

# A GUIDE TO CRIMINAL INJURIES COMPENSATION



Being a victim of crime such as physical or sexual assault can have significant and long-term consequences for a woman's health and well-being. If you have received a physical or mental injury as a result of a violent crime you may be eligible to apply for compensation through the Criminal Injuries Compensation Scheme 2008. This legal guide is designed to give you information about criminal injuries compensation, who can apply for it and how.

## Language

In this legal guide we will use the terms "victim" and "applicant" to describe the person who is applying for compensation and "perpetrator" or "assailant" for the person who is responsible for the criminal offence. We use these terms because this is the language used in the Criminal Injuries Compensation Scheme.

## The Criminal Injuries Compensation Scheme 2008

A person seeking compensation for an injury that occurred because they were a victim of a crime can apply (subject to certain conditions, see below) to the **Criminal Injuries Compensation Authority (CICA)** for a compensation award.

The CICA decide whether an applicant for criminal injuries compensation is eligible and, if so, how much they are given. To decide these

issues the CICA must apply the **Criminal Injuries Compensation Scheme 2008 (the Scheme)**. This is a Scheme created by the Government which is updated every few years. All applications to the CICA for criminal injuries compensation made **on or after 3rd November 2008** in England, Scotland and Wales will be decided under the 2008 Scheme's criteria. Applications for compensation made **before 3rd November 2008 or from Northern Ireland are dealt with under different arrangements**, and are not dealt with by this legal guide.

The purpose of the Scheme is to compensate victims of violent crime for the physical or mental injuries they have received. This may include, in some cases, compensation for lost earnings or certain other expenses such as for medical treatment or equipment. The compensation that a victim receives comes from the CICA and not the perpetrator.

## Who is eligible to apply for criminal injuries compensation?

In order to be able to apply for criminal injuries compensation you have to have received a **criminal injury**. According to the Scheme this means that:

1. You must have received an injury (for definition of **an injury**, see below) as a result of a criminal offence committed against you **on or after 1st August 1964 in England, Scotland or Wales**.
2. You must have received the injury in the course of being a victim of crime in the following situations only:
  - a **crime of violence** such as assault occasioning actual bodily harm or sexual assault. It includes if a person has been trafficked for sexual exploitation and injuries received as a result of arson or poisoning.
  - an **offence of trespass on a railway** e.g. you were injured in the resulting train crash.
  - **trying to stop a crime being committed** or trying to prevent someone who has committed an offence from escaping (you must have been taking exceptional risk justified in the circumstances).
3. You **must** have reported what happened to the police. **It does not matter whether or not the perpetrator is identified or convicted**. What matters for the purposes of compensation is reporting what happened.

If you sustained an injury from an offence that falls outside the above criteria e.g. an injury as a result of being the victim of fraud, you would not be entitled to receive criminal injuries compensation, even if you reported it to the police. Similarly, if an offence was committed against you when you were abroad you would not be able to apply under the Scheme (although if you received the injury in an EU

country you may be able to seek assistance from the CICA, see below).

## What types of injury can I claim for?

In order for a claim for compensation to be successful you, the applicant, have to show on the **balance of probabilities** that you suffered a **criminal injury**.

Under the Scheme an injury is defined as:

- a **physical injury** (including a fatal injury),
- a **mental injury** (e.g. mental illness) or
- a **disease** (a medically recognised illness or condition) which is directly attributable to a crime of violence.

While all injuries are serious for the person involved, compensation is **not available** where the injury received is **comparatively minor** such as a scratch or a bruise. If you have received multiple minor injuries it may be possible to receive compensation, although it is advisable to seek advice before you apply.

### Physical injury

A **physical injury award** includes an element of compensation for the mental distress receiving an injury may cause. If you have medical evidence (from a doctor, psychiatrist or psychologist) that you have received a more significant mental injury you may be entitled to a separate award for this (see below).

You will need to show evidence from a medical professional that you have received a physical injury as a result of being a victim of a crime.

### Mental injury

Under the Scheme an applicant who received a mental injury **but not a physical injury** will be able to receive compensation if:

- she was in reasonable fear of immediate personal physical harm; **or**

- she received the injury because:
  - someone she was in a close relationship of love and affection to at the time suffered a criminal injury; and,
  - she either witnessed the incident and was present when the other person sustained the injury, or was closely involved in its immediate aftermath; and,
  - the relationship is on-going (unless the victim has since died).

This means, for example, that if your only injury is a mental injury caused by loss of property after arson you will not be eligible for compensation.

