

Delivering justice for victims: A consultation on improving victims' experiences of the justice system

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

Our response to the consultation is focused on the exclusion of victims with some unspent convictions from criminal injuries compensation, commonly referred to as the unspent conviction rule. Surprisingly, the online consultation does not include questions on this issue and we have therefore provided a written response to victimsbillconsultation@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. In practice, awards to victims with unspent convictions of any type result in a reduced award.

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. No victim who disclosed an unspent conviction of any type received a full award, and a significant number were refused entirely.

The impact

The exclusionary rule removes discretion from decision makers to consider all the circumstances of the unspent conviction, including the gravity of the offence and any steps the victim may have taken to make amends. This means more victims are refused awards, simply because they have an unspent conviction, regardless of the circumstances.

Research conducted by Anglia Ruskin University found [hundreds of victims of rape have been 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.

The Ministry of Justice are aware of the impact on victims. The 2020 CICA [consultation document](#) referred to internal analysis of the 75,000 applications from victims received between 1 January 2016 and 1 January 2019 (para12). In just these three years, 3,500 victims of violent crime – including 420 victims of sexual violence - were refused compensation due to an unspent conviction.

We have no way of knowing how many victims of violent and sexual crime decide not to apply for compensation because they know they will be discriminated against because of an unspent conviction.

Stakeholder response

The Independent Inquiry into Child Sexual Abuse (IICSA) [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.

The [Victims Strategy](#), published in 2018, indicated that the government intended to consult on changes to the compensation scheme – including the IICSA recommendations. 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.

The [Criminal Injuries Compensation Scheme Review 2020](#) did not include consultation on the unspent conviction rule. A Ministry of Justice press release in 2020 said the review recognised concerns around the unspent conviction review but '[...found that any change would undermine the Scheme's ethos of treating all victims in a fair and consistent manner.](#)'

In 2021, the High Court [ruled that the failure to carry out a public consultation on the matter was unlawful](#).

Unlock's view

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. Furthermore, income collected from the victim surcharge – paid by every person convicted in a court - is ring-fenced and contributes to victim and witness support service budget. In 2021/22, the budget is £150.5 million, and the surcharge contribution is around 25% of that.

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"*. 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.

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.

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 racially minoritised groups.

The High Court have directed that the Ministry of Justice ‘...is required to carry out a public consultation on whether the unspent convictions rule in paragraph 3 of Annex D of the Criminal Injuries Compensation Scheme should be revised so that applications are not automatically rejected in circumstances where an applicant's criminal convictions are likely to be linked to their sexual abuse as a child. Following completion of this consultation, the Defendant should re-consider whether the unspent convictions rule should be revised, and announce his decision.’

At the time of writing, no consultation has been announced and the current Victims Consultation does not seek responses on this issue. We urge CICA and the Ministry of Justice to publish their plans for the consultation.