**SUPPORTING RAPE SURVIVORS THROUGHT THE CRIMINAL INJURIES COMPENSATION SCHEME: AN EXPLORATION OF ENGLISH AND WELSH INDEPENDENT SEXUAL VIOLENCE ADVISOR’S EXPERIENCES.**

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ABSTRACT

English and Welsh responses to rape have long been critically examined, leading to attempted improvements in the Criminal Justice System (Home Office, 2013). Despite this, little attention has been paid to the Criminal Injuries Compensation Scheme [CICS] and the difficulties applying it to rape. To begin addressing this gap, researchers interviewed three, and qualitatively surveyed twenty-two, Independent Sexual Violence Advisors. The findings suggest that CICS can reinforce rape myths and disadvantage vulnerable survivors, but is also a source of validation and contributes to survivor justice. The study, while exploratory, therefore highlights the need for further discussion about rape survivor compensation.

Criminal justice responses to rape and sexual assault have been critiqued for decades in England and Wales (Home Office, 2013); with extensive research highlighting the prevalence of myths (Temkin & Krahé, 2008), ongoing use of sexual history evidence (Smith, 2014), and manipulative questioning at trial (Smith & Skinner, 2012). Despite this, some areas of study have remained relatively unexamined. One such area is the Criminal Injuries Compensation Scheme [CICS], a statutory arrangement for the financial redress of violent crime victims (Ministry of Justice 2012a). This article, though tentative and preliminary, seeks to highlight the importance of research into the CICS and how it is applied to rape cases. The study used semi-structured interviews and a qualitative survey of Independent Sexual Violence Advisors to gain insight into the difficulties faced by rape survivors who seek State financial redress. The findings suggest that the structures of the scheme can reinforce rape myths and disadvantage survivors from more deprived backgrounds, but that it can also be an important source of validation and may fulfil some survivor justice needs. Ultimately, the study argues that there is a need for debate and further research on survivor compensation and the CICS.

**CONTEXTUALISING THE STUDY**

In order to best understand the data, it is useful to briefly contextualize this study in relation to the wider English and Welsh literature. The existing research has tended to focus on myths about rape, defined as “prescriptive or descriptive beliefs about rape that serve to deny, downplay or justify sexual violence” (Bohner *et al*, 1998:14). Examples of these include beliefs such as ‘rape complaints are often false’, ‘delayed reporting to police is suspicious’, and ‘women involved in sex work cannot be raped’ (Burrowes, 2013). They appear to influence responses to rape (Dinos *et al,* 2014), for example Rose, Nadler and Clark(2006) found that delayed reporting or ‘foolish behaviour’ were interpreted as meaning the survivor was lying and justified cynicism towards them. Smith and Skinner (2017) suggested that these myths reveal an entrenched focus on gendered ideas of ‘rationality’, and Rose *et al* (2006) have argued that survivors must be one-dimensional ‘ideal victims’ in order to be believed. Notably, these rape myths are widely accepted as having been dispelled by research or analysis of the law (Burrowes, 2013). For example, despite Ellison and Munro’s (2013) finding that mock juries believe false allegations to be common, a Crown Prosecution Service (2013) analysis suggested they were actually very rare. This assumption that rape allegations are often false has led to survivors who seek compensation being treated with suspicion, because financial gain is perceived as a common motive for making accusations (Wheatcroft & Walklate, 2014).

This cynicism about rape survivors is especially pertinent when identifying the nature of, and routes to, ‘justice’ after sexual violence. McGlynn, Downes and Westmarland (2016) have argued that survivors have a shifting set of justice needs that encompass participation, voice, validation, vindication, and offender accountability. A sense of reparation is often highlighted in discussions of survivor justice and has been recognized as particularly powerful because it can combine validation with redistributive justice (Baird & Radford, 2011). Although States around the world have resisted the *right* to compensation, then, it is noted as a way to make amends for failing to protect citizens from violent crime (Miers, 2016). Such approaches to survivor justice appear effective, as Australian survivors have been found to be more satisfied with case outcomes when they received some form of compensation, regardless of the source of this money (Ristovski & Werthein, 2005).

A detailed comparison of international compensation schemes is set out by the Thomson Reuters Foundation (TRF, 2015). In general, though, these schemes offer compensation for physical and mental injuries sustained as a direct result of violent crime. Most offer this compensation on the basis of the actual loss suffered, for example medical expenses or loss of earnings; but excluding costs that may be dealt with by insurance, for example loss of property (TRF, 2015). New Zealand is the most comprehensive of these, allowing claims for social and vocational rehabilitation, as well as child care and property losses (New Zealand Government, 2016). Other schemes base compensation on the nature of the harm and may include payments for ‘pain and suffering’. In the UKi, the CICS is a combination of these, with a tariff system based on the nature of the crime which is then ‘topped up’ with actual losses where applicable (Ministry of Justice, 2012a).

