

# Criminal Injuries Compensation Scheme Review 2020

## About Unlock

Unlock is a national, independent advocacy charity for people facing obstacles, stigma and discrimination because of their criminal record. Every year we hear from thousands of people who are unnecessarily held back in life because of their criminal record. We work at policy level to address systemic and structural issues. We listen to and consult with people with criminal records, undertake research and produce evidence-based reports to inform policy makers and the public.

## About this response

Unlock welcomes the opportunity to provide a response to the consultation on the Criminal Injuries Compensation Scheme. Our response is focused on the [Criminal Injuries Compensation Scheme Review 2020](#) (hereafter, "the consultation document") specifically the section on unspent convictions. The online consultation does not include questions on this issue and we have therefore provided a written response to [cics-review@justice.gov.uk](mailto:cics-review@justice.gov.uk).

## The Criminal Injuries Compensation Scheme

The Criminal Injuries Compensation Scheme (hereafter, "the Scheme") is a government funded scheme designed to compensate victims of violent crime. The Criminal Injuries Compensation Authority (CICA), administer the Scheme and decide all claims.

The rules of the Scheme and the value of payments awarded are set by Parliament and calculated according to a tariff of injuries. CICA acknowledge that "[...\[the award\] will never fully compensate you for what you have suffered or lost - it is just society's way of recognising that you have been a victim](#)".

Compensation can be awarded for:

- mental or physical injury following a crime of violence;
- sexual or physical abuse;
- loss of earnings - where you have no or limited capacity to work as the direct result of a criminal injury;
- special expenses payments - these cover certain costs you may have incurred as a direct result of an incident. You can only ask us to consider special expenses if your injuries mean you have been unable to work or have been incapacitated to a similar extent for more than 28 weeks;
- a fatality caused by a crime of violence including bereavement payments, payments for loss of parental services and financial dependency; and funeral payments.

## The “unspent conviction rule”

Since 2012 victims of violent crime are not entitled to compensation under the Scheme if they have an unspent conviction that resulted in:

- a sentence excluded from rehabilitation;
- detention or imprisonment, including in a young offenders’ institution or other youth custody
- a sentence of service detention;
- removal from Her Majesty’s service;
- a community order;
- a youth rehabilitation order; or
- a sentence equivalent to a sentence described in (a) to (f) above, imposed under the law of Northern Ireland or a member state of the European Union, or such a sentence properly imposed in a country outside of the European Union.

Where a victim has an unspent conviction that resulted in an unlisted sentence, an award can be reduced. The CICA say *“The new rule was intended to simplify the Scheme, to support the principle that state-funded compensation be provided to victims who have not cost society through their offending behaviour, and allow further transparency, clarity and consistency in decision making”* [101].

The unspent conviction rule was introduced following a 2012 review of the Scheme. Before 2012, decision makers had discretion to pay out awards for those with unspent convictions, on a case-by-case basis, where there were exceptional reasons not to withhold or reduce an award.

## The impact

The [consultation document](#) refers to analysis of the 75,000 applications received between 1 January 2016 and 1 January 2019 (para12). In just these three years, 3,500 people who were victims of violent crime – 420 who were victims of sexual violence - were refused compensation due to an unspent conviction [74]. Data obtained under freedom of information law shows criminal records were a factor in refusing compensation for a further 161 victims of sexual violence compensation in 2015.

The CICA chose not to include any further information on the nature of the convictions or sentences received but research conducted by Anglia Ruskin University found [hundreds of victims of rape denied compensation or offered reduced awards due to unspent convictions for offences including non-payment of TV licence and using a mobile phone while driving](#).

Further examples highlighted in the media include:

- a victim of Grievous Bodily Harm [denied compensation because of a three year old conviction for “threatening and abusive behaviour” after he heckled a politician](#).
- a victim of sexual abuse in childhood [denied compensation for a similar charge following an argument over wages](#)

- a victim of an organised grooming gang [denied compensation because she had spent time in custody as a result of the abuse](#)
- a victim of rape had their award [reduced by 30 per cent because of a drink-driving offence](#).

In each of these cases, the gravity of the offences committed by the applicant was far outweighed by the harm caused to them. These victims faced lifelong consequences as the result of the crimes committed against them but were denied the compensation that other victims facing these consequences would have received – in essence, their victimisation was ignored by the Scheme.

## Stakeholder response

The consultation document notes that *“Stakeholders have raised concerns about the impact of the 2012 rule on victims of abuse, exploitation and controlling and coercive behaviour”* [103].

These stakeholders include the Independent Inquiry into Child Sexual Abuse, which [recommended that the rule be revised](#) so cases where an applicant’s criminal conviction is likely to be linked to their child sexual abuse can be considered on their merits.

