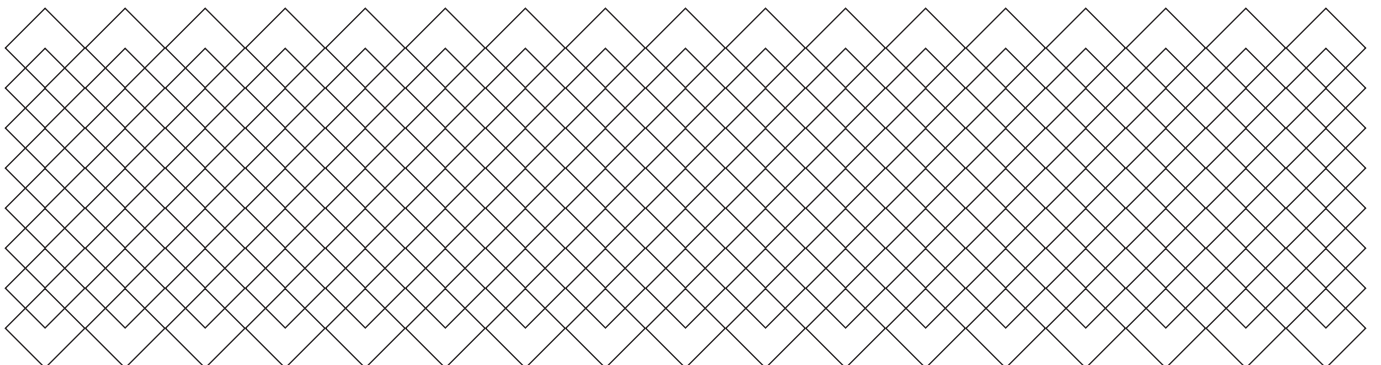




Ministry of
JUSTICE

Getting it right for victims and witnesses

Consultation Paper CP3/2012
January 2012





Getting it right for victims and witnesses

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

January 2012

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Getting it right for victims and witnesses

Foreword by the Lord Chancellor and Secretary of State for Justice

Proper protection and support for victims of crime is fundamental to my vision of a reformed criminal justice system.

Victims of crime must be able to rely on swift, sure justice which punishes offenders properly, and on intelligent justice which demands that offenders face up to the causes of their behaviour, protecting future victims from similar trauma.

But more than that, victims need sympathetic and timely support which helps them to recover, as well as to understand and cope with the inevitable stresses of investigation and trial. This support should be properly funded, increasingly by offenders rather than taxpayers. Cash compensation should be focused on blameless victims of the most serious crimes.

The current system falls short of these ambitions. Reoffending rates are disgracefully high, so the public is not properly protected from repeat offenders. High quality, practical support for victims is not consistently available. Perpetrators pay little towards meeting victims' needs.

Too often, the process of justice itself can add to the injury inflicted on the victim. They are sometimes left feeling like mere accessories to the system, kept in the dark about the progress of their case, or expected to sit next to the families of perpetrators in court. If something goes wrong in the criminal justice system, victims have to choose between 13 different agencies to decide where to complain to.

Equally troubling, the official Government fund, the Criminal Injuries Compensation Scheme (CICS) has never been properly funded since it began, and is now in serious financial difficulty. Claimants wait months – and in some cases years – for the whole process to run its course and payments to arrive. Meanwhile, a significant proportion of the budget is spent on payments for those who suffer relatively minor injuries, such as a sprained ankle. Absurdly, tens of millions of pounds have been spent on compensation for people who are themselves convicted criminals.

This paper consults on a set of reforms which will deliver a more intelligent and coherent service for victims of crime. I want to see a system targeted at those who are most seriously harmed by crime, whether through physical injury or emotional trauma. I want victims to be able to rely on CICS for the long-term, which means giving it financial stability by focusing resources on the most compelling cases. I want to ensure that first class support, such as practical advice and counselling services to help people deal with daily life, is available to all who require it, at the time of need.

Under my plans I am seeking to maintain overall levels of spending on victims, with increasing sums available for the vital area of practical advice and support. Meanwhile, compensation will be targeted on the most seriously injured victims of serious crime, ending the anomalies of current funding and delivering a saving to the taxpayer. The extra money for services will come from offenders themselves, underlining the principle that those who do harm should help to heal it. Compensation will no longer be available to those with relatively minor injuries and anyone who has been breaking the law themselves.

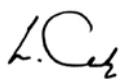
For families bereaved by homicide and those affected by serious violent and sexual crimes, these proposals would protect compensation payments for pain and suffering whilst aiming to improve practical support and advice. Rather than receiving a payment a long time after the event, people who suffer minor injuries will be able to draw on better practical support and counselling when they need it.

The experience of investigation and trial should minimise the suffering of victims and not inadvertently add to it. Victims' rights will be enshrined in a clear code, signed up to by all of the relevant agencies, with a straightforward complaints procedure replacing the current confusing system.

The overall effect of these proposals will be a more flexible and tailored system of support for victims of crime, with the vast majority of decisions about what services are needed made at local level by democratically accountable Police and Crime Commissioners.

I also wish to make good on the last Government's intention to compensate victims of overseas terrorism. I recognise the concern caused by the delay in confirming the details of this policy, but I believe it is important that in future, victims of terrorist attacks abroad should be able to qualify for compensation on a similar basis to victims of domestic crime. We will also make ex gratia payments to eligible victims of incidents going back to 2002 on the basis of the current CICS tariff. As these plans are not new, they are not subject to consultation in this paper, and I thank all of those who waited patiently for the announcement of these schemes while the detail was being worked out.

Victims are too often an afterthought for the criminal justice system. But they are the people to whom we have the greatest responsibility. Their needs should be dealt with sensitively, proportionately and promptly. I believe the proposals in this paper will ensure victims' services are on a sustainable footing and go a long way to putting right the failings of the past.



Rt Hon Kenneth Clarke QC MP
30 January 2012

Impact and Equality Assessments

To inform responses to this consultation document we have published separate analyses of the potential impacts of our proposals.

- **Impact Assessments:** their purpose is to identify the main groups affected by our proposals and the likely costs and benefits to those groups. Costs and benefits are monetised where possible. The impact assessments can be found at <http://consult.justice.gov.uk/digital-communications/victims-witnesses>.
- **Equality Assessments:** to meet our obligations under the public sector equality duty in the Equality Act 2010. These consider the potential effects of our proposals according to the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The equality assessments can be found at <http://consult.justice.gov.uk/digital-communications/victims-witnesses>.