The UK CICS is open to all victims of violent crime as long as they have reported it to the policeii (Ministry of Justice, 2012a). Applications are considered by the Criminal Injuries Compensation Authority [CICA], taking into account a set tariff for each injury and any factors that increase or decrease the amount to be awarded (Ministry of Justice, 2016). The current tariff for a single perpetrator rape is £11,000, rising to £13,500 if there are two or more offenders. Additional payments are made for further harm, such as pregnancy or sexually transmitted infection, but it is noteworthy that the CICS will not pay for more than three injuries (Ministry of Justice, 2012a). Despite this, the English and Welsh awards are some of the most generous in the world (Brienen & Hoegen, 2000); with countries such as Canada awarding closer to $5,000-10,000, or £3,500-6,500, and Finland awarding a maximum of EUR 8,800, or £7,858 (TRF, 2015).

There is little systematic research on CICS, especially in relation to sexual violence, but the few reviews that do exist have suggested that survivors feel frustrated by the scheme (Payne, 2009) and that the controversial eligibility rules should be reconsidered (Stern, 2010). These rules include that survivors who have criminal convictions or who did not report to police within 48 hours can have awards rejected or reduced (Baird & Radford, 2011). Appendix I contains a list of the relevant exclusions and restrictions on eligibility as set out by the 2012 CICS (Ministry of Justice, 2012a). In its response to Stern, the UK Government (2011) highlighted that case officers have discretion in applying many of the rules and reaffirmed its belief that a survivor’s previous convictions should limit an award because they have previously caused society expense. However, such exclusions appear contradictory given that previous convictions do not bar survivors from other state benefits, for example jobseekers allowanceiii. Baird and Radford (2011) therefore criticized the narrow eligibility criteria as being about CICA’s need to save money in a climate of limited or reducing budgets. Notably, though, Baird and Radford’s study was cut short by Baird’s election as Police and Crime Commissioner and so only preliminary findings are available. This study therefore sought to address a gap in the literature by exploring what actually happens when survivors apply for compensation.

**METHODOLOGY**

This research focused on the experiences of Independent Sexual Violence Advisors [ISVAs], as these professionals regularly support survivors to claim compensation and lobby for change on their behalf. ISVAs were introduced in 2005 as an attempt to improve support for rape survivors, and an estimated 251 now work across England and Wales (Lea *et al,* 2015). While there are no statutory guidelines on the role, these advisors are based in police stations, Sexual Assault Referral Centres or voluntary organisations; and organise regular updates, support service referrals, practical help and information about the criminal justice process (Stern, 2010). It is recognized that speaking directly to survivors would have provided more accurate dataiv; however given the short timeframe, drawing upon the ISVA sample provided insights into a higher volume of survivors’ experiences than would otherwise have been possible. A further study is now underway and will involve survivors directly.

First, semi-structured interviews were conducted with three ISVAs in order to identify key issues for discussion in the qualitative survey. Using open coding and thematic analysis, an online questionnaire was then created to examine topics ranging from the decision to apply through to perceptions of client satisfaction. The open questions enabled free responses about ISVAs’ experiences of the process and the meaning that survivors derived from compensation. The results of the survey were once again analyzed using open and thematic coding, before being compared with the coding of the interviews (which were also reanalyzed in light of the survey results). The key themes that emerged in both the surveys and interviews were: Stigma versus validation in applying for compensation, narrow eligibility rules that reinforced shame, long waiting times, and a contradiction between criminal justice advice and CICS application time limits.

Sampling occurred opportunistically, with the three initial interviewees being selected because they worked close to the researcher. Similarly, the survey sample was opportunistic in that the researchers contacted 100 ISVAs whose details were publically available and 22 participants responded. This holds potential for bias, as those who did not join the research may hold different views to those who chose to take part (Bryman, 2012) and so the findings should be considered tentative. In addition, the small sample size means that the findings cannot be generalized in the statistical sense (Curtis *et al*, 2000). Despite this, Gobo (2007) has highlighted the importance of research with small samples but which qualitatively explore processes that could be applied in other contexts. This study is therefore meant as a pilot to more extensive research, initiating discussion and highlighting potential issues rather than making universal claims. The sample was made up of ISVAs from across England, although there was a small bias towards the Midlands. It also represented a range of experiences, from three months to over ten years in the role, with the mean length of time in the role being five years. The sample had supported an average of 559 survivors each, although the true average may be higher because one respondent could not estimate the number of clients but said their service had dealt with over 1,600 cases in the past year. It is apparent, then, that while the sample is small it captures extensive expertise.

