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Response from **Amicus the Union** on the Home Office Paper

REBUILDING LIVES – Supporting the victims of crime

Amicus is the UK's second largest trade union, with a greater number of members in the private sector than any other union and it is the fastest growing in the public sector. Now with 1.2 million members, Amicus has members in a range of industries including financial services, manufacturing, print, media, the voluntary and not for profit sectors, local government and NHS health professionals.

Amicus has members, who work as bank and building society staff, in the probation service and as health care professionals, who are among those most at risk from injury as a result of a crime of violence during the course of their everyday working lives.

Preliminary Remarks

“We pay out more compensation [to the victims of crimes of violence] than the United States and more than all the other countries in Europe put together. By the end of the decade, the liability to compensation will be in the order of £250 million a year. That is no mean achievement, and one in which we can all justifiably take pride.”

So said the Right Honourable Michael Howard, then Secretary of State for the Home Department, on 29 June 1995, in the House of Commons, defending a new Criminal Injuries Scheme, on the third reading of the Bill and in response to the comments that follow:

“The Bill...punishes the victims of violent crime...there are many major defects in the scheme that is before the house. There is no compensation for loss of earnings before 28 weeks...There is no payment for special expenses. Maximum awards will be capped, adversely affecting those with catastrophic injuries...the tariff is extremely low [and] Tariff levels are basically the same as those in the discredited 1994 tariff...The tariff provides no flexibility in difficult cases.”

Jack Straw

We agree with Jack Straw's comments and the following statement:

“the answer is...not to cut support for victims but to take measures to cut the crime that gives rise to the applications.”

Tony Blair (House of Commons, 28 March 1994)

We do not share Michael Howard's view that the Scheme, which came into effect on 1 April 1996, was satisfactory (for reasons, most of which were rightly outlined by the comments of Jack Straw and many others), but the Scheme must not now be made worse for any of the victims of crimes of violence.

We note that in spite of Michael Howard's anticipation that the total amount of compensation payable under the 1996 Scheme would be £250 million by

2000, which, in Mr Howard's view all should be proud of, "***each year [the scheme] pays out about £170 million in compensation***" ('Rebuilding Lives' page 15).

Given the small number of cases which are affected by the cap of £500,000, it is clearly possible to ensure those with catastrophic injuries and very substantial losses and costs are not deprived of the correct amount of compensation by removing the cap, whilst at the same time ensuring that the substantial number with less serious injuries are also compensated. The equivalent Scheme in Northern Ireland does not have a compensation cap.

We have also had an opportunity to consider the response from the Criminal Injuries Compensation Appeals Panel and we note the authority of their views in the light of their position and experience.

We are also mindful of the Home Office Consultation Paper "**Compensation and Support for Victims of Crime**" 12 January 2004, which included the same proposals found in this Consultation Paper, that would deny compensation, for example, to innocent victims, because they were working at the time of an attack.

In July 2004, the Government accepted sound arguments to reject such proposals. It is astonishing that they are back on the agenda within 18 months. One reason given then that such proposals are unacceptable is that two people stood next to each other, harmed in the same incident, may find that one present on duty, would not receive a penny, but the other, who may not suffer as much, is compensated.

Many of the arguments in the paper are illogical and contain non sequetors. One such example is to say that delay is a problem for the victims, so that we should contemplate paying no compensation to most victims.

Indeed to argue for a rise in the cap on damages and at the same time propose underpayment of compensation, so that fewer applicants reach the cap, by denying payment for loss of earnings and special care, is as offensive as it is illogical.

We are concerned that this consultation paper may be classed as “wretchedly deceptive” (to borrow the phrase of Tony Blair in the House of Commons, 28 March 1994).

Replies to Consultation Questions

Chapter 2 – Financial Support

1. Compensation orders – (a) whether to deduct court-ordered compensation from benefits.

The comments of those who said, in response to the 2004 Consultation Paper, that greater use of compensation orders should be made, should now be acted upon.

2. Maximum award limit – (a) whether to increase the maximum award limit

The maximum award limit should be removed. “Compensation” to the deserving should be exactly that. No more and no less than a sum in restitution.