We welcome comments about the accuracy and extent of the effects identified. We particularly welcome responses from those who identify themselves as sharing a protected characteristic or from interest groups representing those with protected characteristics. The responses received will be taken into account as the Government decides the best way forward following the end of the consultation period.

We have also published separate analyses of the potential impacts of our plans for victims of terrorism overseas, which are not subject to consultation, alongside the analyses of our other proposals. We plan to publish an updated version of the equality analysis when we open the application process for the ex gratia scheme.

Territorial application

Part 1 of this document relates only to England and Wales.

In Part 2:

- text relating to the Criminal Injuries Compensation Scheme applies to England, Scotland and Wales;
- while text relating to compensation for victims of terrorism overseas relates to the United Kingdom as a whole. This policy is not subject to consultation.

How to respond to this consultation

Please send responses by 22/04/12 to:

victimsconsultation@justice.gsi.gov.uk

or respond online at

<http://consult.justice.gov.uk/digital-communications/victims-witnesses>

Enquiries (including requests for the publication in an alternative format) should be emailed to the address above, **or contact:**

Bola Fabunmi
Victim and Witness Unit
Ministry of Justice
8.10
102 Petty France
London SW1H 9AJ
Tel: 020 3334 2584

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Introduction – the case for change

The Government's responsibilities

1. The role of Government in relation to victims and witnesses is three-fold:
 - First, the Government should make sure that victims get the support they need to deal with the immediate aftermath of a crime and, over time if need be, receive further help, which may include compensation, to put their lives back on track. In doing this, the Government should ensure that resources are focused on those in the greatest need.
 - Second, in recognising the critical role that victims and witnesses play in court, without which justice cannot be done and there would be many more criminals on our streets, the Government must ensure that those who play their part in this way get the support they need to deal with the stresses of going to court and giving evidence.
 - Third, the Government owes it to victims of crime to ensure as far as possible that offenders are caught, that they are punished, and that they are dealt with in a way that reduces the likelihood of their re-offending and creating more victims.
2. In December 2010 the Government published a consultation document, *Breaking the Cycle*, which proposed wide-ranging reforms to the way in which offenders are sentenced by the courts and are subsequently dealt with in custody and in the community. The Government response to the consultation was published last July and Parliament is currently considering a package of measures set out in the Legal Aid, Sentencing and Punishment of Offenders Bill. There is nothing more to be said in the present document about the last of the three bullets above. This document does, however, build on themes that the Government first articulated in *Breaking the Cycle*, in particular the importance of offenders making a greater contribution to putting right the harm they have done to victims of crime.

The victim's perspective

3. Crime carries a human cost. For some victims, particularly those of relatively low-level offences, the impact may be practical and short-lived. Many will find themselves having to contend with the emotional effects of crime. For those subject to the most serious violent and sexual crimes, the impact can be distress, hardship, life-changing injury or bereavement.

4. In around 80%¹ of all cases, victims say they do not want any information, advice or support from the state or from other sources. But around 20% of victims say they do, and they are entitled to expect assistance from the justice system and the Government to help to overcome the harm they have suffered.
5. In general, evidence shows that criminal justice agencies and support organisations provide a good level of service. The Witness and Victim Experience Survey (WAVES)² indicates that, between 2007/8 and 2009/10, over 80% of the victims and witnesses it surveyed were satisfied with the way they were treated by the criminal justice system.³ Research shows a similar level of satisfaction with the police.⁴ What victims and witnesses say they want is information about the criminal justice process, information about progress in their case, to feel safe at court and not to feel intimidated by the offender or their families and friends, either at court or before and after the trial.
6. However, the surveys do not include some of the most vulnerable groups of victims and victims of some of the most serious crimes. We know that some victims have important needs that are not being met. As Sara Payne – then the Victims’ Champion – reported in *Redefining Justice*,⁵ some victims say they feel like accessories to the criminal justice system and find the process impersonal and frustrating. Those victims cited sporadic contact from the police during investigations, inconsistent provision of information, long waiting times at court, and a lack of support following the trial. These factors may lead victims to feel that the criminal justice system engages with them for the sole purpose of achieving a successful prosecution, without taking their needs and concerns seriously.

¹ Ministry of Justice, report forthcoming. This figure is from the 2008/09 British Crime Survey – the last year for which figures are available. The BCS is a face-to-face victimisation survey in which people resident in households in England and Wales are asked about their experiences of a range of household and personal crimes. It excludes a number of types of crime, such as fraud, crimes against commercial premises, and homicide. The data presented here excludes children under the age of 16; in addition this estimate excludes victims of sexual violence.

² WAVES, cases closed in 2007/8, 2008/9 and 2009/10. WAVES interviews victims and prosecution witnesses aged 18 and over whose cases resulted in a charge, after the case has closed. It covers the following crime types: violence against the person; robbery; burglary; criminal damage; theft and handling stolen goods. Victims and witnesses in sensitive cases, such as sexual offences or domestic violence, crimes involving a fatality, and any crime where the defendant was a family member or a member of the victims’ or witnesses’ household, are not included. WAVES also excludes police officers or other criminal justice agency officials assaulted in the course of duty, and all police and expert witnesses. It has now been discontinued.

³ <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/cjs-stats-bulletin-march2010.pdf>

⁴ Web link as above.

⁵ <http://www.justice.gov.uk/about/docs/sara-payne-redefining-justice.pdf>

7. Thousands of people, including over five thousand Victim Support volunteers, work to support victims in England and Wales. They provide a vital service, and they do so with commitment and professionalism. We need to make sure that this support is not routinely provided to those who do not need or want it. This is particularly important when research shows that victims struggling to deal with the impact of the most serious offences, or those who are repeatedly the victims of crimes such as localised and deliberate anti-social behaviour, too often do not get the support they need. We must do better to target support to those who need it most.