**EXPLORATORY FINDINGS: BEFORE, DURING AND AFTER APPLICATION**

The themes that arose in both the interviews and survey were remarkably consistent given the exploratory nature of the study. Financial burdens and a sense of reparation were found to be key reasons for applying, eligibility rules were found to impact on more vulnerable survivors, and the awarded money was noted as sometimes leading to reduced state benefits. Despite this, survivors tended to express satisfaction upon receiving an award because of the validation this provided.

Before the Application: Decisions About Claiming Compensation

The findings showed that decisions about whether to apply for compensation were complex, as there was a tension between wanting a chance for validation and the fear of being stigmatised.

Reasons for not applying to the Criminal Injuries Compensation Scheme

The data suggested that survivors initially had little to no information about compensation, with 22 of the 25 ISVAs saying they usually started discussion of the issue. Indeed, ISVA 9v noted that it was “the exception to the rule that they are aware of the scheme” and this was reflected in many other comments, arguably countering the myth that false allegations of rape are commonly made for financial gain (see Wheatcroft & Walklate, 2014). It may also explain why only an estimated average of 16%vi clients applied for compensation. While seemingly low, however, this is actually higher than the estimated 5% of eligible victims thought to claim compensation in the UK (Committee of Public Accounts, 2008) and is closer to the high uptake rate of 20% in the Netherlands (Kunst, Koster, & van Heughten, 2015). It is unclear why this might be, but could relate to having ISVAs provide information and support, especially in light of clients’ initially limited awareness. It is therefore important to embed a discussion of CICS into the ISVA role (see Lea *et al*, 2015, for the need to systematise the job), because they may be the only service to inform the survivor of their opportunity for redress.

Where survivors were aware of compensation, they were often misinformed. In particular, some survivors were put off applying because they thought the money was paid by the offender (ISVA 3; ISVA 7; ISVA 18) and “[they] do not want to claim if it comes from there (sic) perpetrator” (ISVA 10)vii. Additionally, respondents commented that the vast majority of survivors do not pursue compensation because of a perceived stigma surrounding it. For example, two interviewees noted:

“[There is] a lot of shame and guilt involved with rape generally, [so survivors] feel slightly ashamed that they would want to claim compensation.” (ISVA A)

“People aren’t ready to talk about it [compensation], it feels selfish, it feels wrong, you know it’s not but it feels opportunistic.” (ISVA B)

Survey respondents reflected these sentiments, with words like ‘dirty’ and ‘tainted’ being used to describe the awards; and ISVA 1 explaining that “some people feel compensation is not appropriate for this type of crime”. Fear of being judged by others was therefore noted as a significant reason for not pursuing financial redress. ISVAs were also aware of the risk that compensation would be raised in cross-examination if the case reached trial (ISVA 18). For example, ISVA C recalled a survivor being warned by police not to claim compensation until after trial so she could not be accused of lying for money. Such advice was reflected in the survey data, with many repeating this warning:

“Defence lawyers use CICA claims of victims against them at trial... police advise victims not to claim until after the trial.” (ISVA 11)

The stigma surrounding the use of compensation to help survivor recovery shows an apparent double standard for rape survivors compared to those experiencing other crimes. For example, Kelly (2010) compared rape to theft, which has a relatively high level of false reports but where victims are *expected* to claim money back from insurance companies without this being treated as suspicious. A plethora of literature has already established the sense of shame that can be experienced in the aftermath of rape (Weiss, 2010). This shame can make the public’s suspicion of compensation more pronounced for survivors, and Turvey and McGrath (2011) have shown that police do treat interest in restitution as a ‘red flag’. It is therefore unsurprising that survivors feel guilty at the prospect of accessing financial aid and it is important to remember the CICS exists in order to aid recovery rather than being a ‘silver lining’. Until rape myths about false allegations are tackled, then, it seems that the majority of survivors will not access the redress to which they are entitled.

Reasons for applying to the Criminal Injuries Compensation Scheme

For those survivors who did apply for compensation, the ISVAs noted that financial burdens and a sense of reparation were two driving factors in the decision. For example:

“The woman has incurred significant debt because of the emotional trauma that she has experienced over a long period of time... [Survivors have] usually lost money through loss of work or mental health problems that have followed.” (ISVA A)

“[A] lot of our clients have suffered financial difficulties due to the abuse.” (ISVA 14)

This highlights the financial consequences that can arise from long-term trauma, with survivors described as being in “financially dire straits” and so needing to claim compensation to provide for their families (ISVA B). ISVA 14 also noted the importance of financial redress in allowing survivors to move away from accommodation in which they were abused. Although sexual violence occurs in all social groups, economically disadvantaged women are at particularly high risk of victimisation (Renzetti, 2009). The impact may also be disproportionate, because these less financially stable survivors face additional pressure to return to work rather than focusing on their emotional needs in the aftermath of rape (Jordan, 2012). Compensation can therefore play a vital role in protecting survivors against further disadvantage by alleviating some of these financial pressures.

