



**The Forum of Complex Injury Solicitors
(FOCIS)**

Response to

**Unspent Conviction Consultation by the
CICA**

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,
3. Further better understanding in the wider community of issues which arise for those who suffer serious injury,
4. Use members' expertise to promote improvements to the legal process and to inform debate,
5. 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 23 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 APIL are members or Emeritus members of FOCIS. Firms represented by FOCIS members include:

Anthony Gold	Hugh James
Atherton Godfrey	Irwin Mitchell
Ashtons	JMW
Balfour + Manson	Leigh Day
Bolt Burdon Kemp	Moore Barlow
CFG Law	Osbornes
Dean Wilson	Potter Rees Dolan
Digby Brown	Serious Law
Fieldfisher	Slater & Gordon
Fletchers	Stewarts
Freeths	Thompsons Law
Hodge Jones & Allen	

FOCIS members act for seriously injured Claimants with complex personal injury and clinical negligence claims. In line with the remit of our organisation, we restrict our responses relating to our members' experience, practices and procedures relating to complex injury claims only. We will defer to others to respond on the impact relating to other classes of case.

FOCIS welcomes the opportunity to comment in response to the Consultation as to eligibility through the 'unspent convictions rule' of the Criminal Injuries Compensation Scheme 2012.

General comments

FOCIS members act for a significant number of very seriously injured CICA Applicants often who have suffered acquired brain injury ('ABI') through an assault and those who have suffered sexual abuse often as minors and over prolonged periods of time.

The number of these Applicants is small relative to the total number of CICA Applicants, but such Applicants much more often receive the largest or maximum CICA awards.

FOCIS has submitted two previous responses in 2020, one as to ABI Applicants and the other predominantly for victims of sexual abuse. Those Responses are attached for ease of reference.

The 'unspent conviction rule'

In our view, there should not be an automatic rejection of a case through the unspent conviction rule in at least two circumstances identified as **A** and **B** below. *Kim Mitchell v Secretary of State for Justice* [2021] EWHC 248 (Admin) highlighted the importance of this issue and the legitimate expectation within the survivor community that a real attempt should be made to re-visit this exclusionary rule which is manifestly unfair.

It is accepted that introducing discretion will increase the cost of administering the Scheme but only marginally and any failure to do so might easily be interpreted as patent cost cutting/maintenance.

A - The conviction would have been spent before an application could have been made in accordance with the Scheme i.e. generally within 2 years of the crime of violence.

This is because:

- a. Delay benefits neither the Applicant, the Police nor the CICA and the existing rule invites this in appropriate cases; and
- b. The existing rule allows anomalies which are illogical and unfair and reflect not the substantial merits of an application but the timing of the application so that an application made on one day would be automatically rejected but if made 24 hours later might be accepted. This is of particular prejudice to those Applicants who apply without legal support/advice to identify the rules as to when a conviction is spent and whose application then is almost certainly lost under the prohibition of two identical applications rule at paragraph 18 of the Scheme:

"subject to paragraph 18a, an award will not be made to a person in respect of a criminal injury where that person has previously made an application in respect of the same injury under this Scheme ... irrespective of whether or how that application was finally disposed of".

B – Where there is a link between a crime of violence suffered by the Applicant and his/her commission of an offence subject of the unspent conviction.

There should be no automatic rejection of a case through the unspent conviction rule where the conviction is linked to a crime of violence which the Applicant has himself/herself suffered. In this context, sadly it is often the case that significant brain injuries cause disinhibition, change of personality and cognitive impairment. Similarly, victims of sexual abuse commonly suffer mental illness or disorder.

To automatically reject applications in such circumstances fails to protect victims of crime and seems inconsistent with the stated objectives of the Scheme. In these circumstances, the Scheme should allow provision of medical evidence to determine if the unspent conviction was linked to a crime of violence and in which case the conviction should be disregarded. It is anticipated that medical evidence would often be sought from a Neuropsychiatrist or Neuropsychologist and in the usual course would be obtained by the CICA in collaboration with the Applicant or his/her legal advisors.

Dated this 5th day of July 2022