

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 experienced a violent crime you may be eligible to apply for compensation through the Criminal Injuries Compensation Scheme 2012. 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 Authority and the Criminal Injuries Compensation Scheme 2012

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.

Claims officers at the CICA decide whether an applicant for criminal injuries compensation is eligible for an award, and, if so, how much they are given. The CICA apply the **Criminal Injuries Compensation Scheme 2012** (the Scheme). This is a Scheme created by the Government which is updated every few years.

Who is eligible to apply for criminal injuries compensation?

In order to be able to apply for criminal injuries compensation you must fulfil the following requirements:

1. You must have received **an injury** as a result of a criminal offence committed against you on or after 1st August 1964 in England, Scotland or Wales. The type of injury you have experienced must be included in the Scheme for you to be able to claim compensation for it (see below).
2. You must have received the injury in the course of being a victim of a **violent crime** or in **the course of preventing a crime**.
 - A violent crime is a physical attack such as assault or sexual assault, a threat against a person causing fear of immediate violence, or arson or fire-raising. Compensation is available for a period of domestic or sexual abuse involving violent crime(s). You can also claim compensation if you were present at, and witnessed, a violent crime where a loved one was injured, or you encountered the immediate aftermath of such.
 - In order to receive compensation for preventing

a crime (including stopping a suspect or assisting a police officer) you would have to have taken an exceptional and justified risk, and you could not take this action as a normal part of your job e.g. if you were a police officer.

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.
4. You must pass the **residence test**. You will be considered eligible for compensation only if, on the date you experienced the incident, you were:
 - **Ordinarily resident** in the UK – the Scheme does not say what ‘ordinarily resident’ means but it is commonly accepted to mean that a person normally resides in the UK, their residence is lawful, voluntary and they are settled i.e. the UK is their home; or
 - A **British Citizen**, a close relative of a British Citizen, an **EEA citizen** or their family member (see our legal guide *Domestic violence, immigration law and no recourse to public funds* for more information on who is an EEA citizen), a national of a country signed up to the Council of Europe Convention on compensation for victims (European Union countries), a member of the **armed forces** (or an accompanying close relative); or
 - You were at the time of the incident (or have subsequently, and before you claim compensation) been identified formally as a **victim of trafficking**, or you have received a period of **refugee leave** or humanitarian protection, i.e. you have made a successful application for asylum. If you are waiting for a decision on your asylum application or to be identified as a victim of trafficking you can defer a decision on your compensation application.

If you do not fit into the above criteria, you will not be entitled to claim criminal injuries compensation, even if you have received an injury. For more information on your eligibility please contact our Criminal Law Advice Line (see below for details).

When compensation will not be given or may be reduced

If you meet the eligibility criteria above you will still not be able to receive an award of compensation in the following circumstances:

- If you have **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 schemes).
- If you received an injury **before 1st October 1979** where you and the perpetrator were living together at the time as members of the same family.
- If you received an injury **on or after 1st October 1979** where you and the perpetrator were adults living together as members of the same family, unless you no longer live together and are unlikely to do so again. This restriction is put in place to prevent a perpetrator from benefitting from the compensation claimed (any anticipated benefit to a perpetrator will result in a claim being rejected). If you are claiming for an injury received in the course of domestic abuse, you will need to clearly state you are no longer living with the perpetrator as a member of the same family.

There are other circumstances where an award of compensation may be withheld completely or reduced:

- An award will be **withheld** unless you reported the incident which caused the injury to the police as soon as reasonably practicable. When considering what is ‘reasonably practicable’ a claims officer will look at your age and capacity at the time of the incident and whether the effect of the incident on you was such that it could not reasonably have been reported earlier e.g. you were too traumatised to report to the police initially.
- An award will be **withheld** unless you have co-operated as far as possible in making sure the perpetrator is brought to justice e.g. you have co-operated with the police investigation.