The principles underpinning our reforms

8. The reforms set out in this consultation document are based on the following principles:
 - **Practical and emotional support should be given to those who need it most.** We think that funding for support should be directed as a priority to victims of serious crime, those who are persistently targeted and the most vulnerable.
 - **Victims should receive help as and when they need it.** Our approach to funding and commissioning victim services will recognise the importance of ensuring that practical and emotional support is on hand immediately after the crime has been committed, and that victims' needs change over time.
 - **Services should meet the different needs of communities across the country.** Different localities suffer from different levels and types of crime. While victims must have clear, national expectations about how they will be treated and the support on offer, local services must have the flexibility to meet the different and changing needs.
 - **Offenders should make reparation for the impact of their crimes.** We want to see a shift away from compensation funded by the taxpayer to a situation in which more offenders take personal responsibility for the harm they have caused by offering an apology or by making the appropriate financial or practical reparation.

9. The following box sets out in greater detail those victims the Government believes should be prioritised for receiving support.

We will give priority to:

- **Victims of serious crime.** Murder and manslaughter, rape, sexual violence, terrorism, and violent crimes such as wounding or causing grievous bodily harm with intent, usually have the most serious impact on victims. Crime type never tells the full story – which is why we want to empower professionals to exercise their judgement in assessing needs – but there should be a working assumption that victims of serious crime may well require significant support.
- **The most persistently targeted.** Crime, even when seemingly less serious, can have a devastating impact on victims when committed again and again over a period of time, particularly where a person is deliberately targeted. This should be taken into account as needs are assessed, and support provided.
- **The most vulnerable.** These are people who are most likely to become victims, or who need particular assistance in coping with the consequences of crime or to engage with the criminal justice system. They might include people who are isolated, or lack social or family support; those who need assistance in managing their own affairs; those who are more likely to be a victim of crime than members of the community generally (for example, by reason of age or medical condition) or less able to cope with the consequences if they do; and those who are able to benefit from additional or special measures in relation to court proceedings.

Question for consultation

Q1 Are there groups of victims that should be prioritised that are not covered by the definitions of victims of serious crimes, those who are persistently targeted and the most vulnerable? If so, can you provide evidence of why they should be prioritised and what support needs they would have?

10. As the following box shows, in the last year the Government has been moving in the right direction:

- The Government has acted on its commitment, set out in the Coalition Agreement, to target resources at rape victims by putting Rape Support Centres on a sustainable footing.
- The Government awarded nearly £8.5 million of new grants over three years to 65 Rape Support Centres across the country, ensuring that – for the first time – they have a guaranteed stream of income until 2014.
- The Government has supported and improved the National Homicide Service which supports families bereaved by murder and manslaughter, investing £2.75 million in the Service and in specialist groups in the current financial year.

- The Government has ring-fenced £28m until March 2015 to provide a range of support services to victims under its strategy for tackling violence against women and girls,⁶ including Independent Domestic Violence Advisers, Independent Sexual Violence Advisers and Multi Agency Risk Assessment Coordinator posts.
- The Government awarded over £15 million to support voluntary organisations which provide support to the most vulnerable victims of crime.

Reform of Entitlements for Victims

11. Prioritising help to the right people is essential, but a major part of the reform that's needed revolves around greater clarity about what is to be delivered and how it is to be delivered. Central to this discussion is the need for a new Victims' Code, recognising that the existing document falls far short of its objective – to provide victims with a clear idea of the entitlements and services they can expect from criminal justice agencies. Its replacement will not be a detailed set of provisions written in obscure language but a straightforward set of entitlements and expectations expressed in a way that everyone can understand. It should enable greater opportunities for professionals to determine how to deliver support, and to which victims, based on need.
12. The Government opted in to negotiations of a new EU Directive on the rights, support and protection of victims of crime last year. It is too early to say what the final Directive will include. But at present, it looks likely to include several things we see as potentially complementary to the new Code. Our active participation in the negotiations in Brussels means that we are helping to make sure that someone from the UK who is a victim of crime elsewhere in the EU enjoys rights similar to those from which they would benefit at home. When work begins to consider incorporating the Directive into UK law we will take the opportunity to look at options for a wider, more comprehensive Victims' Law. We believe that reform must begin immediately, however, and that this should begin with a new, much more effective Victims Code.
13. As to how services are to be delivered, we need to commission them in a way that better reflects and is more responsive to local needs, with most services therefore commissioned at local level rather than from Whitehall. This document proposes that the bulk of victims' services will, from 2014, be commissioned by Police and Crime Commissioners who will be elected by their local communities under legislation introduced by this Government. There will still however be some specialised services (such as support for the bereaved families of homicide victims and helplines for victims of domestic violence and stalking) which it makes

⁶ <http://www.homeoffice.gov.uk/crime/violence-against-women-girls/>

sense to commission nationally, and this document considers the options for doing so.

From compensation to reparation

14. It is not only the state which has a duty towards victims. In recent years, there has been far too little focus on the duties owed to victims by perpetrators of crime. While the Criminal Injuries Compensation Scheme costs over £200m a year only £30m was paid by offenders in court-ordered compensation in 2010/11.⁷ That present imbalance is unacceptable. We are determined to see a fundamental shift in approach in which offenders play a significantly greater role in making financial reparation, in repairing the damage their criminal activity has caused, and, where appropriate, in helping victims come to terms with the harm that has been done to them.
15. The Victim Surcharge will play a major part in this. It currently raises about £10m annually, but by increasing the rate ordered on fines and extending it to the full range of sentences ordered in court, and also by using increased revenue from Penalty Notices for Disorder and motoring Fixed Penalty Notices, we aim to raise up to an additional £50m each year.
16. The Surcharge is one of a number of financial impositions in respect of which courts can apply to the Department for Work and Pensions for deductions to be made from an offender's benefits in order to enforce payment. The Government plans to increase the maximum amount that can be deducted from benefits to repay the Surcharge and other financial impositions from £5 a week to £25 a week, ensuring that offenders pay more, more quickly. The next box covers three additional reforms the Government has already begun to increase reparation from offenders to victims:

In the last year:

- The Government has implemented the Prisoners' Earnings Act 1996. In its first year of operation up to £1m of deductions will be made from the income of those prisoners earning enhanced wages. The money will go to Victim Support.
- Through provisions in the Legal Aid, Sentencing and Punishment of Offenders Bill the Government will place a stronger duty on courts to consider awarding a compensation order.
- The Bill also contains provisions for deducting money from the earnings of a wider group of prisoners than is possible under the 1996 Act.

⁷ Offenders also paid £160m in fines in 2010/11.