Another key reason for applying to the CICS was a sense of reparation, especially where “they didn’t get a court outcome… [compensation] was a way of closure” (ISVA B). Indeed, ISVA A noted that an award could become “recognition people believe [survivors] enough that they would compensate them”. Survey responses strongly reflected these sentiments, for example:

“Most people I work with want to apply for compensation because they feel let down by the legal system and feel it’s another chance to be believed.” (ISVA 1)

These views confirm that survivors are often more concerned about being acknowledged than getting a conviction (Feldthusen *et al,* 2000; Stern, 2010). Jordan (2012) has already highlighted how survivors can feel silenced within the CJS, which is overwhelmingly out of their control. By contrast, compensation can be a way to acknowledge the trauma caused and any resultant money enables survivors to take control over their future. Showing social solidarity with survivors has been recognised as a key role for compensation internationally (Buck, 2005), and this highlights the importance of the CICS within survivor justice. Funding must therefore be protected despite the climate of budget cuts in order to continue improving responses to rapeviii.

During the Application: Narrow Eligibility & Delays in Decisions

Despite the positive elements of the CICS described above, the findings also highlighted difficulties with narrow eligibility and long waits for CICA decisions.

Narrow Eligibility

A key theme to arise out of the interviews was that many survivors experienced obstacles in applying for compensation. Indeed, ISVA 7 argued that “in my opinion it is set up so that they can find any excuse possible not to compensate”. It is perhaps therefore unsurprising that 22 of the 25 ISVAs had experienced problems with narrow eligibility rules. For example, almost half of the ISVAs said that previous convictions had presented a problem for service users gaining compensation, even when the rape defendant had been found guilty. This reduction or rejection of claims for survivors with unspent convictions was perceived as “flawed in thinking and it really stigmatises women” (ISVA A) because many survivors were involved in sex work and so were not able to access compensation (ISVA 2; ISVA 17). Such exclusion is likely to exacerbate the stigma already highlighted in the aftermath of rape (Weiss, 2010) and so needs strong justification.

The UK Government (2011) has argued it is unacceptable to award public money to those who have previously caused society distress, but also recognised the potential outrage if compensation was to be denied to rape survivors because of minor offences. While a 2012 review of CICA guidelines narrowed eligibility for applicants with criminal convictionsix or ‘questionable character’x, it therefore also retained some discretion in rape applications (Ministry of Justice, 2012a). Minor offences, like solicitation, should not therefore be automatically used to reject claims; but the ISVAs above suggested this regularly occurs. Journalists have also challenged the Ministry of Justice’s (2012b) assertion that low level convictions are not considered in sexual offence claims. For example, Pettifor (2015) found that rape survivors received partial awards on the basis of non-payment of a television license, using a phone whilst driving, and breaching the peace. These offences are low-level and are unlikely to cause enough public distress to justify the Government’s claim that providing financial redress would be immoral.

The focus on convictions highlighted by the ISVAs ignores the overlap between victims and offenders (Cops & Pleysier, 2014), especially as rape survivors can self-medicate with substance misuse (Acierno *et al,* 2003). Indeed, Seear and Fraser’s (2014) work on addiction in Australian compensation revealed the importance of examining how ‘bad character’ is framed. While some judges interpreted addiction as meaning claimants should not receive compensation, others argued that as a social problem addiction should be addressed using societal-level compensation (Seear & Fraser, 2014). Reframing a claimant’s ‘bad character’ as a social problem might therefore create an imperative for the State to act rather than exclude.

The ISVAs also highlighted problematic time restrictions on applications, because survivors must claim within two years of the offence. This was repeatedly noted as inappropriate for sexual violence:

“A client applied at 2 years 3 weeks and was turned down. She had mental health and physical problems and didn’t want to apply until after the police decision to charge in case it was thought she only reported ‘for the money’”. (ISVA 9)

This is significant given the aforementioned finding that survivors were advised to wait until after the CJS conclusion of their case. In fact, almost all respondents commented that survivors were told not to claim until after trial, but delays in the CJS then put applications outside the two year deadline. Police were sometimes aware of this difficulty, with one officer writing a letter of support to CICA:

“I even got a signed letter from the OIC [Officer in Chief] advising that the case had to be adjourned twice due to no fault of the victim and he has specifically told the victim not to apply until the case was over to prevent this being brought up in court.” (ISVA 7)

Despite this forward-thinking, the claim was rejected even after review and the survivor did not feel able to put forward an appeal. In other cases, though, such letters were accepted and this reflects the inconsistent application of rules noted by the ISVAs. It is now recognised that survivors of sexual violence are more likely to delay in disclosing their victimisation than in other crimes (Felson & Paré, 2005). In addition, the Ministry of Justice (2016) advises that applicants wait until the full extent of their injuries are apparent before making a claim. Recognizing and naming the psychological impact of child sexual abuse is a long term process (Sanderson, 2006); so a two year time limit appears inappropriate in sexual offences.

