

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Ninth Delegated Legislation Committee

DRAFT CRIMINAL INJURIES COMPENSATION
SCHEME 2012 (AMENDMENT) INSTRUMENT 2019

Tuesday 14 May 2019

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The Committee consisted of the following Members:

Chair: MR NIGEL EVANS

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| † Argar, Edward (<i>Parliamentary Under-Secretary of State for Justice</i>) | † McMorrin, Anna (<i>Cardiff North</i>) (Lab) |
| † Brereton, Jack (<i>Stoke-on-Trent South</i>) (Con) | † Phillipson, Bridget (<i>Houghton and Sunderland South</i>) (Lab) |
| † Caulfield, Maria (<i>Lewes</i>) (Con) | † Quin, Jeremy (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Cruddas, Jon (<i>Dagenham and Rainham</i>) (Lab) | † Shelbrooke, Alec (<i>Elmet and Rothwell</i>) (Con) |
| † De Piero, Gloria (<i>Ashfield</i>) (Lab) | † Thomas, Derek (<i>St Ives</i>) (Con) |
| † Eustice, George (<i>Camborne and Redruth</i>) (Con) | † West, Catherine (<i>Hornsey and Wood Green</i>) (Lab) |
| † Foxcroft, Vicky (<i>Lewisham, Deptford</i>) (Lab) | |
| † Johnson, Gareth (<i>Dartford</i>) (Con) | |
| † Jones, Mr Marcus (<i>Nuneaton</i>) (Con) | |
| Kinnock, Stephen (<i>Aberavon</i>) (Lab) | Mike Winter, <i>Committee Clerk</i> |
| † McDonald, Stuart C. (<i>Cumbernauld, Kilsyth and Kirkintilloch East</i>) (SNP) | † attended the Committee |

Ninth Delegated Legislation Committee

Tuesday 14 May 2019

[MR NIGEL EVANS *in the Chair*]

Draft Criminal Injuries Compensation Scheme 2012 (Amendment) Instrument 2019

2.30 pm

The Parliamentary Under-Secretary of State for Justice (Edward Argar): I beg to move,

That the Committee has considered the draft Criminal Injuries Compensation Scheme 2012 (Amendment) Instrument 2019.

The purpose of the amended scheme is to remove what we consider to be a discriminatory eligibility rule, and to provide a potential remedy to some victims of violent crime who have been affected by its application. It is right that we are seeking to make these changes expeditiously. I am grateful for the strong support on both sides of the House for what we seek to do, in particular from the shadow Minister. I am sure she will wish to shade into broader issues in her remarks.

Our knowledge and understanding of domestic violence and sexual abuse of children is far greater today than it was when the rule was introduced. It is not acceptable that a rule originally intended to stop perpetrators from benefiting financially from causing harm to people they lived with has unfairly denied victims acknowledgment of that harm and access to compensation for their injuries. All cases of sexual and physical abuse by a family member in the family home involve a grave abuse of trust, but the rule has operated in a way that has denied eligibility for compensation on the basis of victims being in a situation over which they had no or limited control and could not necessarily change.

The circumstances that have given rise to the need for this instrument are exceptional. It is fitting that Parliament is breaking new ground in meeting that need. For the first time, Parliament is invited to approve an amendment to part of the existing statutory scheme. Hon. Members will be aware that we have committed to bring forward a consultation later this year on the overall scheme, offering them and others the opportunity to comment more widely.

A commitment to abolish the pre-1979 “same roof” rule was announced in the “Victims Strategy” published on 10 September 2018. Today, with cross-party support I hope, we deliver on that commitment. Under the rule, applicants were not entitled to compensation if they lived with their assailant as members of the same family at the time of the incident. The rule applied to cases between 1964 and 1979, and affected victims who were adults or children at the time of the incident and claims for injuries from physical or sexual assault.