17. In order to maximise the benefits from these measures the Government aims to significantly increase the number of prisoners who work and who therefore contribute to the costs of their own rehabilitation and victim support services. We will also encourage local commissioners of victim support services to use the additional funding to make restorative justice much more readily available.
18. In addition we will give consideration to implementing legislation that would enable claims officers in the Criminal Injuries Compensation Authority to recover money from offenders who have caused injuries resulting in awards of compensation. We ask consultation questions about some of the practical aspects of implementation.

A step-change in restorative justice

19. Ensuring that offenders make financial reparation for their crimes is not enough. Wherever possible, offenders should be made to face up to the impact of their offending and the harm they have done to victims. For this reason, the Government is committed to increasing the use of restorative justice – both as part of and an alternative to the traditional model of criminal justice – and to ensure that at all times it is led by the interests of victims, not offenders.
20. Our proposals for local commissioning and for increasing revenue for victim support services through the Victim Surcharge present an opportunity to make a step change in the provision of restorative justice. The proposed reform of the Victims' Code will allow us, for the first time, to give victims an entitlement to request restorative justice in their case and to receive this where it is available and resources allow.

Compensating victims – the Criminal Injuries Compensation Scheme (CICS)

21. Provision of compensation is of particular importance to those victims who are most seriously affected by their injuries and where the impacts are long-term and life-changing. It is plainly right that compensation payments should be a continuing part of how Government supports and responds to their needs. But consistent with our principles of reform we believe it is more sensible and beneficial for victims with less serious injuries that we focus on ensuring immediate practical and emotional support is available, rather than on compensation. The services these people need are now far more readily available than in the mid 1990s when the statutory compensation scheme was established.⁸

⁸ For example in 1996 the government gave Victim Support a grant of £10.8m. This year (2011/12) The Ministry of Justice has given Victim Support a grant of £38m as well as c£10m in grants to other specialist organisations such as rape crisis centres and organisations providing support for people bereaved by homicide.

22. We are also concerned that any compensation scheme must be sustainable. The CICS is a demand-led scheme which costs the Government over £200m each year and is one of the most expensive in Europe in terms of direct financial compensation for victims of crime. The Scheme has historically been underfunded, with funding allocated at the beginning of the financial year needing to be topped up later in the year. Under the tariff scheme there are existing applications with an estimated total value of £260m,⁹ more than the value of claims expected to be made each year, and more than the available annual budget for future years. In addition, provision was not made for the scheme's historic (pre-tariff) liabilities of nearly £400m,¹⁰ which this administration is now tackling and to which it is already allocating funding, so that awards due to victims will be paid as their cases are decided.
23. It is clear that a review of the Scheme is long overdue and that it takes place in a difficult financial climate. The Scheme must be sustainable if it is to continue to offer timely compensation to victims in the long-term and provide a set of fair, realistic expectations. Our proposals for reform are focused on protecting awards to those most seriously injured by violent and sexual crime. They open the way to make savings from the Scheme and rebalance the overall resources available to victims to best effect by increasing the financial reparation made by offenders in order to provide additional funding for victims services.
24. By examining the scheme against our wider principles for reform, and focusing limited resources on the most seriously injured, we estimate that the proposals in Part 2 of this consultation could deliver savings to the taxpayer of about £50m per year. We aim to bring a new draft scheme before Parliament for approval this year but the CICS budget is not planned to be reduced until 2014/15, enabling us to ensure that applications made under the current scheme are resolved once they have been decided. Consistent with our desire to see a move away from taxpayer-funded compensation towards reparation we will aim to ensure, through the additional sums raised from offenders, that the overall sum spent on victims is not reduced. The revenue from offenders will be spent on victims' services, not compensation. The Government regards it as legitimate, at a time of acute financial pressure, to make its proposed saving from the CICS, being clear in doing so that payments to those in greatest need are safeguarded. There will be no change in the compensation paid under the tariff to victims of rape, other sexual offences or sustained abuse.

⁹ Estimated at the end of March 2011. In addition there are £128m of liabilities that are assumed to be incurred by not yet reported.

¹⁰ Before 1996, CICS awards were calculated in accordance to what the victim could have received in a successful civil action against the offender. The majority of outstanding cases arise from children where a final assessment of their ongoing need could not be concluded until they reached adulthood.

Victims of Terrorism Overseas

25. The final section of this document sets out the schemes the Government will introduce and is not subject to consultation.
26. Terrorism is unique in the public consciousness. Whether terrorist attacks are targeted at individuals or more indiscriminately, terrorism is intended as a political statement and as an attack on a state and its people as a whole. As such, it has ramifications beyond those directly affected by it.
27. Alongside our revised domestic compensation Scheme we intend to lay before Parliament a scheme for compensating victims of terrorism overseas which will be commenced once it has been approved by Parliament later this year. We will also launch a separate fund to provide ex gratia payments to eligible victims of terrorist attacks, designated for the purposes of these schemes, which will cover terrorist incidents overseas from January 2002 until the commencement of the statutory based scheme (open to receive applications from April).

Part 1 – The victims and witnesses strategy

28. Part 1 of this consultation document sets out the Government's proposed approach to ensuring that victims and witnesses get the support they need, both to overcome the consequences of crime and to participate fully in the criminal justice process. It also sets out our commitment to ensuring that offenders take greater responsibility for repairing the harm they have caused, through a combination of financial reparation and restorative justice.

Supporting victims to cope and recover

What happens now?

29. Successive governments have granted funding to a wide range of voluntary, community and social enterprise organisations to provide support services for victims and witnesses, reflecting diverse needs, over many years. Annual funding by central government currently stands at around £66m. Based on published charity accounts, we estimate that in 2008/09 local authorities spent at least a further £85m on victim support services. (This is likely to be an underestimate due to errors and missing data in the published charity accounts used to produce the estimate).
30. To date, however, there has been no consistent, strategic approach by central Government to the commissioning of victims' services. Decisions about what to fund, where, and when have often been taken in isolation by a range of decision makers without a consensus about the aims of providing support.
31. These arrangements have failed to build capacity in the services which are most needed. Moreover, given the large number of providers of support services to victims and witnesses (in excess of 250 organisations bid for Ministry of Justice funding in 2011/12), it is unrealistic to expect central Government to determine which of these provide the best services and offer the best value for money.
32. The bulk of central Government funding is currently provided by the Ministry of Justice to Victim Support, an independent charity and the largest provider of emotional and practical support to victims and witnesses of crime in England and Wales. Victim Support has been awarded core funding of around £38m per year since 2007/8. The Home Office has ring-fenced £7m per year (between April 2011 and March 2015) to provide a range of specialist support services to victims of domestic violence, sexual violence, and stalking under its Violence Against Women and Girls strategy. This includes financial support to a range of voluntary sector organisations to run national helplines and support projects for victims. Both the Ministry of Justice and the Home

Office provide funds to other voluntary sector organisations that give support to victims through numerous smaller grants.