There are otherwise good arguments for raising the limit, which has stood at £500,000 since Michael Howard encouraged that limit to be set in the 1996 tariff Scheme. Any maximum award should be reviewed annually in line with inflation.

The proposal that compensation for loss of earnings should be removed must be abandoned. Jack Straw rightly criticised the existing scheme for limiting the compensation for loss of earnings to victims who suffer loss of earnings or loss of earning capacity for more than 28 weeks. Would the “compensation” to a single person on a healthy pension be the same as another much younger person in a good job with a family to support?

Such problems as there may be in calculating loss of earnings, do not amount to a good reason to refuse to pay it. By the same token special expenses should also continue to be awarded to victims, including those who need care.

We do not accept that victims with an entitlement to compensation for loss of earnings/earning capacity under the Scheme should be treated differently to those claiming a loss of dependency in a fatal case.

3. Refocusing the scheme – (a) whether the scheme should be refocused around the concept of “seriousness”; (b) how best to define “seriousness”

The answer to (a) is a flat “no” and (b) is, therefore, not applicable.

The current Scheme does not make an award to those who do not qualify for the lowest level of awards. The 14% of applications rejected due to the current minimum award does not include the number, who do not apply because they know the lower limit would deprive them anyway.

Under the existing Scheme, victims can often suffer serious losses and run into debt due to the fact that the Scheme will not compensate for loss of earnings for the first 28 weeks of loss after an incident.

The concept of “seriousness” will be arbitrary in its effect and cannot operate unless it is a blunt tool cutting off a large number of applications, by those who are currently entitled to the lower levels of awards.

People will be outraged to be told that their injuries are not serious. We believe that members of the public, including our members, will have their beliefs that the Government and society care for the victim damaged and their faith in the criminal justice system will be substantially reduced. We know that many are already disappointed when they are turned away, because they do not qualify for the lowest awards. It is also clear that even relatively modest sums for relatively modest injuries help victims come to terms with such traumatic events.

What the victim may spend the money on is not relevant (page 16 “Rebuilding Lives”). Indeed that the majority may spend it on debt relief may well be related to losses incurred due to an incident and a holiday may replace one lost, or be a much needed break.

4. Payments in fatal cases – (a) whether the current payments for fatal cases are appropriate and, if not (b) how a different basis for compensation could be devised

It is unacceptable that dependents of those who are killed should have awards assessed differently to other victims and their dependents. The present Scheme’s clauses relating to loss of dependency and loss of parent, should not be made worse. Comments made earlier about the cap on awards, however, apply equally to such awards.

The bereavement awards are not high by any stretch of the imagination by the public, but that they are a little more than at common law, should not result in such awards being lowered. Funeral expenses should also continue to awarded, but as an early interim payment.

5. Applying awards retrospectively – (a) whether changes to the scheme should apply from the date of the incident or the date of the application.

We agree that it is better to avoid changes being retrospective.

6. Interim awards – (a) whether interim awards should become the norm

We agree that interim awards should be offered whenever possible and advice given to those who have means tested benefits that may be reduced or removed. It is wholly wrong that a sum is paid to those unfortunate enough to rely on means tested benefits, only for that sum to be used in effect to pay their benefits for a time.

7. An applicant’s criminal record – (a) the sliding scale used to determine the level of compensation for a person who has unspent convictions

The current provisions of the Scheme should be removed. Either a person has paid the penalty for being involved in a crime or not. One who has a past record should not have a significant proportion of their award threatened when they later fall to be an innocent victim of a crime of violence or trespass on the railway.

8. Anomalous categories in the scheme – (a) whether this is appropriate in all cases of injury at work, or whether there are violent crimes that cannot reasonably be guarded against by employers and for which society as a whole should continue to provide compensation; (b) how compensating employees could be achieved in the private sector; for example through work based schemes or on a case by case basis.

These are not anomalous categories at all. Suggesting that they are indicates a clear misunderstanding of this area.

It is wrong to treat differently victims of crimes of violence, injured at work. The duties on employers at common law and by application of statutory duties do not provide compensation for those injured as a result of a crime of violence (save in very exceptional circumstances, when our union would take a case, if advised, rather than pursue an application under the CICS and in any event the law relating to “double recovery” applies). The employers argue that it is not practicable to prevent such injuries occurring and that, in appropriate circumstances, they have done as much as they can reasonably be expected to do. Many examples and much evidence can be cited in relation to this issue.