The amended scheme strikes out paragraph 19 of the 2012 scheme. That will enable victims of violent crimes who may not have applied due to the rule, or those who may not have been aware of the scheme, to consider applying. However, we have gone further in recognition

of the unfairness attached to the application of the rule for more than 50 years. We have made provision in new paragraph 18A for past claimants who were refused on the grounds covered by the rule to make new applications.

We have also taken steps to avoid creating a new potentially discriminatory position whereby claimants who were adults at the time of one incident are treated more favourably if the incident happened before 1 October 1979. We have extended the post-1979 “same roof” rule of paragraph 20 of the 2012 scheme to a start date of 1964, to provide consistency in how the rule applies to all applicants who were adults at the time of an incident. The rule will be considered in the comprehensive review of the scheme that we announced in the “Victims Strategy” and to which I just referred. A public consultation on potential reforms to that overall scheme will take place later this year.

Requirements, eligibility rules, criteria and values of awards have changed over time. Members will recognise the importance of a fair and proportionate approach for all applicants, whether they are making a new first application or are reapplying following a past refusal on the grounds of the pre-1979 “same roof” rule. We have sought to enable as many of those victims affected by the rule as possible to consider and take up the opportunity to apply.

As I mentioned, this is the first time we are making changes to parts of an existing scheme and, uniquely, we are applying changes to past applicants. The complexity, therefore, of assessing applications made so long ago will be significant. Administratively, it will be challenging for the Criminal Injuries Compensation Authority to assess and determine claims to the non-statutory or statutory scheme that was applied to previously, or to which a victim could have applied at the time had the rule not existed. We have addressed that by providing that new first applications or reapplications following a past refusal under the pre-1979 “same roof” rule should be made to the 2012 scheme—the existing scheme—and amending the scheme to that effect. We believe that that ensures equality of opportunity.

We have set a time limit for new applicants and past applicants who are reapplying that we believe is fair and consistent. They must submit their claim within two years, as applies to current claims under the scheme, beginning from the date on which the amended scheme comes into effect. We have retained the discretion in the 2012 scheme to extend the time limit where, owing to exceptional circumstances, an application could not be made within that timescale, thereby again ensuring consistency.

Placing a time limit on applications will help us to manage the significant financial liability potentially attached to the changes and to forecast the financial repercussions more effectively. However, where a victim meets all the relevant eligibility criteria under the amended scheme, an award will be made. I recognise that there may be challenges in meeting the evidential threshold required for a compensation award, and it is right to state that a successful outcome to a claim cannot be guaranteed, as they will all be considered appropriately in line with the scheme’s rules.

The changes to the scheme are designed to level the playing field for applicants to the amended scheme. All eligibility criteria in the 2012 scheme must be met.

Cases will be assessed on their merits, and the authority will make appropriate inquiries with the applicant and relevant authorities as sensitively and as quickly as possible. All the circumstances of the claim must be considered as a whole to determine whether there is sufficient evidence on the balance of probabilities to support it.

The safeguards in the 2012 scheme will apply to decisions of the authority on an application. They include review by another officer in the authority and, if the applicant remains dissatisfied, the right of appeal to the first-tier tribunal. We intend to monitor carefully the operation of the amendments once they are implemented. It is important that we assess the impact of the changes in meeting our intention to offer an opportunity for redress for the unfairness under the existing 1979 “same roof” rule. We recognise that there is a challenge in raising awareness of the scheme—a point that appertains to the two-year time limit, which is the same limit as applies for other applications under the scheme—and we are looking at that more generally in our review of the scheme.

Given that her term comes to an end imminently, I wish to put on record my gratitude to Baroness Newlove, the Victims’ Commissioner, not only for her work in that role but specifically for her review into criminal injuries compensation. She has been a tireless advocate for the rights of victims of crime and for their voice to be heard. It has been a great pleasure and privilege to work with her in the role for the past 11 months. I am sure that all Members wish to put that on the record. I look forward to working with her successor, Dame Vera Baird, who will be known to many in this House. She will be an equally passionate advocate for the rights of victims.

