

Article 39

Criminal Injuries Compensation Scheme Review

Article 39 consultation response

Introduction

Article 39 is a small, independent charity which fights for the rights of children living in state and privately-run institutions (children's homes, boarding and residential schools, mental health inpatient units, prisons and immigration detention). We take our name from Article 39 of the United Nations Convention on the Rights of the Child (UNCRC), which entitles children who have suffered rights violations to recover in environments where their health, self-respect and dignity are nurtured.

We promote and protect children's rights in England through four complementary areas of work:

- **Awareness-raising of the rights, views and experiences of children** – through our own work, and research and testimony published by others, we stay informed of children and young people's views, experiences and priorities and keep them at the heart of everything we do;
- **Legal education** – we provide a range of legal resources to support practitioners to use the law in their day-to-day work with children and our pioneering rights4children.org.uk website provides children and young people with accessible information about their rights;
- **Practice development** – we run a national network of independent advocates, with over 200 members, whom we support to give the best help to children and young people through peer discussion groups, online lectures and seminars and specialist resources and training;
- **Policy advocacy, research and strategic litigation** – using our specialist knowledge and evidence from consultation with children, young people and advocates, we work to influence the development of law and government policy so that children are better protected; and we support and lead legal challenges when this is the best way of protecting children's rights and securing long-term change.

In 2018, with The Care Leavers' Association we intervened in *CN v Poole* when it was before the Supreme Court, in order to protect the right of children and young people to sue for negligence where a local authority has failed to protect them from harm.

General observations

We welcome this consultation and the government's continuing commitment to the Criminal Injuries Compensation Scheme. While the often devastating and life-long consequences of child sexual abuse are clearly acknowledged in the consultation document, and the UK's current obligations under EU law and the Council of Europe Convention on compensation for victims of violent crimes are noted, we regret that no consideration appears to have been given to the UNCRC and its Optional Protocol on the sale of children, child prostitution and child pornography. The UK ratified the treaty in 1991 and the Optional Protocol in 2009. The most pertinent articles for this Review are set out below.

United Nations Convention on the Rights of the Child

Obligations most directly relevant to the Criminal Injuries Compensation Scheme

Article 2 – all the rights in this treaty apply to all children without discrimination.

Article 3 – the child’s best interests must be a primary consideration in all actions concerning them (this applies to individuals and groups of children).

Article 19 – the state’s obligation to take all appropriate measures to protect children from all forms of violence. Protective measures include treatment and follow-up.

Article 39 – the state’s obligation to take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child victim of abuse, neglect and other human rights violations.

Optional Protocol on the sale of children, child prostitution and child pornography

Obligations most directly relevant to the Criminal Injuries Compensation Scheme

Article 8(4) – the state’s obligation to ensure those working with children who have suffered crimes prohibited under this Protocol receive appropriate training.

Article 9(3) – the state’s obligation to ensure appropriate assistance to victims, including their full social reintegration and their full physical and psychological recovery.

Article 9(4) – the state’s obligation to ensure child victims can access compensation for damages without discrimination.

Furthermore, the Review document contains no discussion of the obstacles which children living in institutional settings often face in reporting abuse, being believed and receiving the help they need to recover from mistreatment, including through this Scheme. The Independent Inquiry into Child Sexual Abuse (IICSA), which the Review helpfully references a number of times, has published extensive evidence of the barriers to protection which continue to exist in children’s institutional settings today, especially in closed institutions like prisons.

In 2015, we asked all English local authorities to provide us with information about allegations against staff working in institutional settings. Of those that provided detailed data – only 34 councils were able to do so – we found that less than a quarter (24%) of 1,389 allegations resulted in an official child protection investigation.¹ The Criminal Injuries Compensation Authority (CICA) is not, of course, responsible for the child protection system. However, this is important context for ensuring the Scheme operates in the most sensitive way, and does not compound the suffering of individuals who may have tried to secure help from authorities in the past and been left feeling entirely alone and unsupported.

Non-contact and online forms of abuse

We strongly support the recommendation of the All-Party Parliamentary Group for Adult Survivors of Childhood Sexual Abuse that non-contact and online forms of abuse be incorporated into the Scheme’s definition of a crime of violence.² The Review’s statement (para 63) that the impact of such crimes can be analogous to suffering fraud or dishonesty (when neither leads to a physical attack, or threat of physical attack) misunderstands the depth of psychological injury which children can suffer from non-contact and online forms of abuse. Child cruelty offences were extended in 2015³ to encompass both physical and psychological injury and suffering; we urge this Review to take a

similarly holistic approach.

