



PARK
SQUARE

BARRISTERS

CRIMINAL INJURY COMPENSATION CLAIMS

A very brief introduction

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What is it?

A statutory scheme set up by Parliament to compensate blameless victims of crimes of violence

Historically the Criminal Injuries Compensation Board awarded compensation using common law principles

The scheme now exists in a statutory form with a fixed tariff scheme. The present scheme is the 2012 Criminal Injuries Compensation Scheme

Applications made under previous schemes continue to be considered under the different terms of those schemes (1995, 2001, 2008 schemes)



- The maximum award is £500,000
- A person may be eligible for an award whether or not the incident giving rise to the criminal injury to which their application relates has resulted in the conviction of an assailant in any part of the United Kingdom or elsewhere.
- An award will not be made if an assailant may benefit from the award
- In exceptional cases an act may be treated as a crime of violence where the assailant is not capable of forming the necessary mental element due to insanity or is a child below the age of criminal responsibility who in fact understood the consequences of their actions



Eligibility

A person may be eligible if they sustain a criminal injury which is directly attributable to their being a victim of a crime of violence committed in a relevant place

Annex B defines “crime of violence”

- 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
- e) Arson or fire-raising

An act or omission will not constitute a crime of violence unless it is done either intentionally or recklessly



Indirect injuries

A person may be eligible for an award if they sustain a criminal injury which is directly attributable to them taking an exceptional and justified risk for the purpose, and in the relevant place of:

- a) Apprehending an offender or suspected offender
- b) Preventing a crime
- c) Containing or remedying the consequences of a crime
- d) Assisting a constable who is acting for one of more of the purposes at a) to c)

A risk taken for the above purpose in the course of a person's work will not be considered to be exceptional if it would normally be expected of them in the course of that work



Witnessing an incident

A person may be eligible for an award if they sustain a criminal injury in a relevant place 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 a person with whom the Applicant

- a) At the time of the incident had a close relationship of love and affection
- b) If the loved one is still alive, continues to have such a relationship



Grounds for withholding/reducing an award

An award will be withheld unless the incident has been reported to the police as soon as reasonably practicable and unless the applicant has co-operated as far as reasonably practicable in bringing the assailant to justice

In deciding whether this requirement is met, particular account will be taken of:

- (a) the age and capacity of the applicant at the date of the incident;
- (b) whether the effect of the incident on the applicant was such that it could not reasonably have been reported earlier.

An award will be withheld or reduced if the Applicant has unspent convictions set out in Annex D



An award may be withheld or reduced if;

The Applicant fails to take all reasonable steps to assist the claims officer in considering the application

The conduct of the Applicant before, during or after the incident giving rise to the criminal injury makes it inappropriate to make an award or full award

The Applicant's character makes it inappropriate to make an award or full award

In the case of a fatal injury, if the deceased's conduct during or after the incident, makes it inappropriate to make an award or full award



Loss of earnings

Under previous schemes loss of earnings were awarded for past/future loss using a multiplier/multiplicand approach.

The 2012 scheme has limited the scope for claims for loss of earnings

No payment will be made for the first 28 weeks of loss

An Applicant must have no or very limited capacity for paid work as a direct result of the injury

The Applicant must have been in paid work at the date of the incident and must have been in regular paid work for a period of at least three years immediately before the date of the incident or they must have had a good reason for not having been in paid work for this period (i.e. full time education)



The period to which a loss of earnings payment will relate ends on whichever is the earliest of:

- (a) the day on which the applicant no longer has no or very limited capacity for paid work as a direct result of the injury
- (b) the day on which the applicant will reach state pension age;
- (c) where the criminal injury has resulted in a life expectancy below the state pension age, the expected end of the applicant's life.

Past loss of earnings are calculated by multiplying a weekly rate, at the date of determination, of statutory sick pay under section 157 of the Social Security Contributions and Benefits Act 1992 by the number of weeks, treating part weeks as full weeks to the day the application is determined.



Future loss of earnings are calculated on the same basis from the day after the day on which the application is determined and ending on the day calculated in accordance with the above paragraph (paragraph 45)

Future loss of earnings payments are then discounted in accordance with the Tables in Annex F, which set out multipliers to be applied to account for the accelerated receipt of payments, discount factors to be applied to a lump sum in respect of loss which starts at a future date and assumptions in relation to life expectancy



Special expenses

Only certain types of special expenses may be awarded where the Applicant has a loss of earnings for over 28 weeks

They must be necessarily incurred by the Applicant on or after the date of the injury as a direct result of the criminal injury giving rise to the injury payment. Provision, or similar provision, must not be available free of charge from another source and the cost must be reasonable.