In relation to the changes that we are introducing, work has begun to engage with external stakeholders on how to ensure that potential applicants are signposted to guidance and support in making a claim. We recognise that making claims to the amended scheme may prove difficult for some applicants, and the authority has made specific preparations to implement it. A small dedicated team has been set up, ready to support people making applications by phone or online.

Catherine West (Hornsey and Wood Green) (Lab): I simply wish to commend the choice of Vera Baird as the champion. She has done excellent work over many years, particularly on violence against women, both in a legal capacity and in the community.

Edward Argar: I am grateful to the hon. Lady for her words. We were clear that we wanted the best person for the job. This is not about party politics or anything else. We wanted someone who would do an excellent job and, crucially, carry with them the trust of stakeholders, be they victims or organisations. It is fair to say that Dame Vera has that in spades.

Applicants will be given a named contact to assist them through the application process. The amended scheme and the Government’s intent are clear. The changes we are making are necessary, fair, reasonable and, I would argue, urgent. I commend the amended scheme to the Committee.

2.40 pm

Gloria De Piero (Ashfield) (Lab): It is a pleasure to serve under your chairmanship, Mr Evans. I echo the comments about Baroness Newlove and her work. I extend my congratulations and the congratulations of hon. Members on both sides of the Committee to Dame Vera Baird, who I am sure will do a fantastic job.

The instrument addresses an antiquated and outdated law, which has received widespread condemnation throughout our justice system. We welcome the move to finally consign it to history. As we have heard, the “same roof” rule denies compensation to victims of violent crime who lived with the perpetrator at the time of the offence, if it took place before 1 October 1979. Victims have had claims for compensation rejected not because they have not suffered enough or are not deserving, but because of an arbitrary cut-off date that prohibits any payment. That not only denies the victims proper financial redress for their traumatic experiences, but denies them justice.

According to the charity Victim Support, 1,484 compensation claims have been rejected in the last decade due to the “same roof” rule. Those claims involve some of the most horrific crimes imaginable, with devastating effects on the victims. People subjected to child abuse or domestic abuse over several years, for instance, have endured appalling episodes of violence, but the nature of those crimes means that the perpetrators are likely to be known to and close to the victim—a parent, partner, family member or carer. That means that the victim is likely to be living under the same roof as the perpetrator, often with no other option. Instead of receiving financial reparation for those horrific experiences, however, they are flatly rejected because of an illogical cut-off date for eligibility.

Victim Support describes the case of two sisters who were sexually abused by their father. One was awarded compensation and the other was not. The only difference was that one had been subjected to that grotesque abuse before 1979 and the other after. It is a cruel and arbitrary rule that excludes some of the most vulnerable, traumatised and in need.

The law has not only presented a barrier to justice for too many, but established a rank double standard in our justice system. In a ruling that was eventually overturned on appeal last year, a woman was denied compensation after surviving sexual abuse at the hands of her father between the ages of four and 17, yet another of his victims was granted compensation. The difference was that the abuser’s daughter, naturally, lived under the same roof as him when he committed the offence, but the other victim did not. That is plain evidence of the horrendous double standard for which the out-of-date law is directly to blame.

Because of such cases, and the hard work of victims’ organisations and charities across the country, action has finally been taken to abolish the “same roof” rule and its distressing impact on victims in our justice system. Can the Minister confirm that those rejected for compensation because the offences took place before 1979 will face no barrier to reapplying for financial compensation from the criminal injuries compensation scheme?

Although the change in legislation is a welcome step, for justice to be fully delivered, the Government must match it with further efforts to make amends to victims.

[Gloria De Piero]

What steps are the Government taking to make the many victims whose claims for compensation were previously rejected aware that they have the opportunity to reapply? Many will have lost trust and interest in the system that was established to support them, so will the Government make an active effort to reach out and contact those whose claims were rejected in the past? With crimes dating back decades—the Minister touched on this—will victims of historical offences be subject to time restrictions in making the new claims?