33. The Government is determined to ensure that, in future, central Government funding is better targeted to those victims most in need of support and that a wide range of service providers are available to give victims the support they need. The business model endorsed by the previous administration, culminating in the aim of creating a National Victims' Service, was designed to offer support to all those referred by the police rather than specialising in support for those in greatest need. This is unsustainable and wasteful. For example, Victim Support received more than a million referrals in 2010/11. With the resources available, it was only able to contact and assess the needs of 60% of them. Only a third of the victims assessed actually required support.
34. We urgently need to establish a more coherent approach for how central Government funds services, underpinned by a shared understanding of the needs of victims, priorities and successful outcomes.

A new approach to supporting victims

35. Our approach will be guided by the following principles:
 - Victim services should be targeted at those who have suffered the greatest impact from crime, including victims of serious crimes, those who are persistently targeted, and the most vulnerable.
 - Support services should aim to achieve two outcomes: helping victims first to cope with the immediate impact of crime, and subsequently to recover from the harm they have experienced.
 - Services should receive funding depending on whether they are able to achieve these outcomes, based on evidence, and the outcomes should be reflected in a consistent commissioning framework.
 - Such a framework is best applied by local decision-makers based on a detailed assessment of demand against need. Exceptions might include services for relatively small groups of victims with complex needs (such as victims of trafficking, or those bereaved by homicide), case management functions which require a consistent approach and national reach, and services that can only be provided at a national level, such as national domestic violence and stalking helplines.
 - Commissioners should have a wide margin of discretion about the way in which they make services available to meet local need with a small set of minimum entitlements for the most vulnerable victims, such as those suffering from domestic and sexual violence, which the Government would expect local commissioners to fund as a priority. We will commit a proportion of the additional income raised from offenders through the Victim's Surcharge and other financial impositions to services for victims of domestic or sexual violence.

- Commissioners, and those providing services, should be held accountable for the outcomes they achieve – the recovery of victims – rather than for transactional measures, such as the number of victims who have received a particular service.
- Services should be specified through dialogue between commissioners and providers.
- Commissioners should work closely with others who are commissioning services for victims locally, such as local authorities and Primary Care Trusts, in order to share knowledge, avoid duplication, and ensure a more strategic approach.
- Service providers should be funded through a single process in each area, reducing the need to apply many times for small sums of money. More funding should go directly to supporting victims rather than administration.
- Services should be provided to victims through an effective and efficient referral system, based on joint working with the police, which ensures they receive the support that is required.

Providing and assessing services based on outcomes

36. Not all victims will be able to return to the life they had before the crime took place. But this should not prevent commissioners and providers from striving to return an individual to their previous or comparable level of well-being. Where victims have suffered serious impacts, it is particularly important that support achieves real results so that victims are able to recover and regain their confidence and independence.
37. Outcome-based approaches to commissioning services are already in use in other sectors. Since publishing 'Breaking the Cycle', the Ministry of Justice has embarked on a series of projects to test a 'payment by results' model to incentivise agencies to provide services which are most effective in tackling reoffending. There are other examples such as the Healthy Lives, Healthy People strategy proposed by the Department of Health to improve public health.
38. In the same way, a new commissioning framework for victim services must provide clarity about the outcomes for victims, and ensure that there is a practical and agreed mechanism for measuring performance so that commissioners and providers can be held accountable. We will introduce a new commissioning model in 2014/15, building on the experience of other sectors and the expertise of those who already support victims and commission services.

An outcomes-based framework

39. Dialogue with practitioners and support providers has suggested that the commissioning framework should cover eight categories of need: mental and physical health; shelter and accommodation; family, friends and children; education, skills and employment; drugs and alcohol; finance and benefits; outlook and attitudes; and social interaction.
40. The commissioning framework will be designed in a way that enables commissioners to take full account of the benefits which flow from interventions, but which may not fall neatly under a single heading. For example, Victim Support volunteers provide emotional support but where possible will also assist with practical considerations such as home security.
41. To support the implementation of a new commissioning framework we will:
 - Strengthen the evidence available about the demand for services, against each category of need, particularly those who have been affected by the most serious crimes, are persistently targeted, or who are vulnerable.
 - Establish which interventions have most impact in meeting these needs, taking into account the extent to which victims would otherwise require longer or more extensive support from other services funded by Government.
 - Develop guidance and training for commissioners and providers in mapping the demand at local level against each type of need.

Measuring outcomes

42. The way in which the effectiveness of victim support services is assessed varies as widely as the way in which services are commissioned. An effective framework will need to set clear expectations against which both commissioners and providers will be held accountable.
43. We want the practical impact of the services that have been commissioned to be transparent to victims and the wider public. To that end we will work with the voluntary sector in developing new methods for measuring service quality.

Questions for consultation

- Q2 Should supporting victims to cope with the immediate impacts of crime and recover from the harms experienced be the outcomes that victim support services are assessed against?
- Q3 Are the eight categories of need identified correct? Are there any other categories of need that support services should address?

Who should commission services?

