking.

It should also be extended to cover secondary victims e.g. the parent of a child who suffers a psychiatric injury as a result of the harm suffered by their child. This would mirror the position adopted by the Australian State of Victoria in their Legal Identity of Defendants (Organisational Child Abuse) Act 20018 (Vic). This Act applies to any claim founded on or arising from “child abuse”. Section 3 of the Act defines sexual abuse as “*an act or omission in relation to a person when the person is a minor that is physical abuse or sexual abuse*”. It includes psychological abuse, but only if that psychological abuse arises out of the act or omission of physical or sexual abuse. The Act eschews detail of what may comprise “abuse” and leaves it open to the Court to determine what is, and is not, “abuse”. In *RWQ v The Catholic Archdiocese of Melbourne & Ors*, a parent of an alleged victim of sexual abuse relied on the Act to bring his claim against the Archdiocese. It was held that the Act extends to nervous shock claims of secondary victims, including family members, not themselves the subject of the “child abuse” (i.e. not the primary victim). The father was able to claim (his son the victim had committed suicide).

Question 4: What are your views on bringing serious non-contact offending within the scope of the Scheme?

We feel this is perhaps a better solution to the issues highlighted by IICSA and others (as opposed to amending the definition of a ‘crime of violence’ to include non-contact offences which nevertheless cause harm). As we say above, the scope of the Scheme should be revised to encompass compensating victims of crimes against the person which cause demonstrable physical or mental harm. It should also be extended to include secondary victims – see question 3 above.

Question 5: Which types of non-contact offending should be brought in scope of the Scheme?

Examples of non-contact offences have been listed in our answer to Question 3. There is no reason why these should not extend to adult victims as well as children (particularly (a) crimes involving the distribution of ‘revenge porn’ otherwise known as image-based sexual abuse, (b) stalking, and (c) coercion and manipulation, such as modern slavery offences). Crimes against vulnerable adults – those who would come under the definition of a protected party in the civil courts - are deserving of additional recognition.

It should also be extended to include secondary victims – see question 3 above.

Question 6: What are your views on the approach to the Scheme’s time limits remaining unchanged?

The Scheme allows ‘time to run’ either from the date when the offence was reported to the police or from the applicant’s 18th birthday if reported when the applicant was a child. However, the current 2 year limit is impractical in view of the length of time criminal investigations are taking. In order not to prejudice a criminal trial, victims may not apply to the CICA for fear of this being used against

them in cross-examination. It is noted that The Law Commission has considered restricting the admissibility of such evidence in criminal trials, but we do not know when and if such a recommendation will be adopted. In the meantime, we have to deal with the current reality: Too often, 2 years is insufficient time for a victim to come to terms with what has happened to them, and be in a position (through therapeutic support or otherwise) to exercise their right to compensation, particularly if involved in a criminal investigation as a prosecution witness.

Consideration should be given to creation of a certain category of applicant who has been a complainer in a criminal trial. Rather than the time limit running from report to police it should run from the conclusion of the criminal trial. This would accommodate the applicant who discloses to police but due to lack of corroborative evidence no further action is taken. Then a period of time later (sometimes 10 plus years) when a further disclosure is made the original complainer is revisited and a criminal trial proceeds. It is understandable in these circumstances that the original complainer would not seek compensation at the point of disclosure to the police because no further action could be taken. However, it is more likely this category of victim would seek compensation after securing a conviction.

Question 7: What further action could be taken to raise awareness of the Scheme and its time limits?

We would propose a statutory obligation on the police to inform victims of their rights to compensation (via the CICA and/ or civil proceedings) and the time limits within which a claim should be made. An amendment to the Victims and Prisoners Bill currently going through Parliament, could be made to bring this into effect.

The Victims Code already has this stipulation which is not appreciated. A warning lies in the repeated failure of the courts to order compensation as legally required on sentencing of offenders (Powers of the Criminal Courts (Sentencing) Act 2000). Both the police, CPS and courts are failing to comply with the law as it is which begs the question whether any further obligation would be respected?

The bill before Parliament explicitly excludes any legal responsibility on the part of State in failing to meet the obligations set out therein, and until victims have a right of recourse as a consequence of any failing further statutory obligations may mean little in reality.

Question 8: What are your views on amending the Scheme's time limit to seven years for child sexual abuse applicants who were children under the age of 18 on the date of the incident giving rise to the injury, with the CICA retaining discretion to extend the time limit in exceptional circumstances?

It is accepted that IICSA's recommendation of 7 years was somewhat arbitrary, but we would be happy to endorse this recommendation as this is likely to facilitate access to the Scheme for the greater number of victims who are deserving of compensation. It may be considered more just and equitable to increase the time limit for all children (whether sexually abused or not) to 7 years, so as to promote a consistent approach. For the avoidance of doubt the 7 years would apply to both disclosure to police in childhood and in adulthood. Consideration should be given to creating a special category of applicant who could apply within a time period after the conclusion of a criminal trial where they have been the complainer as outlined in question 6.

The CICA should always retain discretion to allow cases through 'out of time'. We are particularly concerned with crimes against vulnerable adults who would be treated as protected parties in the civil courts. We would hope that discretion would be automatically exercised in their favour. (In comparison with the civil courts, as a protected party by reason of their mental incapacity, time

ceases to run against them and effectively there is no time limit within which they must instigate litigation).

Question 9: What are your views on amending the Scheme's time limit to seven years for all applications, with the CICA retaining discretion to extend the time limit in exceptional circumstances?

We are alive to the evidential difficulties this may present, and the increased burden on the CICA in investigating what could be seen as rather stale cases. However the delays and backlogs in the criminal justice system are very real and as long as a compensation claim can be used against a prosecution witness in cross-examination, we feel that as much time as possible should be extended to victims to allow them to get through the criminal process, and then exercise their right to compensation. So on balance we would be open to extending the time limits to 7 years for all applicants. Again, discretion to allow cases through out of time should also be retained.

See also the answer to 8 above.

Question 10: If the time limit for applications to the Scheme were extended to seven years, either for applications in relation to child sexual abuse or for all applications, is it necessary for the CICA to retain discretion to further extend the time limit in exceptional circumstances?

Yes, for the reasons given in response to question 8. It is very difficult to legislate for all circumstances and scenarios. Retaining discretion to allow cases through out of time (and therefore not adhering to an otherwise arbitrary time limit) would be reasonable.

Question 11: What are your views on amending the time limit to three years for all applicants who were children under the age of 18 on the date of the incident giving rise to the injury?

For the reasons given above, we would support an extension to 7 years, as recommended by IICSA, but should that not find favour, an extension to 3 years would at least improve on the current situation.

Question 12: What are your views on amending the time limit to three years for all applicants to the Scheme?

For the reasons given above, we would support an extension to 7 years, as recommended by IICSA. However as an alternative (although not our preferred position) we could support this amendment. It would at least tie in with the time limits for bringing civil claims for compensation from the date of a cause of action. Having said that, most claims in the civil courts for compensation in child sex abuse cases rely heavily on the court's discretion to proceed out of time under section 33 Limitation Act 1980, as the majority are historical in nature. IICSA have of course recommended that that time limit be abolished for non-recent abuse cases except in specific circumstances. If that was to pass into law, the CICA might want to consider a similar abolition to the time limits for such cases submitted for compensation under the Scheme.

We trust our responses are helpful. We are of course happy to answer any questions on our submissions, or clarify any of our answers. In that event please contact:

Jonathan Wheeler (on behalf of FOCIS)
020 7288 4837/ 07894 397 728
jonathanwheeler@boltburdonkemp.co.uk

FOCIS