

PE1612/A

Criminal Injuries Compensation Authority letter of 7 December 2016

Thank you for the letter of 14 November 2016 from the clerk of your Committee, the terms of which have been noted. I have been asked for CICA's views on the above petition and, in particular, for an explanation of the reason behind the date 1 October 1979 as it applies to paragraph 19 of the Criminal Injuries Compensation Scheme 2012 and equivalent paragraphs in previous Schemes ("the same roof rule").

May I first express my sympathy to Mr McKinlay and to all those who have suffered, directly or indirectly, as a result of historical sexual abuse.

It may be helpful if I first set out briefly CICA's role. The Criminal Injuries Compensation Act 1995 empowers the UK Secretary of State for Justice to establish the Criminal Injuries Compensation Scheme. The Scheme's terms must be approved by resolution of both Houses of the UK Parliament. Several Schemes have been made under the Act, most recently in 2012. Prior to the Act, there had been a non-statutory Scheme for compensating victims of violent crime from 1964.

I note from the transcript of the evidence at the committee on 10 November that a suggestion was made about CICA changing its processes. The CICA is an Executive Agency established under the Act and sponsored by the Ministry of Justice to administer the Scheme. We therefore have responsibility for its day-to-day administration. We interpret the Scheme's rules and make all decisions on individual applications independently of ministers and Parliament. I have set this out in order to explain that CICA does not have the power to implement any changes to the Scheme. It appears that what is being sought by the petition is a change in the law, rather than a change to our processes.

I should also make the committee aware that the same roof rule provisions (and in particular the exclusion of claims for injuries occurring before 1 October 1979) have been the subject of a number of legal challenges both in Scotland and in England. Most recently, decisions have been made by the Outer House of the Court of Session and by the Upper Tribunal (see undernote) rejecting those challenges. However, the legal proceedings remain ongoing.

I have provided links to these recent decisions below. They set out the historical development of the Scheme in the context of the same roof rule and the reasons for the change in 1 October 1979, but I am happy to summarise the position.

The same roof rule was part of the original Scheme in 1964 and was retained when subsequent Schemes replaced it in 1966 and 1969. An interdepartmental working party reviewed the Scheme and in 1978 recommended that the same roof rule be changed. The working party recommended that the changes to the rule be 'for a limited period and experimental' and that they not be retrospective. The recommendations of the working party were reflected in a new Scheme that came into effect on 1 October 1979. It was from that date that the same roof rule was relaxed, but only in relation to incidents from that date. All subsequent Schemes, both non-statutory and statutory, have retained this rule.

The most recent Scheme was introduced on 27 November 2012. In advance of this the UK Government carried out a consultation exercise and published an Equality Impact Assessment (EIA). The Government's reasons for the changes to the same roof rule being made prospective in 1979, and for maintaining that position in the 2012 Scheme, are summarised in that EIA:

“166. However, we will retain our policy in the historic rules relating to injuries prior to 1 October 1979. In these cases, awards will not be made where the victim and assailant were living together as members of the same family. This rule was changed in 1979 to make it easier for victims of crime in their own homes to claim compensation. However, at that time the decision was taken to change the rules prospectively rather than retrospectively. This was a legitimate choice made at the time, and was in line with the general approach that changes are ordinarily made going forward, rather than in respect of historic claims. The rule has therefore been a feature of every Scheme since 1979.

167. In the light of the potential impacts of retaining the rule, we have considered whether the Secretary of State should amend the rule in relation to injuries sustained before 1 October 1979. We have concluded that it is justified to retain that rule on the basis that one of the aims of the reform of the Scheme is to reduce the burden on the taxpayer and make the Scheme sustainable in the long term. On that basis, and taking into account the policy reforms to reduce elements of compensation in the Scheme in the future, and restrict its scope, we will not change this rule as it would have the effect of increasing the Scheme's potential liability in an uncertain way in respect of injuries sustained between 1964 and 1979, more than 30 years ago. To open the Scheme up in this way would also involve a significant administrative burden for CICA and could present difficulties for claims officers in establishing the link between the offence and the injuries.”

I note that in the evidence at the committee on 10 November there was reference to the financial and administrative implications of amending the same roof rule. The records we retain would not allow us to identify every applicant since 1964 who has applied for compensation but had their case rejected under the same roof rule. In addition, there may be many people who never applied for compensation because it was clear their claim would fail. The potential cost of amending the rule is therefore very difficult to quantify. The administrative burden of investigating cases that date back such a long time, and of establishing whether particular physical or mental health difficulties are attributable to historical offences, again would be difficult to quantify.

I hope that this information is of assistance to you and your Committee.

MA, Petitioner [2016] CSOH 115:

<https://www.scotcourts.gov.uk/search-judgments/judgment?id=778f1aa7-8980-69d2-b500-ff0000d74aa7>

JT v FtT and CICA [2015] UKUT 0478 (AAC):

<http://administrativeappeals.decisions.tribunals.gov.uk//Aspx/view.aspx?id=4644>