The 2012 review of CICA did provide greater discretion on delayed reportingxi. For example there is now provision to allow a full award if the survivor has a ‘reasonable’ explanation for delay because of their age or the effect of the crime (Ministry of Justice 2012a). The above data suggest that this is not consistently upheld, however, and CICA’s (n.d.) internal guidance states that ‘fear of reprisals’, ‘not recognizing the assailant’ and ‘saw no point in reporting it’ are not considered reasonable. Research has shown these to be common reasons for delayed reporting in rape (The Havens, 2010) and so the guidance may disproportionately impact on survivors of sexual violence. In addition, the 2012 review stated that only reports to police would be accepted, narrowing the eligibility further (Miers, 2013). Given the increasing recognition of historic child abuse, such exclusions feel outdated and in need of renegotiation. Langevin (2010) has made similar arguments in Quebec, calling for sexual violence survivors to be formally given additional time for applications because discretion alone cannot guarantee fair consideration. Indeed, it may be useful to adopt the Australian approach, where compensation can be claimed up to ten years after the offence and there is no time limit if the survivor was a minor (TRF, 2015). Similarly, New Zealand does not require survivors to report to the police immediately because it operates a ‘no-fault’ scheme (New Zealand Government, 2016).

There remains an even more significant timeframe barrier, though. In child sexual offences committed before 1st October 1979, “if the victim was living with the perpetrator as members of the same family, they are not eligible” regardless of other factors (ISVA 4). This was the subject of the greatest resentment and many ISVAs had difficult stories about the rule. For example, ISVA 16 recalled an application that had been rejected and undergone a very long appeal, only for the decisions panel to realise they could not do anything because the restriction was in law. Additionally, ISVA 21 gave an example of a survivor who had reported abuse aged six but was not eligible, while her brother reported at 23 and received compensation. She summarized this succinctly, saying: “Same crime, same court appearance, different compensation outcome. Very unjust.” (ISVA 21).

The exclusions highlighted by ISVAs above link to public discourse about ‘deserving’ or ‘undeserving’ victims. For example, the Ministry of Justice (2012b:4) stated that the eligibility rules “ensure that where payments are made they are to blameless victims”. Such wording reflects the civil law principle that compensation should be proportionate to the injured party’s culpability, but CICA has moved away from civil law in other areas and this appears more stringently upheld by the CICS than in civil cases (Miers, 2014). Additionally, CICA is clear that the scheme does not replace offender compensation and is about recognising harm (Miers, 2014). It is subsequently difficult to justify limited awards for some survivors, because having a conviction does not change the harm experienced. Narrow eligibility rules also limit the usefulness of compensation in providing social solidarity with survivors, which is a key justification for the scheme (see Ministry of Justice, 2012b). Feldthusen *et al* (2000) argued that this solidarity is what matters most to survivors: Almost all claimants were primarily motivated by the desire to feel heard and believed, even above financial gain. It is for this reason that claimants in New Zealand can access redress regardless of whether they contributed to the offence or have previous convictions (TRF, 2015). At the start of this inclusive policy, newspapers raised fears about fraudulent claims, but a counter-debate then highlighted the need to tackle a real problem and initiated debate about addressing the wider issues of sexual violence (Frewin *et al,* 2009). With considerate framing of the problem being addressed, then, the UK Government should not fear public outrage for an inclusive policy on compensation.

Long Waits for a Decision

In contrast to the strict time limits on when an application can be made, respondents commented that the CICA often took to a long time to make decisions. While the Ministry of Justice (2016) website warns applicants to expect to wait up to one year, the ISVAs here noted that it could be much longer. ISVA B had still not heard decisions from applications made at the start of her two years in the role. Similarly, ISVA 8 had seen one survivor wait 5 years for a final outcome, while ISVA 11 was supporting multiple complainants who had no news after 18 months. Such delays were perceived as problematic because of the role that compensation played in survivors seeking closure. While the decision was outstanding, then, survivors were noted as finding it difficult to move forward with their lives (ISVA 21). For this reason, ISVA 3 argued that:

“Sexual offences applications [should be] dealt with as a priority as the psychological effect of this claim ‘hanging over them’ means they struggle to put closure to the case.”