- An award may be **withheld** or **reduced** if you fail to take all reasonable steps to assist with the process and consideration of your claim e.g if you repeatedly fail to respond to letters/ emails/phone calls from the CICA or anyone else involved.
- An award may be **withheld** or **reduced** where your behaviour before, during or after the incident giving rise to the injury claimed for, makes it inappropriate to make a full (or any) award. For example, where a person received an injury in a fight they had begun. This exclusion does not include behaviour where you have taken alcohol or drugs and that has made you more vulnerable to becoming a victim of a crime of violence e.g. in incidents of sexual assault. If this is the case, you can still receive a full award.
- An award may be **withheld** or **reduced** if you have unspent criminal convictions and/or other bad character. Bad character apart from criminal convictions is assessed on a case-by-case basis. Some criminal convictions exclude you from receiving an award altogether e.g. if you received a custodial sentence or a community order sentence. If you received, for example, a fine or conditional discharge, your award will be withheld or reduced unless there are exceptional reasons not to do so. Minor traffic offences do not generally lead to an award being withheld or reduced. If you have a criminal conviction or anything else that could be seen as 'bad character' you should ensure you explain the circumstances on your application form and state why you should still receive a full award.

What can I claim for?

In order for a claim for compensation to be successful you have to show on the **balance of probabilities** that you experienced an injury listed in the Scheme (Annex E provides a comprehensive list). The list is divided into different parts – physical injuries and mental injuries (this includes mental health conditions like post traumatic stress disorder); and fatal injuries, sexual offences and

patterns of physical abuse of adults and children, including domestic abuse.

Compensation for physical and mental injuries is not available where the injury received is comparatively minor. For mental injuries this means that you are unlikely to receive compensation unless your condition is disabling (i.e. it impacts greatly on you being able to carry out normal day to day activities), or permanent. All your physical and mental injuries need to be identified by a medical professional, who should provide a report, and need to have resulted from your experience of a violent crime, or in the course of you trying to prevent a crime.

Fatal injury

Fatal injuries are injuries that someone has died of. For further information on claiming compensation as the bereaved relative of someone who has died, please contact our Criminal Law Advice Line (see below).

Victims of sexual assault

If you have been the victim of a sexual offence (including rape) then you do not need to show evidence of a diagnosed mental or physical injury to get compensation because the fact that you have experienced the crime is seen as an injury in itself. Therefore, you should be eligible to receive a set award and the amount you receive will be according to the type of sexual offence you have experienced, as set out in the Scheme. If you have been diagnosed with a mental health condition or received a physical injury as a result of what happened, you may be able to receive a sum in addition to compensation for the offence in itself.

Compensation for sexual offences is only available if you did not consent to the sexual offence you experienced. This is because someone can commit a sexual offence against children and young adults even if they are consenting. 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, even if the victim says they consented to the activity.

Victims of domestic abuse

If you have experienced (as an adult or a child) a pattern of physical abuse then you may be able to claim compensation. If you were a child at the time of the abuse, you may also receive compensation even if the abuse was 'minor' as defined by the Scheme i.e. isolated or intermittent.

Other awards

If you **lost earnings** (or the ability to earn) for over 28 weeks as a result of the injury you are claiming for, 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. You will need to provide supporting evidence from your employer and/or doctor. Payments made will be based on statutory sick pay rates.

In addition to lost earnings you can also claim for **special expenses** you have incurred as a result of the injury, such as for medical expenses or equipment. The cost must be reasonable and will not be awarded if what you are claiming for is available for free e.g. available through the NHS, or where something similar is available for free. This is particularly relevant if you are claiming for the cost of specialist counselling – to be given an award in this category you will need to demonstrate that you could not access counselling or therapy of the same or similar nature through the NHS.

Are there time limits for applying?

Generally an application for compensation must be made as soon as possible after the incident causing the injury and should definitely be **received by the CICA within 2 years** of the date of the incident.

If you were **under 18** years old at the time of the incident the normal time limits do not apply and you should apply within 2 years of the first report of the incident to the police (if the report was made on or after your 18th birthday) or if the report to the police was made before your 18th birthday, you should apply for compensation by the time you turn 20.

A claims officer has a discretion to extend both time limits, and therefore accept an out of time application, if they are satisfied that due to exceptional circumstances you could not have applied earlier and the evidence presented in support of the application means that it can be determined without further extensive enquiries.

