

9 October 2020

Vulnerability Policy Unit
Family and Criminal Justice Policy Directorate
Ministry of Justice
7th Floor
102 Petty France
London
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Dear Sir,

I write to you as the UK Independent Anti-Slavery Commissioner in response to your consultation on the Criminal Injuries Compensation Scheme (CICS). Having read the CICS Review¹ published in July 2020, I welcome the efforts already undertaken to engage with stakeholders for their views on how the Scheme is working and where it could be improved, as well as the review's focus to make the Scheme simpler and more transparent for victims. I was pleased to read that the Criminal Injuries Compensation Authority are also working closely with victims' groups through its stakeholder forum as it is vital that those with lived experience are given the opportunity to contribute to this work.

Given the remit of my role, I am keen to ensure that the experiences of victims of modern slavery and human trafficking (MSHT) are specifically reflected within this review. I am aware that whilst applications for the CICS are being made for MSHT cases, unfortunately these are rarely successful on initial application and in some circumstances, awards are only being made after a case progresses to a first-tier tribunal appeal. A survey² of solicitors and lawyers conducted by the Anti-Trafficking and Labour Exploitation Unit (ATLEU) in 2019 highlighted that 67% of respondents had experienced refusal for an application on the basis that it was made outside of the time limits for the Scheme and 50% had experienced refusal for an application on the basis that there was no evidence of a crime of violence.

This response will therefore outline some of the issues regarding the CICS that have been raised with my office by our stakeholders from the anti-slavery sector over recent months.

Access to compensation for victims of MSHT

I recognise that one of the key principles of the CICS is that it is a Scheme of 'last resort', offering compensation for victims of violent crime who have been unable to seek compensation through other means. Whilst there are other routes for victims of MSHT to access compensation, such as

¹ Ministry of Justice (2020) [Criminal Injuries Compensation Scheme Review](#)

² In July 2019 a survey was sent to solicitors and support workers working with victims of MSHT who had experience of making CICA claims. 35 responses to this survey were received, but it is noted that there are very few practitioners assisting victims to access compensation and few support workers with capacity to prepare CICA applications for a victim.

through the Reparation Orders introduced by Section 8 of the Modern Slavery Act 2015³ and Compensation Orders more broadly, it is important to acknowledge that each of these routes can present their own challenges. Reparation Orders for example can only be granted where there has been a conviction under the Modern Slavery Act 2015 and despite increased operational activity over the past few years, in 2019/2020 there were only 36 such convictions⁴ in England and Wales.

As your review rightly acknowledges, no amount of compensation can make up for the harm and suffering caused to victims by violent crime, however it can play a significant role in recovery and help to reduce the risk of re-trafficking. Article 15 of the Council of Europe Convention on Action Against Trafficking in Human Beings 2005 also requires each country to ‘adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under internal law’⁵. It is therefore essential that victims of MSHT can access the CISC as a form of compensation both in principle and in practice, and that this continues for non-UK citizens following the end of the EU withdrawal transition period on 31 December 2020.

‘Crime of violence’ definition

I appreciate that the primary purpose of the Scheme is to provide compensation to victims who have sustained physical and/or mental injury as a result of a crime of violence and I welcome the consideration that the Review has given to whether the current definition of a crime of violence reflects the changing nature of violent crime. Your Review states that the current definition is broad enough to allow for a wide range of circumstances, including ‘in certain cases online exploitation, grooming and modern slavery’, however I am aware that it can be extremely difficult for victims of modern slavery to meet this definition in practice without explicit reference.

I agree that there is a need to ensure that the Scheme remains focussed in order to avoid creating operational difficulties in establishing evidence of the crime and that it also remains affordable. However, whilst some victims of modern slavery may experience physical violence or sexual assault and therefore meet the crime of violence definition, others will have been subject to severe threats of violence that result in fear and psychological trauma. Whilst the Scheme does include ‘threats against a person’ within the definition of a crime of violence, I understand from colleagues in the sector that in such circumstances it can be difficult to evidence the fear of *immediate* violence. I would therefore urge you to give consideration to this wording so as not to exclude those unable to evidence a threat of violence as immediate.

Eligibility rules – time limits

At present, I understand that the Scheme requires those who wish to claim compensation to apply to the CICA as soon as ‘reasonably practicable’ and that claims outside of the two-year limit can only be considered “exceptional circumstances”. The Review document already acknowledges concerns from stakeholders regarding this time limit noting that some victims may be unaware of the scheme, some may have been advised to wait until the conclusion of a criminal case before applying and as

³HM Government (2015) [Modern Slavery Act \(2015\)](#)

⁴ Office of the Independent Anti-Slavery Commissioner (2020) [Independent Anti-Slavery Commissioner Annual Report 2019-2020](#)

⁵ Council of Europe (2005) [Council of Europe Convention on Action Against Trafficking in Human Beings](#)

highlighted by the Victims' Commissioner⁶ that it may be difficult for victims still recovering from trauma to pursue a compensation claim. I would echo these concerns in the context of MSHT.