Recent figures provided by the Government show that the amount of compensation paid by the criminal injuries compensation scheme since 2010 has fallen by almost a half. Will the Minister provide details of what new funding has been earmarked to address the increase in applications, or will an already depleted pot of resources be spread even more thinly? On that note, while welcome, this change fails to address many of the other shortcomings of the criminal injuries compensation scheme that regularly fails victims. The charity Barnardo's has labelled it "unfair and illogical" and in need of overhaul.

The Government's changes to the eligibility criteria of the scheme in 2012, for instance, drastically reduced the number of people receiving payments. The most recent figures show that 60% fewer victims have been given compensation. Overall payments made by the scheme have been slashed year on year, while victims suffering horrific injuries now receive significantly less for their troubles. Where once an eye injury that required an operation entitled the victim to £4,400, now they will receive just £2,400. A fractured skull resulting from a violent crime would have brought up to £6,000 in compensation for the victim; now, it is no more than £4,600.

Once again, we see the real impact of the Government's obsession with austerity and callous slashing of budgets. It is the victims of violent crime, some of the most vulnerable people in our society, who are forced to shoulder the burden of these cuts. Will the Government now commit to providing new funding for victims, so that those who are most in need can be properly compensated for their trauma and injuries?

Charities such as Victim Support have also voiced concerns over the so-called consent rule, which sees the scheme classify sexual assault as a violent crime only in circumstances where a person did not consent. As the scheme provides no minimum age for the point below which all sexual activity automatically becomes criminal, there are fears that this rule is being used to deny compensation to child victims of sexual abuse and grooming if there is any sign that the victim may have complied with the abuse.

Charities have noted cases where victims of child sexual exploitation, subjected over years to horrendous acts of abuse including rape, have been denied compensation because the scheme determined that they had consented to the act. That is an egregious miscarriage of justice; no child victim of grooming should be denied compensation on the grounds that they consented to their abuse. Can the Minister commit to immediately reviewing the consent rule?

Concerns have also been raised about withholding or reducing compensation awards due to previous criminal convictions. Preventing the awarding of compensation

or severely reducing the amount paid due to the victim's holding an unspent conviction can disproportionately affect the most vulnerable victims. Victims of child abuse, for example, are often targeted specifically because of their background and upbringing, so they are more likely to have already committed a crime, while victims are also likely to do so in the process of their abuse.

Victim Support has found that over the past five years, 159 victims aged 16 or under have had an award for a sexual offence refused due to an unspent criminal conviction, while 105 child victims of sexual offences had their payments reduced for the same reason, some by up to 80%. Again, we see evidence of the scheme failing in practice and inappropriately targeting those it was established to support. Does the Minister acknowledge the evidence of a link between victimisation and offending?

We further recognise that the scheme's failure to do that is a significant flaw that discriminates against victims of abuse. Will the Minister also commit to a review of the unspent conviction rules, so that any reductions are proportionate and no victim is denied financial redress due to convictions for unrelated and minor offences?

Ultimately, the legislation before us is an attempt to address a specific element of the criminal injuries compensation scheme, which has prevented victims from acquiring justice for too long. We welcome the abolition of the outdated "same roof" rule but, while it is an important step in the right direction, that long overdue change should not be used to mask the failings of the scheme at large, which sees victims of the most horrendous abuse and violent crimes re-traumatised, discriminated against and absent of the vital support the scheme was established to provide.

I therefore look forward to the guarantees from the Minister, not just on the implications of this legislation, but on what further efforts the Government are making to support, and properly provide access to justice for, victims through the criminal injuries compensation scheme.

2.49 pm

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is a pleasure to serve under your chairmanship, Mr Evans. I thank the Minister for his explanation of the background to the proposed changes to the compensation scheme; I welcome pretty much all that he had to say, although I share some of the wider concerns set out by the shadow Minister and think they are worthy of consideration. I certainly agree with what both of them said about the work of Baroness Newlove.