If you are applying outside of the 2 year limit then you should explain in your application why you think the time limit should be waived and why you did not apply before. You should also try and gather as much evidence about the claim yourself as you can e.g. a medical report from your doctor, a supporting report from the police, so that the claims officer does not come to the conclusion that your case needs extensive further enquiries.

Applying for criminal injuries compensation?

Application forms to apply for criminal injuries compensation can be obtained from the CICA (see Useful contacts).

You should include evidence to support your application, in particular any evidence in relation to eligibility (e.g. documents stating you have refugee status), medical evidence diagnosing and explaining your injuries and evidence to support any request for additional payments such as loss of earnings or special expenses. If you have to pay to receive evidence in support of your application e.g. for medical reports, then the CICA will not normally pay for this or pay you back, unless the claims officer is persuaded either that you cannot reasonably obtain the information, but the CICA can, or that you cannot afford to get the evidence, or the cost exceeds £50. You would need to alert the CICA if you want them to meet the costs of obtaining initial evidence and explain why. If the claims officer wants more evidence after you have submitted your application, and it would be reasonable in the circumstances for the CICA to pay for this, then they will do so. However, the CICA may deduct from

any award of compensation the costs of obtaining further medical evidence up to £50, or any costs relating to you failing to attend a medical or other appointment.

When the CICA have made a decision, a claims officer will write to you.

Any award of compensation you receive **must be accepted by you in writing within 56 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.

Help with applying for compensation

The application process is designed for people to be able to make their own application. The CICA publish supporting information to assist people to make their own application (see Useful contacts). Victim Support workers (see Useful contacts), staff at local Citizens' Advice Bureaux and Law Centres, and advisors on our Criminal Law Advice Line may also be able to help you complete the form. You can also contact a solicitor but legal aid for applying is not available so you would have to make other payment arrangements.

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 56 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 mean that you could not have complied with the time limit.

Appeal

If, following a review, you still disagree with the decision you can **appeal** before an independent body, the **First Tier Tribunal** (the Tribunal). Information about appealing a decision should be sent to you with the letter explaining the outcome of the review. If the Tribunal hear your appeal this means they will reconsider your application and you will be expected to attend the Tribunal hearing, and may be asked to give evidence. The Tribunal's decision is almost always final and they may make the same decision as the CICA, increase the award, or decrease it. For more information on the appeal process and how to apply you can contact the Tribunal's Service (see Useful contacts) or contact our Criminal Law Advice Line (see below).

Re-opening a case

An application for compensation can be **re-opened** within 2 years of the final decision (or later with supporting evidence) posthumously or if there has been such a material change for the worse in your medical condition that injustice would occur if the application was not re-opened.

Other compensation available

There are other ways you may wish to seek compensation for what has happened to you. You may wish to bring a claim for damages in the civil courts or ask for a compensation order if your perpetrator has been found guilty in the criminal courts. These options are beyond the scope of this legal guide but you could seek legal advice from a civil litigation solicitor in respect of claiming damages and/or contact our Criminal Law Advice Line for more information on compensation orders.

Britain is a member of the European Union (the EU) and as such you may be entitled to compensation if you have been injured in another EU country as a result of a violent crime on or after the 1st

July 2005. You can contact the EU Compensation Assistance Team for further information on 0300 003 3601 or e-mail eucat@cica.gsi.gov.uk.

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 criminal law issues including domestic and sexual violence, reporting to the police and criminal injuries compensation, call our Criminal Law Advice Line on 020 7251 8887 (telephone) or 020 7490 2562 (textphone) on Tuesdays 11am–1pm.

If you live or work in London you can also call our Ascent Legal Advice Line for advice on family and criminal law issues on 020 7608 1137. For more information about this advice line and our Family Law and Immigration and Asylum Law Advice Lines please visit our website.

Other useful contacts

Criminal Injuries Compensation Authority	0300 003 3601	www.justice.gov.uk/victims-and-witnesses/cica
Tribunal's Service	0141 354 8556	www.justice.gov.uk/tribunals/criminal-injuries-compensation
Victim Support	0845 303 0900	www.victimsupport.org.uk

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

Office: 020 7251 6575 Email: info@row.org.uk

Website: www.rightsofwomen.org.uk

Charity number: 1147913



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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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