Legal age of consent

We have been unable to access online the CICA's operational guidance which sets out how matters relating to consent in sexual assault or abuse cases should be dealt with. We note, however, that the CICA maintains a presumption of no consent in all of these cases, and that applications concerning children under the age of 13 are referred to your legal team (para 68).

During the passage of the Sexual Offences Act 2003, government ministers affirmed that they did not intend to criminalise children of similar age who engage in genuinely consensual sexual activity.

Without sight of the guidance, and further information about applications which were refused due to the victim (or their family) not wishing to notify the police, we are unable to contribute a view on whether your policy should remain unchanged.

Failing to report to the police

It is not clear from the Review document whether consideration has been given to accepting children's reports to social workers, teachers or others in positions of authority as an alternative to reporting crimes to the police.

Time limits

In its reference to avoiding "further extensive enquiries", the time limit discretion in the current Scheme appears to have been drafted for those administering the scheme, rather than for individuals who were unable for a variety of reasons to meet the statutory timescales – as children or adults. The additional, "exceptional circumstances" provision similarly does not reflect the reality that a very long time-lag *usually* occurs between a child suffering sexual abuse and them, either in childhood or adulthood, being able to speak about this with strangers and to access formal help. The Children's Commissioner for England has reported that only around 1 in 8 child victims of sexual abuse within the family come to the attention of the police and children's social care.⁴

We suggest a more positive discretionary provision could be drawn from s.7(5)(b) Human Rights Act 1998.

'Blameless' victims of crime, character and unspent convictions

The CICA's website states:

The Scheme is intended to compensate blameless victims of crimes of violence. Before making a payment we have to consider if your behaviour before, during or after the incident caused or contributed to the incident in which you were injured.

We are very concerned that this information could disproportionately affect childhood victims of violent crime. A common feature of such crimes is that children are made to feel unworthy and personally to blame, and these strong feelings can stay with them throughout their lives.

Since the Scheme was last revised in 2012, and discretion on unspent convictions taken away, the UK's largest public inquiry – IICSA – has published substantial evidence of the scale and devastating

effects of child sexual abuse. We trust that policy makers and wider society have become much more sensitised to the wide-ranging impacts of child abuse as a consequence of IICSA's work. This learning must also be reflected in the Scheme.

A Scheme which offers compassion and solidarity to victims of violent crime should not seek to differentiate deserving from undeserving children. We cannot see what relevance an unspent conviction has to the fact of whether an individual child⁵ suffered injury from a violent crime, or the extent of any harm suffered.

There is no simple dividing line between victims and perpetrators of crime. One in every five people (n=219) who spoke to IICSA's Truth Project reported that involvement in offending was one of the impacts of the abuse they suffered as children.⁶ Research for the Youth Justice Board found that up to 92 percent of children in custody had previously suffered abuse or neglect.⁷ Over half (56%) of sentenced children in 2018/19 were currently or formerly officially classed as a child in need under the Children Act 1989.⁸

Taking our international children's rights law obligations into account⁹, we cannot see any justification for children's access to the Scheme to be negatively affected by unspent convictions and unfavourable official assessments of character. Indeed, such processes could greatly compound the profound psychological injury of earlier mistreatment.

Reaching out to children

We note the Review's proposal for a distinct scheme for victims of terrorism, which would allow for "targeted awareness raising... to ensure victims are provided with the contact information immediately following a terrorist incident" (para 81). Proactive assistance like this is critical and we recommend the CICA consider a parallel initiative to ensure children who have suffered violent crimes in institutional settings, including prisons, children's homes, mental health units or residential special schools, are similarly assisted to gain access to the Scheme. As well as information being provided to children and their families, awareness-raising among independent advocates, independent reviewing officers and social workers would be essential.

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¹ Full report available here: <https://article39.org.uk/wp-content/uploads/2018/02/article-39-abuse-in-institutional-settings-november-20171.pdf>

² All-Party Parliamentary Group for Adult Survivors of Childhood Sexual Abuse (October 2019) Can adult survivors of childhood sexual abuse access justice and support?

³ New s.1 Children and Young Persons Act 1933 (as amended by Serious Crime Act 2015).

⁴ Children's Commissioner for England (2015) Protecting children from harm: A critical assessment of child sexual abuse in the family network in England and priorities for action.

⁵ Or an adult making an application in respect of what happened to them as a child.

⁶ Independent Inquiry into Child Sexual Abuse (2017) Victim and survivor voices from The Truth Project.

⁷ Youth Justice Board (2008) A literature review into children abused and/or neglected prior to custody.

⁸ Ministry of Justice / Youth Justice Board (2020) Assessing the needs of sentenced children in the youth justice system 2018/19, England and Wales.

⁹ See especially Articles 3, 40 and 39 of the UNCRC.