For my part, all I need to say is that the Scottish National party welcomes an end to the old "same roof" rule, which is necessary in light of earlier court judgments, but also simply in the interests of justice. The Minister was right to say that this will be challenging both for people who might want to apply for very old cases and for the authority in respect of how it looks at and investigates these cases. It will be important that it is given the resources and manpower to do the job properly.

The Minister rightly flagged the importance of raising awareness of the changes, so that people who are eligible to apply are encouraged to do so. To understand whether we are making sufficient progress on that, it would help to know whether the Minister has an estimate of how many people may be eligible to apply thanks to the changes.

That would help us to understand whether there has been sufficient awareness raising to reach the people who need to know about them.

I welcome the broader public consultation that will happen in due course. As ever, I encourage the Minister to pay particular attention to the feedback that comes from stakeholders in Scotland. Although the compensation scheme operates UK-wide, it does so in the context of a different set of criminal laws in Scotland. In short, I very much welcome the proposed changes.

2.50 pm

Edward Argar: We have had an interesting and important debate. This debate and what we are seeking to do provide an example of something not always seen beyond these walls: Parliament doing what it does, and doing it well. I reiterate my gratitude for the cross-party support for the measures, and in particular to the shadow Minister, the hon. Member for Ashfield, for her engagement on this issue.

The hon. Lady raised a number of points, which I will endeavour to address. As I mentioned in my opening remarks, we have been clear that, although this is not routine, the changes are in essence retrospective and people will have the right to reapply if their claims were previously rejected on the grounds of the “same roof” rule. Other criteria still apply to the scheme that will obviously have to be met, but that rule will no longer be a ground for rejection, as it has been in the past.

On building trust and communicating the changes to those who need to reapply, the hon. Lady is right that the success of the changes will be measured in people coming forward, and knowing that they can do so. We have imposed the two-year time limit because we believe that it is important that that is consistent with the rest of the scheme’s operation. However, I highlight two things. First, there is an element of discretion in particular circumstances that mean that someone is unable to come forward within the time period. We also have a clear emphasis on communication and stakeholder engagement, because it is right that people know, and know early, about the changes that we have made here, and that hopefully will be approved in due course by the House and the other place.

We have that stakeholder engagement and we have a dedicated team to support those who apply through the process; those applicants will get a named contact.

I also encourage hon. Members to highlight the changes by whatever means they have within their power when the legislation has passed all its stages, as I hope it will.

The hon. Lady asked about payments for those who are deemed eligible and are successful. I assure her that victims applying to the amended scheme who meet the criteria will receive the award that they are offered, and funding will be available to ensure that they get the money that they are awarded.

The hon. Lady moved on to other aspects that fall more properly into the review that we have announced of the overall 2012 scheme, which we will introduce later this year. The scheme was last reviewed in 2012, when reforms were made to make the scheme more financially sustainable. As she said, that has affected the total awards made, although the volume of applications has also reduced since 2012. It is important to remember that our scheme remains the most generous in Europe; CICA paid out £154 million in compensation to victims in the last financial year.

The broad terms of reference for the current review of the scheme were announced on 18 December 2018. In that context, the hon. Lady made a number of points about the tariff for awards, the eligibility criteria more broadly, the consent rule in the context of the scheme and the previous convictions rule. The overall review of the scheme will be an opportunity for people, stakeholders and members of the public to comment on those and other factors; I am sure the official Opposition will wish to do so too. I am conscious that she and I are due to meet in the near future to discuss the review.

I will briefly mention the comments of the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, who, as ever, was measured, pragmatic and sensible in his response. I am grateful for his support, and that of his party, in this endeavour. I am conscious of the points that he made about Scotland. I am sure that he and his party will also wish to participate in the broader review of the overall scheme.

I hope that the Committee agrees that the proposed changes are small but an important step as part of a bigger whole. They are welcome and necessary to remedy an unfairness that has taken place for far too long.

Question put and agreed to.

2.55 pm

Committee rose.