Examples include

- a) The Applicant's property or equipment, which was relied on by the applicant as a physical aid and which was lost or damaged as a result of the incident giving rise to the injury;
- b) Costs (other than in respect of loss of earnings) arising from treatment for the injury under the National Health Service or a state health service other than the National Health Service where those costs would also have arisen if the applicant were being treated under the National Health Service in England and Wales
- c) Special equipment



- d) Adaptation of the applicant's accommodation
- e) The cost of care in connection with the applicant's bodily functions or meal preparation;
- f) The cost of supervising the Applicant in order to avoid substantial danger to the Applicant or another person
- g) Fees payable, in England and Wales, to the Court of Protection or the Public Guardian established under the Mental Capacity Act 2005
- h) Costs arising from the administration of the Applicant's affairs due to their lack of mental capacity
- i) The cost of setting up a trust following a claims officer's direction under paragraph 106



Other types of award

Bereavement payments (£11,000 or £5,500)

Child's payments (£2000 for each year)

Funeral payments (£2500)

Dependency payments



Key differences to the common law

The tariff system

An Applicant receives a fixed level of compensation under a tariff to compensate different types of injuries

The smallest tariff award is £1000. The maximum tariff award is £250,000. The maximum overall award is £500,000

An Applicant may receive up to 3 tariff awards. Applicants receive 100% of the highest tariff award, 30% of the second highest tariff award and 15% of the third highest tariff award

Awards may be reduced if the injury includes a degree of exacerbation/acceleration



Time limits

An application must be sent as soon as reasonably practicable after the incident giving rise to the criminal injury and in any event within two years after the date of the injury

A claims officer may extend the time period where he is satisfied that

- a) Due to exceptional circumstances the Applicant could not have applied earlier
- b) The evidence presented in support of the application means that it can be determined without further extensive enquiries



The procedure

Claims officers determine applications under the scheme

The CICA must receive an application for a review within 56 days after the date of the written notice of determination.

The Applicant may appeal to the First Tier Tribunal following the review decision

Oral hearings take place in front of a three person panel

There is no appeal from the decision of the First Tier Tribunal (but an application can be made for a judicial review to the Upper Tribunal)



Costs

There is no mechanism for legal representatives to recover their costs from the CICA or the Tribunal.

Individuals sometimes enter into Damage Based Agreements, particularly with very large claims

There are provisions for the CICA to pay for the costs of obtaining medical and expert evidence in certain circumstances



Re-opening

A claims officer may re-open the application if the person subsequently dies as a result of the criminal injury giving rise to the award or there has been such a material change in the medical condition of the applicant that allowing the original determination to stand would give rise to an injustice to the applicant

Usually there must be evidence that the application can be determined without further extensive enquiries by the claims officer



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*If you have any topic requests for future seminars, please let us
know*



Relief From Sanctions

By Phillipa Hildyard



Pre-April 2013

Jackson LJ concerned with the:

“damage this culture of delay and non-compliance [was] inflicting upon criminal justice system”



Jackson Reforms

CPR 3.9

(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –

(a) for litigation to be conducted efficiently and at proportionate cost; and

(b) to enforce compliance with rules, practice directions and orders.

(2) An application for relief must be supported by evidence.



Immediately after Jackson Reforms

- Inconsistent application of the new test
- *Mitchell MP v New Group Newspapers Limited* [2013] EWCA Civ 1537 - took a very robust approach.



Denton v White [2014] EWCA Civ 906

- 3 stage approach:
 1. Identify and assess the seriousness or significance of the breach.
 2. Consider why the default occurred
 1. Evaluate all the circumstances of the case, so as to enable the court to deal justly with the application (including CPR 3.9(1)(a) and (b)).



Utilise v Davies & Others

[2014] EWCA Civ 906

- C directed to file costs budget by 4pm
- C filed at 4:45pm
- Court of Appeal overturned Judge and granted relief from sanctions
- Not a serious or significant breach
- No good reason
- But relief applied for ASAP



Patel v Mussa
[2015] EWCA Civ 434

- C failed to file documents and skeleton arguments on time in breach of Court Directions.
- C delivered them only on the morning of the Court Hearing.
- Court held it was a serious breach.
- Court said it was unjustified.
- Judge refused to adjourn and refused application for relief from sanctions.



Jamadar v Bradford
Teaching Hospitals NHS Trust
[2016] EWCA Civ 1001

- Failure to serve costs budget
- Serious breach - resulted in further costly CMC.
- Reason - both DJ and CJ rejected the appellant's reason for the breach. Found that the solicitor had deliberately decided not to file the budget.
- Appellant should not be granted relief from sanctions and appeal was dismissed.



Clearway Drainage Systems Ltd v
Miles Smith Ltd
[2016] EWHC Civ 1258

- C served witness statements 2 months late.
- Would still be possible for trial to take place.
- Refusal to grant relief would effectively end C's case.
- Court of Appeal found serious and significant breach.
- No excuse for such a delay.
- Refused relief from sanctions.



Gladwin v Bogescu
[2017] EWHC 1287 QB

- Late filing of C's witness statement.
- Lower Court found breach was serious and for no good reason but granted relief from sanctions.
- Appeal Court found the Judge erred and that he should have acted more robustly.
- Appeal Court struck out C's claim in full, despite liability having already been admitted.
- No softening in approach.



CURRENT POSITION

- Court has flexibility post *Denton*.
- No softening by Court of Appeal where there is a serious / significant breach and no good reason.
- Relief being granted where the breach is trivial (e.g. small delay in filing).
- Relief being granted where there is an understandable reason for breach (e.g. solicitor diarised wrong date or solicitor unwell).



TIPS

- Try to set realistic timetable from outset
- Anticipate non-compliance.
- Try to agree with your opponent an extension of up to 28 days if necessary (CPR 3.8(4)) - as long as it doesn't interfere with a court hearing.
- If cannot agree - seek extension from court.



MORE TIPS

- If you do miss a deadline - ACT PROMPTLY. Delays in seeking relief often result in refusal.
- Be co-operative with opponents seeking relief / extensions.



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