The previous Victims’ Commissioner for England and Wales, Baroness Newlove, recommended [discretion for victims of exploitation, abuse and coercive control in particular](#). The current Victims Commissioner, Dame Vera Baird, has also [raised concerns about the automatic exclusion of victims with unspent convictions](#). The All-Party Parliamentary Group for Adult Survivors of Childhood Sexual Abuse has [called for the unspent convictions rule to be abolished](#).

Victim Support have [called for the rule to be amended](#) so that victims are not excluded from compensation unless they have an unspent conviction for a serious offence.

## Unlock’s view

The consultation document states *“We must also take into consideration that all individuals with unspent convictions will have been found guilty of a crime, and are likely to have had particular circumstances of their vulnerability presented in mitigation and taken into account during sentencing”* [104].

Sentencing is influenced by a range of factors and does not solely reflect the gravity of the offence nor the circumstances in which it took place. Variations in average custodial sentence length across England and Wales [cannot be explained solely in terms of the characteristics of the cases or the individuals before the courts](#).

A 2015 study by the Ministry of Justice found that, for drug offences, the odds of imprisonment were [around 240% higher for people from self-identified Black, Asian, and Minority Ethnic \(BAME\) backgrounds combined, compared to those from a self-identified White background](#). Analysis in 2019 found that [custody rates were consistently highest for the Chinese or Other ethnic group over the last 5 years](#).

The time before a sentence becomes spent is determined by the sentence. Longer sentences take longer to become spent, therefore these regional or racial differences in sentence will influence the time before a conviction can become spent. This in turn will influence whether a person with a conviction who becomes a victim of a violent crime is eligible for compensation. The unspent conviction rule is likely to be indirectly discriminating against victims of violent crime from non-white backgrounds.

The consultation document goes on to state that *"Under the Rehabilitation of Offenders Act 1974, offenders must fairly bear the impact of their offending, which in our view includes exclusion from compensation of this kind, until their conviction becomes spent"* [105].

The Rehabilitation of Offenders Act was [created to protect individuals already rehabilitated \(that is, no longer committing offences\) from discrimination](#). The fact that a conviction has yet to become spent under the Act does not justify discrimination or blanket exclusion from social or financial support. Criminal injuries compensation is often essential for victims of violent crime to access counselling or to cover loss of earnings or expenses incurred as a result of injuries. These costs do not dissipate for victims who have unspent convictions and a focus on the 'costs to society' ignores the fact that people with convictions are, by and large, taxpayers too, both before and after their conviction.

The CICA insist that *"The intention of the existing rule is to reflect the degree of harm done to others and the cost to society of offending behaviour when deciding eligibility for compensation"* [104]. The existing rule however, does not enable decision makers to 'reflect the degree of harm done to others or the cost to society' - instead it renders victims of violent crime unworthy of compensation if they have an unspent conviction resulting in all but the most lenient sentence. In the examples above, the extent of the injuries to the victims far outweighed the crimes they had committed. There is no discretion and the nature or circumstances of the offence cannot be taken into account.

The CICA say *"We also want to be assured that, in any reforms we propose, we are not inadvertently creating a hierarchy of victims"* [8]. Yet, a hierarchy of victims is assuredly what the unspent conviction rule creates. If the Scheme is ["society's way of recognising that you have been a victim"](#) then the message to victims of violent crime with unspent convictions is that they are not recognised as victims at all. This creates a hierarchy of victims – those deserving of sympathy and support, and those not. The cost – or benefit – to society of each individual cannot be measured solely by their criminal record. Victims of violent crime will often present a cost to society as a result of their victimisation, needing mental and physical health care and social security. People who have served prison sentences will often have been victims before they offended. [In 2018 69% of people sentenced to prison were convicted of a non-violent offence](#) – yet all would be ineligible for compensation if they became the victim of a violent crime.

We urge the CICA to review this rule to ensure that the Scheme works well for all - rather than "most" - victims of violent crime and to return discretion to decision makers so that the circumstances of an offence can be taken into account. In addition, we recommend more transparency in decision making and the routine publication of data on the number of applications refused as a result of unspent convictions, and the nature of those convictions.

The section on unspent convictions concludes that “...we do not believe it is possible to commit to making any change to this rule, without undermining the core principles of the Scheme and introducing significant potential discrimination and operational challenge” [106]. This indicates that the rule is no longer under review and the consultation questions do not refer to it. Unlock submitted a [Freedom of Information request to the Ministry of Justice for documents, minutes, notes or unpublished reports relating to consideration of the unspent conviction rule](#). The request was refused on the grounds that the policy is part of an ongoing review and public consultation. We hope that this is the case and that the rule will be reviewed in light of the impact on victims of violent crime, particularly child victims of sexual violence, and available evidence on uneven sentencing practice.