This reflects the recent findings of Kunst *et al* (2015), who surveyed compensation claimants and found that there was strong dissatisfaction with how long it took to process claims.

Significantly, several of the survey comments also highlighted the extent to which applications are only successful after a lengthy appeals process:

“We have reviewed many decisions on behalf of clients and have been to appeal tribunal on 3 occasions all have resulted in successful outcomes in terms of compensation being paid. The client however has had to endure an initial refusal and a lengthy frustrating and painful wait for the decision. Considerable time and expense must be incurred by CICA.” (ISVA 10)

One ISVA noted that this was particularly dependent on the time of year, as:

“[Claims] made towards the end of the financial year often get turned down and then accepted on review request in April of the next year” (ISVA 11).

Although only mentioned once, this is worrying as it suggests eligible applications could be tactically rejected for budgetary reasons. Such rejections may later be successful, but this relies on claimants being informed enough to review and having enough energy to continue. Further research is now needed to establish the prevalence of such events.

After the Application: Survivor Satisfaction and Impacts on Benefits

The ISVAs were asked what proportion of compensation claims they estimated to be successful and almost all claims were thought to end in some form of award. Indeed, while one respondent said that no applications had been successful, 5 ISVAs estimated that over 90% of applications were successful and another 2 had all claims awarded (ISVAs 4; 8; 9; 16; 17; 21; 22). The findings also suggested positives in relation to survivor satisfaction after the compensation process, but there were some concerns about the negative impact awards could have on State benefits, as outlined below.

Survivor Satisfaction with the CICS

Despite misgivings about the application process, ISVAs noted that survivors tended to be satisfied with the CICS outcome. In fact, 17 of the 25 ISVAs said that survivors tended to be satisfied with the compensation they received. It was argued that this was because “they’re just grateful to get any compensation! Usually we have to appeal to get it” (ISVA 2). Others stated that “the amount of money is something they can use for something positive” (ISVA 4) and that “they usually can’t believe the amount they are given” (ISVA 13). A notable exception to this were claims for ‘less serious’ sexual offences, which receive lower awards and were perceived by survivors as trivialising their experiences (ISVA 7). While it was not possible to establish clear data on the sums received, the standard tariff for rape by a single perpetrator is £11,000 (Ministry of Justice, 2016) and so is a significant amount of money, especially for survivors from less economically stable backgrounds.

Validation was another reason given for high survivor satisfaction. For example:

“In [two] cases the investigations were no further actioned by police so to receive compensation was a huge affirmation that they had been believed.” (ISVA 18)

“Service users who have been awarded the compensation feel believed even if there was a not guilty outcome at court or an NFA [‘No further action’ decision]”. (ISVA 1)

This supports the previous assertion that CICS can play an important role in survivor justice, providing a sense of acknowledgement as well as redress. Survivors were perceived as looking for alternatives to the CJS, which is often a source of disappointment rather than justice (see Feldthusen *et al*, 2000; Jordan, 2012). While it was noted that unsuccessful applications were likely to have significant negative impacts, it is therefore suggested that the CICS can be a powerful tool for reparation and should be protected from budget cuts.

Impact on Benefits

Despite the role of the CICS in survivor justice, the findings also highlighted a potential side effect of receiving compensation that requires consideration. In the initial interviews, ISVA B criticised the way in which awarded money could mean state benefits were reduced or even rescinded:

“Depending on… how diligent and proactive the local benefits authority are, they can reasonably say, “well you have savings of X amount and we expect that you provide for yourself”. (ISVA B)

ISVA B argued that this was a widespread problem because most service users receive some form of financial aid. In order to explore this issue further, survey respondents were therefore asked if they had experienced similar issues and 8 ISVAs stated they had. While this is a minority, it is a significant minority, and warrants discussion considering the potential impact. The 8 respondents noted that unemployment benefits were at risk because of the awardxii, for example ISVA 14 knew of a survivor who had to “provide evidence all spending of the money awarded by the CICS”.

Another ISVA (17) recalled service users having their benefit payments stopped altogether, and ISVAs 4 and 7 noted that clients had gifted the award to family members in order to avoid such penalties. Indeed, ISVA B recalled helping particularly vulnerable clients to set up a Bare Trust, which allows personal injury compensation to be paid to survivors without being considered part of their savings, so that they would not be left “out of pocket”. It has already been established that survivors of sexual violence often experience economic hardships (Renzetti, 2009). The money awarded by CICA is designed to alleviate the harm caused, for example by allowing funds for counselling or to help survivors move on from accommodation in which the offence occurred. It is therefore severely questionable as to why the money awarded justifies taking away long-term support, especially given the one-off nature of the payment. Further research is now being conducted on this issue, as well as the creation of template applications for Bare Trusts in order to aid this process.