If you have suffered a mental injury it is important for the purposes of claiming compensation that you have been **diagnosed with a condition** (e.g. post traumatic stress syndrome) by a medical professional, and **the condition arose from the offence that occurred**.

### Victims of sexual assault

If you have been the victim of a sexual assault you do not need to show evidence of a diagnosed mental or physical injury to get a basic award because the **fact that you have experienced the assault is seen as an injury in itself**. If you have been clinically diagnosed with a mental health condition or received a physical injury as a result of the assault, you may be able to receive a sum **in addition** to compensation for the assault in itself.

Where an applicant has been the victim of a sexual offence, an additional mental injury award can only be given if the victim **did not consent** to the activity. This is because for some sexual offences the act itself is an offence, whether or not the act was consented to. For example, it is an offence to engage in sexual activity with someone under the age of 18 if the perpetrator is in a position of trust with the victim, irrespective of whether or not the victim gave consent.

## Exclusions from receiving criminal injuries compensation

The Scheme states that certain victims are **not able** to receive compensation:

- An applicant who received an injury **before 1st October 1979** where the **victim and the assailant were living together** at the time as members of the same family.
- An applicant who has **already made a claim** for compensation for the same injury under the Scheme, or another criminal injury scheme in Great Britain (i.e. in Northern Ireland, or using previous Criminal Injury Compensation Schemes).
- If the applicant is under 18 and it is thought that it would **not be in the interests** of the young applicant to make an award, an award might be declined e.g. an incident of a one off sexual assault on a very young infant where the infant would not have any memory of the assault and has no further contact with the assailant.

## Crimes of violence in the family

The purpose of the Scheme is to compensate victims of crime, so compensation will **not be paid if the person who has caused the injury may benefit from it**. This means that an application for compensation will be refused if there is a continuing, close, link between the person who experienced the injury and the person who caused it.

Where the injury was sustained when the victim and perpetrator were living in the same household as family members, including as husband and wife, civil partners or as a cohabiting couple, then compensation **will not** be paid **unless**:

- the perpetrator has been prosecuted for the offence or there are good reasons why a

prosecution has not been brought (e.g. because there is not enough evidence to charge the offender); and

- where the claim involves violence between adults, the applicant and the perpetrator stopped living in the same household before the application was made and are unlikely to share the same household again.

## Factors that may affect the award of compensation

### Not co-operating

If you are eligible for compensation and apply for it your compensation may be **withheld completely, or significantly reduced**, if you failed to co-operate with criminal justice authorities, specifically if you failed to:

- report the crime to the police as soon as was possible (taking into account any good reasons for a delay);
- co-operate with the police and others, including the Crown Prosecution Service, in the investigation or prosecution of the offence (e.g. by refusing to give a statement);
- assist the CICA (e.g. by not giving them important information about the claim); or,
- respond repeatedly and without reasonable excuse to communications sent by the CICA to your last known address.

It is **extremely important** to remember that the assailant **does not have to be convicted of a criminal offence** for you to receive compensation, but that you must **try to co-operate fully with the authorities** during the criminal justice process.

### Other factors affecting awards

The following factors may also result in a claim for compensation being reduced or refused:

- Where the applicant's behaviour before,

during or after the incident makes it inappropriate that a full award or any award be given (e.g. where a person was injured in a fight they had agreed to take part in); or

- Where the applicant consumed significant amounts of alcohol or used illegal substances **and** this contributed to the circumstances that led to the criminal injury; or
- Where the applicant has a criminal record there must be exceptional reasons for criminal convictions **not to be taken into consideration** for any claim. A criminal record will exclude spent convictions. If you are not sure whether your conviction is spent you should seek legal advice, see **Useful contacts**.

Claims officers at the CICA use their discretion and apply the Scheme on a case-by-case basis in reducing or withholding an award. Therefore, if you think that one of the above factors may apply in your case, but you think it should not impact on your claim, then you should explain this in your application. If your award is reduced or withheld for any reason you may be able to challenge the decision (see below).

## Are there time limits for applying?

An application for compensation must be made as soon as possible after the incident that caused the injury and should be **received by the CICA within 2 years** of the date of the incident. The 2 year time limit can only be waived if it is:

- **Practicable** to do so **and**;
- In the circumstances of the case it **would not have been reasonable to expect the applicant to have made an application within two years** of sustaining the injury.

If you are applying outside of the 2 year limit, e.g. because you suffered sexual abuse as a

child, then you should explain in your application why you think the time limit should be waived and why you did not apply before.