44. We propose that services provided by voluntary, community and social enterprise organisations should be funded through a competitive commissioning process, on a multi-year basis where appropriate. There are a range of levels at which services could be commissioned:
- **Local level:** A local commissioning body would work with victims' groups, criminal justice agencies, health services and other local partners to commission appropriate services for victims.
 - **Regional level:** A commissioning body would be identified or appointed in each of the ten regions in England and Wales to commission support services across the region.
 - **Prime contractor:** One or more contracts would be established across England and Wales with large providers or consortia. Each would then sub-contract to local providers but would remain accountable for the delivery of services.
45. Based on engagement with victims' groups and those who fund services, and in line with the Government's localism agenda, we propose that the majority of services be commissioned at the local level, with a single funder of victims' services in each area. Decisions would be taken by a commissioner with a good understanding of local victims' needs. Local commissioning should also make commissioners more accountable to communities and victims.
46. However, as already noted above, we are clear that there are a small number of services that are better provided at a national level. Relying on each individual local area to commission and sustain local specialist services when there are relatively few incidences of the crime is inefficient and may risk under-provision in some places. Some administrative functions, in particular case management of victims, where national infrastructure and a consistent approach have demonstrable benefits, might also be commissioned nationally.
47. For these reasons, the proposed model is a mixture of local and national commissioning. The vast majority of services will be commissioned locally, and in accordance with local need.
48. We propose that Police and Crime Commissioners (PCCs) should be responsible for the commissioning process at a local level. PCCs will be elected in November 2012 and will replace police authorities in each police force area in England and Wales. In London, the role will be performed by the elected Mayor with the establishment of the Mayor's Office for Policing and Crime. Further references in this document, and associated documents, to PCCs should be read as including the Mayor's Office for Policing and Crime. Different arrangements will apply in the City of London.

49. Elected PCCs will hold police forces to account, set local policing priorities and make grants to secure crime and disorder reduction in the local area. They will seek views from the public on policing in their area and are specifically required to obtain the views of victims of crime on their plans. Our proposals would further strengthen this link between PCCs and the victims in the area. PCCs will already have reciprocal duties to act in co-operation with all criminal justice partners and members of community safety partnerships. This requirement for strong collaborative work would allow them to draw on the expertise of local partners when commissioning support services for victims.
50. We have considered a range of other bodies that could take on the local commissioning of services, including local authorities, criminal justice agencies and voluntary, community and social enterprise organisations. However, PCCs would have links with these other bodies and would be in a position to work effectively with them all. PCCs will also be directly accountable to the people in their area. The work of PCCs will be informed by the recent examination carried out by Home Office funded Victims' Services Advocates into the needs of local victims and the services currently available to them.
51. Those services commissioned nationally could be commissioned by the Ministry of Justice. Alternatively, voluntary, community and social enterprise organisations could compete for a national commissioning contract to deliver these services.
52. An example of a service which is currently commissioned nationally is the Homicide Service. This was established to provide tailored and intensive one-to-one support by a caseworker to bereaved families for as long as they need it. The service is managed and provided by the national charity Victim Support and is funded by the Ministry of Justice. The success of the service was demonstrated by Victim Support being able to quickly deploy resources to families in Cumbria following the shootings there in June 2010.

Support for Victims of Terrorism

A lot has been learned in recent years and there have been improvements in the way we respond to and support victims of acts of terrorism and families bereaved by such incidents.

Following the London bombings in 2005 the Criminal Injuries Compensation Authority (CICA) introduced a new approach to the handling of major incidents to ensure there is a tailored application process. This includes making sure applicants are not asked for information which CICA should already have (such as a description of the incident) or which can be obtained from other sources.

Victim Support will be a key partner in the establishment of a Humanitarian Assistance Centre in the aftermath of a terrorist incident to provide immediate practical and emotional support for victims.

Since 2010 Victim Support's National Homicide Service has assigned a dedicated, specially-trained, caseworker to bereaved families. The caseworker will, among other things, be able to provide emotional support and practical help with re-housing, benefits and funeral arrangements. Specialist services such as trauma counselling can also be provided where they are needed.

What services will be commissioned locally?

53. The commissioning framework which will be developed with local commissioners following this consultation will provide a basis for the commissioning of services which meet the full range of victims' needs. Reflecting the Government's commitment to targeting resources effectively and realising value for money, the framework will prioritise victims of serious crime, the most persistently targeted and the most vulnerable.
54. It will be the job of local commissioners to apply the framework and to commission the services which they think best meet local need. Victims can have a range of needs in the aftermath of crime, including information, advice, practical help, safety planning, counselling and outreach.

Examples of support services for victims of crime

Refuges can provide a safe and supportive environment for victims of domestic violence. Refuge workers may be trained to offer emotional support and practical advice to residents. This support is essential.

Rape support centres can provide a range of services, including counselling, helpline and e-mail support. During counselling the psychological effects of rape such as flashbacks, nightmares and depression can be dealt with. Helpline and e-mail support can include referring a victim to other services such as sexual health clinics.

Children and young people may require counselling if they become victims of crime and experience emotional and psychological crisis. Counselling services tailored to children and young people may also include the young person's family, if appropriate. Children can be helped to learn that they do not have to be afraid of their memories and despite their experience, they can look forward to a happy and normal life.

55. In developing the framework with local commissioners, the Government will ensure that it provides them with the necessary tools and information to commission two types of service which we recognise have been neglected in the past.
56. We can do much more to support the victims of road traffic offending, especially where those victims meet the criteria for prioritisation set out at paragraph 9. We do not expect local commissioners of victim support services to become responsible for care and support for all those who are injured on the roads, but where a person is seriously injured or killed on the road as a result of criminality, they (or their family) should be able to expect support from victim services.
57. Our proposals for improving the provision of restorative justice are set out from paragraph 111. Victims will have the opportunity to explain to the offender the impact of their crime and offenders will be encouraged to make amends directly by showing remorse or agreeing to reparation. The commissioning framework will equip local commissioners to use restorative justice services with confidence and to benefit from the work being undertaken at national level, such as the register of accredited practitioners launched by the Restorative Justice Council and Ministry of Justice earlier this year. By continuing to provide national leadership on restorative justice, and by giving local commissioners the tools they need to use it with confidence, the Government's objective is to see a step-change in the availability of restorative justice for victims.

Questions for consultation

- Q4 Is a mixture of locally-led and national commissioning the best way to commission support services for victims of crime?
- Q5 Should police and crime commissioners be responsible for commissioning victim support services at a local level? Who else could commission support services?
- Q6 Who do you think should commission those services at a national level?
- Q7 Which services do you think should be commissioned at a national level?
- Q8 Should there be a set of minimum entitlements for victims of serious crimes, those who are persistently targeted and the most vulnerable?
- Q9 Is there further support that we need to put in place for victims of terrorism, and bereaved family members affected by such incidents, to help them cope and recover?