Improving the CICS for Rape Survivors?

Given the challenges highlighted by this research, ISVAs were asked whether the CICS could improve its responses to rape survivors. All except one respondent felt that CICS could be adapted to better serve their clients, mostly by removing the narrow eligibility. For example, ISVA 18 called for:

“Changing the 2 year ruling or having something in place that allows a victim going through court case to delay an application without fear this will affect their eligibility.” (ISVA 18)

Additionally, ISVA 2 argued that the rules need to be reconsidered in order to support those already disadvantaged, such as sex workers. Several calls were made to rescind the restriction on pre-1979 offences, because “a victim of sexual violence should not be refused compensation because a crime happened [years ago]” (ISVA 21). It therefore appears important to gain further clarification from the Government about why this restriction exists and has not been reconsidered despite increasing recognition of past failures surrounding child sexual abuse.

Fifteen of the 25s ISVAs felt there should be a separate branch of the CICS to deal specifically with sexual violence because of its unique characteristics:

“The impact and trauma is very specific, therefore less [sic] requests for proof of formal therapy would be helpful.” (ISVA 1)

“[The] nature of the crime often means victims delay in reporting, which is different to any other crime.” (ISVA 18)

The significance of sexual violence has already been recognised by CICA in their decision to protect funding for sex offence awards despite budget cuts since 2012 (Miers, 2014). Perhaps this lays the groundwork for specialised rules too, although a minority of respondents called for more training within the existing CICS rather than creating a new one. Regardless, all argued that rape survivors should be exempt from the narrow eligibility requirements, summed up in the following quote from ISVA 2: “No matter what your background, why should they be denied CICA?”

**CONCLUDING REMARKS**

This preliminary study has begun to explore ISVA perspectives of the CICS process, making tentative observations about the successes and limitations of the scheme. The UK scheme holds similar benefits and limitations to those elsewhere, providing opportunities for social solidarity and yet also stigmatising vulnerable survivors with normative eligibility rules (Miers, 2016). The findings suggest that financial burdens and a sense of reparation were the main reasons for applying, that the narrow eligibility impacted on more vulnerable survivors, and that the awarded money sometimes led to reduced unemployment benefits. Despite this, we found that survivors tended to express satisfaction if they received an award because of the validation and opportunities this provided. This reflects research internationally, which shows that the social solidarity provided by state compensation is the key factor in applying (Feldthusen *et al,* 2000). It therefore appears that financial redress is a significant part of a State’s ability to provide survivor justice in rape, but that a renewed discussion of the CICS criteria is needed. This is because there is apparent ongoing stigmatization that occurs through the assumption of high false allegations and the need for ‘blameless victims’. Whether as part of a separate scheme or within the current system, it is suggested that CICA must now grapple with the unique trauma and stigma that surrounds rape in order to maximize its successes in this area.

While policy recommendations from a small project must be tentative, this research echoes previous calls for either a separate sexual violence compensation scheme or clear exemptions from the narrow eligibility rules on delay, cooperation with the CJS, and character. The researchers would hope for such focus on ‘deserving’ and ‘undeserving’ victims to be removed from the CICS as a whole, but recognize that the impact on those experiencing sexual offences is of particular concern and must be addressed as a priority. It is also suggested that information about the scheme and what to expect from the process should be given to all survivors upon making a report.

Ultimately, the findings in this research suggest that State financial redress for survivors of sexual violence is an important area of future research. Although the problems that survivors of sexual violence face in the CJS have come to be recognised more widely (Stern, 2010), there remains a need to understand how survivors move beyond this. It is hoped that the current article will act as a catalyst to further research on this issue and that the potential of CICS to provide either validation or further stigma is taken seriously by academics and policy-makers alike. In particular, further projects are planned to explore survivors’ experiences directly, as well as expanding the ISVA knowledge discussed here to a more generalizable sample size. Additionally, it is hoped that CICA will allow case officers to be interviewed about their decisions, but only time will tell how open the Scheme will be.

**NOTES**

1 Despite having separate criminal justice systems, the CICS is applied to the whole of the UK. However, this research sampled English ISVAs and so has focused literature on the English and Welsh CJS.

2 From the outset, this disadvantages the majority of rape survivors since crime survey data suggest only 15% of rapes are reported to police (Home Office, 2013). This requires further research attention.

3 In addition, prisoners can claim compensation for some harms experienced in UK prisons, showing that holding a conviction does not automatically disqualify someone from access to public funds.