### How do I apply for compensation?

The CICA has three application forms; one for **personal injury claims as a result of a single violent crime**, one for **personal injury claims as a result of a period of abuse** and one for **fatal injury claims**. Forms can be obtained from the CICA, they can be downloaded, sent to you in the post, or you can make your application online or over the telephone (see **Useful contacts**).

By making the application for compensation you are giving the CICA permission to seek and obtain information about you and your injury. The CICA may, for example, seek copies of your medical records to confirm the injuries you received or contact the police to confirm that you co-operated with their enquiries. All information received by the CICA is confidential.

When you make your application you will be given a **personal reference number**. The CICA will then start to research your case. You can contact the CICA and quote your personal reference number to check on the progress of your case.

There are no time limits by which the CICA must make a decision regarding your claim. The guideline time for assessing a claim is **12 months**. When a decision on a claim can be made it will be passed to a **claims officer** who will decide whether compensation should be paid and, if so, how much. The claims officer should write to you and explain how he or she reached a decision in your case, with particular reference to whether you have satisfied the test that on the balance of probabilities you received a criminal injury.

### Help with applying

The application process is designed for people to be able to make their own application. The CICA publish a guide to the Scheme which can help to explain how it works. You can contact a solicitor for help but public funding (often referred to as legal aid) is not generally available so it is likely you would have to pay for the advice privately. Victim Support can provide information about the Scheme as well as help completing the form. You can also contact Rights of Women (see **Useful contacts**) and/or approach your local Citizens' Advice Bureau or Law Centre.

### Types of compensation

A **personal injury award** is designed to provide compensation for the injuries you have received. The amount of compensation payable is fixed according to a **tariff**, a list of fixed compensation payments for each injury that an applicant may have received. For example, the tariff amount for an applicant who has experienced non-consensual sexual intercourse by one assailant is £11,000. If as a result of the incident she received serious physical or mental injuries she may be eligible for a higher level of compensation. The tariff describes physical injuries but each award also includes an element of compensation for mental injury. You may receive additional amounts of compensation if you have received more than one injury.

If you **lost earnings** (or the ability to earn) for **over 28 weeks** you may qualify for additional compensation for the lost earnings. If you qualify you will only be paid for loss of earnings from the 29th week and not for loss of earnings during the first 28 weeks. If you are considering making a claim for lost earnings you will need to complete additional forms and provide

supporting evidence from your employer or doctor. If you received any welfare benefits during the period you were not able to work (excluding those received in the first 28 weeks) these will be deducted from any compensation you are awarded.

In addition to lost earnings you can also claim for **special expenses** you have incurred (such as for medical expenses or for equipment). You will **only be eligible** to apply for special expenses compensation if you have lost earnings (or the ability to earn) for over 28 weeks. You will, however, receive money for any expenses that were incurred during and after the 28 weeks. This claim should be made alongside a lost earnings claim, and the same additional forms must be completed and supporting evidence must be provided.

A **fatal injury award** is available where the applicant's parent, child, husband, wife, cohabitee or same sex partner (who lived with the deceased for 2 years before the death) died as a result of a violent crime. An applicant may recover the cost of funeral expenses and may be eligible for additional compensation reflecting loss of financial support by the deceased or for loss of care which the deceased person provided to the applicant before their death. Children may also bring claims for loss of the services or care of their deceased parent.

Any award of compensation you receive **must be accepted by you in writing within 90 days** of the date of the decision to grant it. Actual payment is usually in the form of a lump sum, but can be made in a series of payments if directed by a claims officer, who can also attach conditions to the payment. Any conditions will be specified in your decision letter. At any time before actual payment of an award the CICA can **reconsider** the decision to grant you

compensation where new evidence is discovered or there is a change of circumstances.

## Challenging a decision

### Review

If you believe that a decision to refuse you compensation or reduce the amount awarded is incorrect you can ask for another claims officer within the CICA to **review** it. Information about how to apply for a review should be sent to you with the letter informing you of the decision. An application for review should be made **within 90 days** of the decision. This time limit may be extended if you make a **written request** for an extension and the claims officer considers that there are **exceptional circumstances which justify an extension** being granted. As a result of the review the decision made may not be changed or the amount of compensation you are awarded could be increased or decreased.

### Appeal

If, following a review, you still disagree with the decision you can bring an **appeal** before an independent body, the **First Tier Tribunal** (the Tribunal). A form and information about appealing a decision should be sent to you with the letter explaining the outcome of the review.

If you wish to appeal a decision to the Tribunal you should complete an appeal form and send it to the Tribunal **within 90 days** (although this time limit may be extended in some circumstances). For more information on the appeal process and how to complete the appeal form you can contact the Tribunal's Service (see **Useful contacts**).