Implementation

58. We propose that a new commissioning framework be implemented in full by 2014. To manage the transition to the new model, and ensure minimal disruption to service provision, we propose to transfer responsibility to commissioners by 2013. While Home Office funding for central specialised domestic and sexual violence services (i.e. Independent Domestic Violence Advisers, Independent Sexual Violence Advisers and Multi Agency Risk Assessment Conference coordinators and national helplines) will continue until March 2015, we will expect PCCs to consider the needs of domestic and sexual violence victims when developing their victims strategies from 2013 onwards to ensure they are as comprehensive as possible.
59. The costs of administering any future commissioning model must be kept to a minimum in order to maximise the amount of available funding going to frontline services. Further work will be guided by the aim of ensuring that administrative costs do not exceed 10% of the total sum of money provided to the commissioners.
60. We will carry out an analysis of the costs incurred by statutory services such as the NHS, social services, and housing services, in supporting victims and responding to their needs. We will assess the extent to which early identification of needs, with immediate referral to support, saves money downstream. Using this analysis, we will make the case for funding to be pooled into the commissioning model from a number of sources.

Ensuring community initiatives get the support they need

61. Victims of the most serious crimes, and those who are persistently targeted or vulnerable, often need support from professionals or trained volunteers. At the other end of the spectrum, many simply need 'moral support', some friendly reassurance or basic practical help. In these cases, some communities have organised their own programmes. This is exemplified by initiatives such as Neighbourhood Watch schemes and is the sort of activity promoted in Baroness Newlove's report, *Our Vision of Safe and Active Communities*.
62. While the strength of this kind of activity lies in the fact that it is driven and undertaken by the local community, such initiatives nonetheless require time and expertise in order to be sustainable. Commissioners of victim services will be expected to make the expertise of their staff, and that of volunteers from organisations they fund, available to help set up and advise local action. We will ensure that this support is accessible and demand-led. Local people should not be told what sort of work to undertake – funding and expertise should be adapted to support the priorities they identify, where local commissioners agree that there is a real need.

Supporting victims and witnesses through the criminal justice process

63. Justice depends on the public having trust in the system; it depends on victims or witnesses of crime coming forward to report an incident, provide a statement and, as a case progresses, give evidence in court.
64. For some, criminal activity will cause practical problems. For others – particularly the victims of the most serious crimes – the effects will be traumatic. They may be at risk from intimidation and ongoing threats to their safety. It is only right that victims and witnesses should have adequate support and protection as they help bring offenders to justice. More generally, the way in which victims and witnesses are treated has an impact on the public's trust of the system – and the likelihood of crimes being reported in future.

Developments over the last two decades

65. The last twenty years or so have seen a steady stream of measures designed to improve the experience of victims and witnesses participating in the criminal justice process. These include:
 - In 1990, the Government introduced the Victims' Charter, which set out for the first time the levels of service victims of crime should expect.
 - In 1993, the Royal Commission on Criminal Justice reported on the need for separate waiting areas for witnesses in court. Now, all Crown

Court Centres and 99% of Magistrates' Courts have designated separate waiting facilities.

- In 1994, the Criminal Justice and Public Order Act made it an offence to intimidate victims, witnesses and jurors, punishable by up to five years imprisonment, and Victim Support created the Witness Service, which now has a presence in every criminal court in England and Wales.
 - In 1996, the Government revised the Victims' Charter, and piloted Victim Impact Statements, now known as Victim Personal Statements.
 - In 1999 the Youth Justice and Criminal Evidence Act introduced 'special measures' at court to help vulnerable and intimidated witnesses give their best evidence.
 - In 2004 the Domestic Violence, Crime and Victims Act was passed, creating the role of Commissioner for Victims and Witnesses, and mandating a statutory Code of Practice for Victims.
 - Since 2004 a statutory victim contact scheme has applied in relation to offenders who are convicted of certain sexual offences and sentenced to imprisonment for twelve months or more. This includes a right for victims to receive information from, and make representations to, the local provider of probation services regarding license conditions and supervision requirements as the offender approaches release.
 - In 2005 a joint CPS and Police initiative led to over 150 Witness Care Units being established to support victims and witnesses to attend court. Also the Crown Prosecution Service introduced the Prosecutors' Pledge – setting out levels of service that victims could expect to receive from prosecutors.
 - In 2006 the first Code of Practice for Victims of Crime was launched. In 2007, the Witness Charter established a clear set of expectations for witnesses in the justice system.
 - In 2008 the Criminal Evidence (Witness Anonymity) Act put the power of trial judges to grant anonymity to witnesses whose safety is severely at risk as a result of giving evidence on a statutory footing.
66. There has, therefore, been a great deal of progress in the last generation or so, and much has been achieved. But as noted earlier in this document, far too many victims still do not receive the support they need. Significant challenges remain and the Government will continue working with victims' groups to ensure that victims are properly supported throughout the criminal justice process.

Victims' Experience of the Criminal Justice System

67. The level of satisfaction with the Criminal Justice System amongst victims is slightly lower than for witnesses. Overall, 55% of victims whose case resulted in someone being charged for the crime against them reported

being ‘completely satisfied’ (29%) or ‘very satisfied’ (25%) with their contact with the criminal justice system. A further 26% were ‘fairly satisfied’.¹¹ However, we are conscious that the survey data only relates to those victims whose cases went to court, and not to all victims who had contact with the criminal justice system.

68. Some groups of victims are less satisfied than others. Victims with a disability which limits their activities report being less satisfied with their contact with the criminal justice system than those with a disability which does not limit their activities, or those who do not have a disability (71% compared to 80% and 81%). While the majority of victims across all ethnic groups were satisfied with their overall contact with the criminal justice system, fewer victims in the black ethnic group (75%) reported being satisfied with their overall contact than in the white ethnic group (80%).¹² We will work with criminal justice agencies to identify how to improve the satisfaction of these groups. Some of these victims may have been victims of “hate crime”, where they are targeted because they have a particular characteristic. The Government is committed to ensuring that everyone has the freedom to live their lives free from fear of targeted hostility or harassment on the grounds of a particular characteristic, and is taking action to ensure that criminal justice agencies and their partners at local level are equipped to prevent and tackle such targeted hostility. The Government will publish a new Hate Crime Action Plan in spring this year, setting out how services in response to hate crime will be improved.
69. Not all victims want or need support. Of the victims who reported crimes to the police, only 39% said they wanted some sort of support. Needs are slightly higher amongst victims of burglary (49%) and violent crime (45%); and lower for victims of other crime types, for example theft from the person (30%).¹³ Not all victims who want support get it. The WAVES survey indicates that, of those victims whose cases went to court and who said they had a need for information, advice or support, only 71% received some, or all, of the help they felt they required.¹⁴

Reform of Entitlements for Victims and Witnesses

70. The Code of Practice for Victims of Crime (the “Victims’ Code”) and the Witness Charter raised the profile and awareness of the needs of victims and witnesses in a criminal justice system focused primarily on bringing offenders to justice. They have played a significant role in doing so, and

¹¹ WAVES, cases closed in 2009/10; Percentages do not add up due to rounding. Ministry of Justice. Report forthcoming.