For those who have been referred to the National Referral Mechanism (NRM), many are waiting in the system for a significant amount of time for a Conclusive Grounds decision on their case by the Home Office Single Competent Authority (SCA) to formally acknowledge their status as a victim of MSHT. In 2019, the mean amount of time for a Conclusive Grounds decision was 452 days⁷, therefore it is important that this is taken into consideration as part of the CICS when exercising discretion on time limits for making an application. It is positive to hear that the CICA has been working to improve its application of discretion and that they have engaged with organisations such as Women's Aid to provide specialist trauma informed training. I would strongly encourage this to be complemented by specific training and guidance on MSHT to reflect the unique circumstances of this group of vulnerable victims.

Eligibility rules – unspent convictions

I understand that in 2012 the Scheme removed the ability for discretion on a case by case basis and instead introduced a rule stating that unspent convictions may result in an applicant's compensation award being reduced or withheld. Section 45 of the Modern Slavery Act 2015⁸ offers a statutory defence for victims of MSHT, however as a recent call for evidence and report published by my office⁹ has shown, victims who have been forced to commit criminal offences are not always identified by law enforcement, defence or prosecuting lawyers at the earliest stage of an investigation.

Your Review states that individuals with unspent convictions 'will have been found guilty of a crime and are likely to have had the particularly circumstances of their vulnerability presented in mitigation and taken into account during sentencing'. Whilst this may be accurate in some cases, my recent report also identified that the Section 45 statutory defence is itself poorly understood within the criminal justice system. A significant number of victims of MSHT are now criminally exploited (57% of all referrals into the NRM between April-June 2020 were linked to criminal exploitation)¹⁰. I would therefore support the recommendation¹¹ made by the Independent Inquiry into Child Sexual Abuse that the rule be revised so that awards are not automatically rejected where an applicant's criminal conviction is likely to be linked to their abuse, and that each case is considered on its own merits.

Access to legal aid

Stakeholders have described to me the complexities of the Scheme and how it can be difficult for victims to apply without support from a legal representative. Yet, CICA applications are outside of the scope of legal aid, therefore funding can only be obtained via an Exceptional Case Funding

⁶ Victim's Commissioner (2019) [Compensation without re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation](#)

⁷ Independent Anti-Slavery Commissioner (2020) [Independent Anti-Slavery Commissioner Annual Report 2020](#)

⁸ HM Government (2015) [Modern Slavery Act \(2015\)](#)

⁹ Independent Anti-Slavery Commissioner (2020) [The Modern Slavery Act \(2015\) Statutory Defence: A call for evidence](#)

¹⁰ Home Office (2020) [Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK Quarter 2 2020](#)

¹¹ Independent Inquiry into Child Sexual Abuse (2018) [Interim Report of the Independent Inquiry into Child Sexual Abuse](#)

application to the Legal Aid Agency or through pro-bono legal work. I am concerned that this is a barrier to vulnerable victims of MSHT being able to access the Scheme in practice and therefore urge this to be reviewed.

Noting the challenges in navigating the system, I would also support the recommendation made by the Victims' Commissioner within her 2019 report¹² that the CICA extend their provision of a named contact for complex cases (such as in cases of bereavement) to offer all victims a single point of contact. I agree that this could assist in building a relationship of trust between victims and the CICA, avoid individuals having to repeat their stories and help to make the process of claiming compensation as straightforward as possible.

Information sharing with the CICA

I am aware that as part of their investigation for a compensation claim the CICA will contact the police to ask for any relevant evidence, but that any further documentation must be provided by a victim. In a case of MSHT, where a victim has been referred into the NRM the Home Office SCA will hold a range of information gathered from multi-agency partners including law enforcement, local authorities, legal representatives and Non-Governmental Organisations (NGOs). I would encourage you to consider how this information could be shared directly between the Home Office and the CICA therefore removing this burden on a victim.

Data on CICA applications for modern slavery cases

I read with interest that the Review document provided some analysis of caseload data from the last three years including the number of resolved cases for sexual injuries, the number of cases related to sexual assault applications that were submitted after the two year time limit (and went on to receive an award) and that were rejected due to unspent convictions. If you would be able to provide a similar breakdown of data for applications related to cases of MSHT (including both UK and non-UK nationals) that would be extremely helpful.

I hope that the information above is useful in informing your consultation. Should you require further information, please contact my office's Victims and Partnerships Lead April McCoig, April.McCoig@iasc.independent.gov.uk.

In the interests of transparency, I request that you respond in a way that enables me to publish your letter on my website.

Yours sincerely,



Independent Anti-Slavery Commissioner

¹² Victims Commissioner (2019) [Compensation without re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation](#)