The Tribunal will reconsider your application and, unlike your initial application for compensation, you will be expected to attend the Tribunal hearing and may be asked to give evidence. The Tribunal may make the same

decision as the CICA, increase the award, or decrease it. They will hear evidence as to how the decision was made from a presenting officer from the CICA and information as to why you disagree with it from you or your legal representative, if you have one. The Tribunal will then make a decision, which is almost always final. It may be possible to challenge the Tribunal's decision in certain exceptional circumstances. You should seek legal advice if you wish to appeal a decision by the CICA or challenge the decision of the Tribunal.

### Re-opening a case

An application for compensation can be **re-opened** within 2 years of the final decision if there has been **such a material change** in the applicant's medical condition that **injustice would occur** if the application was not re-opened e.g. since you first applied your condition has unexpectedly become much worse.

### Victims of trafficking for sexual exploitation

Whilst there are no specific criteria under the Scheme which apply to victims of trafficking for sexual exploitation, women who have been trafficked are entitled under international law to apply for compensation. The UK Government has fulfilled its obligations to provide compensation for victims of trafficking in the UK by allowing them to apply for criminal injuries compensation on the same basis as anyone else who has experienced violence. The CICA has awarded damages to women who have been trafficked for sexual exploitation.

### Other compensation available

In addition to, or as an alternative to, claiming criminal injuries compensation you may wish to bring a **civil claim for damages** against the

person responsible for your injury or against someone who failed to protect you from violence (such as Social Services). If you are awarded damages by a civil court, the CICA will take these into account in assessing your compensation. In order to bring a civil action you will need a solicitor. You may be eligible for public funding to help you with your case. For information about public funding and finding a solicitor contact the Community Legal Service (see **Useful contacts**).

**Compensation orders** can be made in criminal proceedings as part of sentencing (after your perpetrator has been found guilty, or has pleaded guilty). If a compensation order is made your perpetrator will be ordered to pay you a set amount of money. How much you receive, and whether a compensation order is made, will depend on the circumstances of the case. You should contact the police officer in your case if you wish to seek a compensation order.

### Injuries received in other countries

If you have received an injury as a result of a crime committed against you in a European Union (EU) country then, under EU law, you may be able to apply for compensation from that country. In order to be eligible you have to live in the UK and have received an injury in another EU country **on or after 1st July 2005** as a result of a violent crime. The CICA are responsible for assisting UK residents with claims in other EU countries by giving you the appropriate application form and information about required supporting evidence. You should contact the **CICA EU Compensation Assistance Team** (see **Useful contacts**), and if necessary seek legal advice.

If you were injured as a result of a violent crime in a country **outside the EU** and wish to investigate whether you may be eligible for

compensation, then you should contact the Foreign and Commonwealth Office.

**The law and procedure relating to criminal injuries compensation is complex and we have provided a very basic overview of the**

**terminology, law and application procedure. If you require advice or wish to discuss any of the issues in this legal guide please contact our advice line, your local Citizen's Advice Bureau or Law Centre.**

**For free, confidential, legal advice on sexual violence, criminal injuries compensation, criminal, immigration and asylum law call 020 7251 8887 (telephone) or 020 7490 2562 (textphone). The advice line is open on Mondays 11am – 1pm and Tuesdays 10am – 12 noon.**

**For free, confidential, legal advice on family law including domestic violence, relationship breakdown, children and contact issues call 020 7251 6577 (telephone) or 020 7490 2562 (textphone). The advice line is open on Tuesdays, Wednesdays and Thursdays 2pm – 4pm and 7pm – 9pm and Fridays 12 noon – 2pm.**

### **Other useful telephone numbers**

Criminal Injuries Compensation Authority	0800 358 3601	<a href="http://www.cica.gov.uk">www.cica.gov.uk</a>
Tribunal's Service	0141 354 8555	<a href="http://www.cicap.gov.uk">www.cicap.gov.uk</a>
Victim Support	0845 303 0900	<a href="http://www.victimsupport.org">www.victimsupport.org</a>
Community Legal Advice (for information and finding a solicitor)	0845 747 4747	<a href="http://www.communitylegaladvice.org.uk">www.communitylegaladvice.org.uk</a>

**Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT**

**Office/Admin: 020 7251 6575 Textphone: 020 7490 2562**

**Fax: 020 7490 5377 Email: [info@row.org.uk](mailto:info@row.org.uk) Website: [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)**



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**Please note that the law referred to in this legal guide is as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this legal guide. This legal guide is designed to give general information only.**

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