We would welcome a strict liability applying to the employers, when a worker was injured whilst on duty due to a crime of violence. That is what would be required, to replace the CICS in relation to those injured at work, but we know the Government would find that the employers and their associations would find this unacceptable. Further, it would only add to the costs of injuries at work and Employers’ Liability Compulsory Insurance.

Other reasons given in 2004, included that the majority of cost here arises in relation to those employed in the public sector. (See “Rebuilding Lives” Annex 3a). The Home Office would, once again, find objection from other Government Departments.

An anomaly would arise if the employee suffering on duty receives nothing, but the bystander also injured in the same incident receives an award. Do we really want, as a society, to dismiss claims by health care professionals and staff in banks and building societies, who we should value, when they are injured whilst they are carrying out their work, when there is certainly no other alternative source of compensation.

Perhaps the most notable cases is that of the incident involving the nursery teacher, Lisa Potts, who suffered severe injuries when a man launched an attack with a machete. How could we justify turning her away whilst making

an award to a parent at the scene? And what of the police officer shot on duty?

Even in relation to railway trespass cases, the Government concluded, following the recent review in 2004, that the arguments accepted by parliament in 1990, were still valid and rail workers should remain under the scope of the Scheme.

Chapter 3 – Emotional & Practical Support

9. Use of the Victims' Fund 2007/08 – (a) widening of the fund to cover other serious crime types e.g. the families of homicide victims or victims of hate crime.

The Victims' Fund should run alongside the CICS. Where the Fund makes a payment, this should be taken into account in relation to any award for economic loss under the Scheme. However, money should not otherwise be made available to the Fund that would otherwise have funded the CICS.

10. Support services - the services CJS want to provide in the future for adult and child victims of crime

A similar approach should be adopted to that outlined in response to question 9 above. Whilst it is appropriate to provide early access to good medical attention, and other support, where this works and reduces an award under the CICS, that is to be welcomed. Where it does not significantly affect a CICS award, this says more about the existing inadequacies of the Scheme.

Chapter 4 – Delivering Support

11. Needs assessment – (a) how needs assessments for victims could be delivered as soon as possible after the crime for adult and child victims of crime; (b) who could best carry out this role for adult and child victims of crime.

Again it is appropriate to encourage early provision of effective medical and other support. This is consistent with the need to encourage consideration and provision of rehabilitation following all types injury, especially perhaps in the workplace. General Practitioners, other health care providers and representatives and advisers should all be involved.

12. Options for Victim Care Units – (a) CJS model for Victim Care Units and suggestions for other models.

Other than to encourage effective support for victims that runs alongside the CICS (as applies to questions 9, 10 and 11), those preparing this response are not qualified to make a useful contribution here.

13. Working with the private sector – (a) the potential for closer working with the private sector in helping victims of crime.

We note the comments in the paper, but would like to add that Amicus and the TUC are already seeking to co-operate with the insurance industry and employers (and the DWP) over initiatives to rehabilitate those who are injured, particularly during the course of work. This will help the victims and reduce premiums and the costs to employers and the state. One matter that would assist enormously, for example, would be an initiative to encourage employers not to terminate the contract of employment (or other work contract), whenever there are realistic alternatives.

Conclusions

We have attempted to be forthright and responsible in our responses to the paper. We have responded to the questions. We would welcome the opportunity to be part of any further review of the CICS, which was more extensive and open.

For example, there are surely improvements that could be made to the existing process, which would result in speedier and more accurate awards at reduced cost. One matter that arises is that the CICA requests for medical assessment do not ask the right questions in light of the Scheme and do not encourage comment and opinion sufficient to enable the right decision to be made in the first instance. A simple measure would reduce the number of applications for a review, which more often than not result in satisfaction only at appeal stage. This adds significantly to the costs of the Scheme. Indeed serious consideration could be given to taking the review process away. There are other such improvements that could be made to reduce costs and speed up the Scheme process, without depriving the innocent victims of crimes of violence of just compensation.

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