4 By talking to ISVAS we introduced another layer of risk of interpretation bias; since we are relying on them to accurately interpret and communicate the experiences of survivors. Despite this, ISVAs often advocate for survivors and so are well placed for such interpretation and communication.

5 Survey respondents are called ISVA 1, 2, et cetera; while interview respondents will be A, B, and C.

6 Although this hid dramatic variations. Those with the highest workloads often had the fewest applicants.

7 Suggesting the Ministry of Justice’s (2012b) call for offenders to pay more compensation is not welcome.

8 The 2012 review reduced CICS’ annual budget by 25% and further reductions are ongoing (Miers, 2013).

9 Since 2012, any unspent convictions resulting in a custodial or community sentence should be rejected rather than reduced, removing case officer discretion and tightening eligibility criteria.

10 This is determined by consideration of illicit drug use or perceived anti-social behaviour

11 For a useful discussion of this review, albeit not specific to rape, please see Miers (2013).

12 Rules state that savings over £6000 will be taken into consideration when deciding unemployment benefits (Department for Work & Pensions, 2015).

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**APPENDIX I: 2012 CRIMINAL INJURIES COMPENSATION SCHEME RULES**

The following is a summary of the relevant rules as set out in: Ministry of Justice. (2012). *Criminal Injuries Compensation Scheme 2012.* London: Stationary Office.

Reporting and Support for Prosecution

An award will be withheld if the applicant did not report the offence to police as soon as reasonably practical, taking into account the age and capacity of the applicant at the time of the violence, as well as the effect that it had on them. The Scheme describes the effect of the incident as needing to be “such that it could not reasonably have been reported earlier.” (p.12)

Similarly, awards will be denied if the applicant does not cooperate with the criminal justice system as far as is reasonably practicable, or if they do not help CICA case officers with their consideration of the application (i.e. not responding to communication from CICA in a timely manner).

Timeframes and Delay

An award must be sent to the CICA as soon as reasonable practicable, but within two years from the date of the violence. If the applicant was under 18 at the time of the offence, an application must be made within two years of the report to police, or by their 20th birthday if a report to police was already made while they were a minor. However, a claims officer may extend the application period if they are satisfied that ‘exceptional circumstances’ meant the applicant could not have applied earlier and where the evidence is such that the claim will not require extensive enquiries.

Case law (*BC v First Tier Tribunal [2016] UKUT 0155 AAC*) suggests that significant relapses in alcohol and drug addiction after the criminal justice process and family bereavement should count under these ‘exceptional circumstances’ if they mean that the applicant was unaware of the right to compensation until after the two year limit.

Further case law (*R(MJ) v First Tier Tribunal [2014] UKUT 279 AAC*) argued that 2008 iteration of the CICS did not create a duty for case officers to exempt cases from the 2 year time limit where there were ‘exceptional circumstances’ for the delayed application, rather they simply had the opportunity to use their discretion. Despite this, the ruling judge asserted that the onus should be on the case officer to explain why they would not exempt a claim of childhood sexual abuse from the limit, because of the well-established and long-term impacts of such offences.

Pre-1979 and ‘Same Roof’

An award cannot be made if the injury was sustained before 1 October 1979 and the applicant was living with the assailant as members of the same family. Case law (*JT* v *First Tier Tribunal [2015] UKUT 478 AAC*) suggests that this rule does not contravene the *Equalities Act 2010* by discriminating on the basis of age.

An award will not be made if the assailant will benefit from the money. Similarly, an award will be denied if the applicant and assailant were adults living together at the time of the offence, unless they no longer live together and are unlikely to do so in future.

Previous Convictions and Conduct

An award may be withheld or reduced if the applicant’s conduct before, during or after the violence makes it inappropriate to make a full award. It is noted that this does not refer to drug or alcohol intoxication where that intoxication increased the applicant’s vulnerability to being victimised. Similarly, an award will be withheld or reduced if the applicant has an unspent conviction which resulted in a custodial sentence, community order, youth rehabilitation order, service detention, removal from Her Majesty’s service, or one that is excluded from rehabilitation. An award can also be withdrawn or reduced for other reasons of the applicant’s character. However, it is possible to award a full award if there are ‘exceptional reasons’ not to withhold or reduce it.

Case law (*G v First Tier Tribunal [2016] UKUT 0196 AAC*) of the 2001 iteration of the CICS suggests that legal changes in the length of time before a conviction is spent should be applied retrospectively. Further case law (*RT v First Tier Tribunal [2016] UKUT 0306 AAC*) argued that the long-term impact of sexual and domestic violence may count as an ‘exceptional circumstance’ for the justification of full award despite unspent convictions, but that this should be decided on a case-by-case basis by CICA.

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