¹² WAVES, cases closed in 2009/10; Percentages do not add up due to rounding. Further analysis of Provisional Quarterly Justice System Information Ministry of Justice. Report forthcoming.

¹³ British Crime Survey, 2007/8 & 2008/9 combined data; Ministry of Justice, report forthcoming.

¹⁴ <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/cjs-stats-bulletin-march2010.pdf>

frontline agencies have worked hard to improve their response to victims' needs. But there are still victims and witnesses who are let down by the system. We are particularly concerned that victims of serious crime, the most persistently targeted and the most vulnerable, should be supported by a range of local and national services to help them cope and recover from the effects of crime.

71. We aim to ensure that support for victims and witnesses in the criminal justice system is more responsive to their needs and more proactive in addressing issues of intimidation and vulnerability. We do not believe that limited resources should be expended on those who say they don't want support. On the other hand, those who require support should have the confidence that it will be provided. There should be greater room for professionals to determine how to deliver support, and to which victims and witnesses, based on need. The system of entitlements for victims and witnesses should reflect this more flexible and personalised approach.
72. The government decided in August last year to opt in to negotiation of a new EU Directive on the rights, support and protection of victims of crime. That decision, and the way in which we have gone about the negotiations (which continue), reflect the approach we describe here. It is too early to say what the final Directive might include. At present, though, it would include a number of things we see as potentially being a valuable complement to the Code, and as part of our approach to ensuring victims are entitled to appropriate recognition, and to support and protection. Our active participation not only gives the opportunity to make that clear, but also means we are helping to make sure anyone who is a victim of crime elsewhere in the EU enjoys rights like those they will benefit from here.
73. Many of those things are familiar. They reflect, for example, the entitlement we acknowledge in this consultation of victims to be treated with dignity and respect, to receive information, and to receive help and support – particularly where a victim may be vulnerable. The Directive may also go further than the Code, for example, in relation to privacy and the protection of family members. We are committed to using the Directive, and (in due course) its implementation, to review such entitlements and how they are provided to make sure they work effectively.
74. When work begins to consider incorporating the Directive into the law of England and Wales, we will take the opportunity to consider options for a wider, comprehensive Victims' Law, as advocated by Louise Casey in her report on the needs of families bereaved by homicide. We believe that reform must begin immediately, however, and that this should begin with a new, more effective, Victims' Code.

Reforming the Victims' Code

75. We propose that the Victims' Code be reviewed and re-written so that it sets out clearly what victims can expect from criminal justice agencies, provides for a more personalised, individual level of service, and gives access to effective measures for redress when things go wrong. We propose that the new Code be structured around the following principles:
- Victims are to be treated with dignity and respect.
 - Victims, their reports of crime and their concerns are to be taken seriously.
 - Families bereaved by murder or manslaughter are to receive the specialist support they need.
 - Information on their case is to be readily available to all victims and offered pro-actively.
 - Victims who must attend court as witnesses, and need practical help to do so, receive the help and support they need upon arrival.
 - Victims who want to complete a Victim Personal Statement are to have the opportunity to do so and can expect it to be considered by the court.
 - Vulnerable and intimidated victims will be supported to feel safe and protected.
 - Victims have the right to ask to participate in restorative justice and this should be provided when available and subject to resources.
 - Businesses which have been the victims of crime are to receive the information and support they need.
76. The current Victims' Code is not based on these principles. It is framed with criminal justice agencies in mind rather than victims and it is process-orientated, containing no fewer than 99 standards which must be met by criminal justice agencies in supporting victims through the criminal justice system. This can stifle innovation and, due to limited resources, lead to some victims not getting the information and support they need while others are needlessly contacted by agencies simply because the Code requires it.
77. The Witness Charter is not as prescriptive as the Victims' Code. It sets out standards that witnesses should expect from the criminal justice system, but it does not unduly prescribe how those standards should be met. Because it focuses on outcomes – the results witnesses can expect rather than the process by which they are delivered – we believe that the Witness Charter is a more straightforward, more accessible document. However, it needs updating and we will consult criminal justice agencies and the voluntary sector to determine whether improvements should be made.

Support for those bereaved by homicide

78. There will always be victims and witnesses with particularly acute needs, including those who require types and levels of support which will require special provision, even within a more flexible and individually-tailored set of entitlements.
79. The Government already funds the National Homicide Service, established in April 2010, which provides specialist support for bereaved relatives. We have invested £2.75m in the service and specialist support organisations this year, to provide bereaved families with a dedicated caseworker who can give practical and emotional support as well as prompt referral to specialist counselling services. This includes £500k invested to immediately implement a number of the recommendations in the Victims' Commissioner's report into the needs of families bereaved by homicide, published in July. Those recommendations include increasing the number of professional caseworkers, ensuring that more families can access timely trauma and bereavement counselling, and providing greater resources to the many smaller organisations which provide longer term peer-support to the bereaved. Last April, the Home Office also introduced legislation on Domestic Homicide Reviews so that lessons are learned following a domestic homicide.
80. In reforming the Victims' Code we will consider the Commissioner's remaining recommendations and propose to include a set of separate, additional entitlements which those bereaved by homicide can expect from criminal justice agencies.

Questions for consultation

- Q10 How could the Victims' Code be changed to provide a more effective and flexible approach to helping victims?
- Q11 What do you think of the proposed principles for the new Code?
- Q12 Are there additional needs for bereaved relatives which should be reflected in a new Victims' Code?
- Q13 How could services and support for witnesses, throughout the criminal justice system, work together better?
- Q14 How could the Witness Charter be improved to ensure that it provides for the types of services and support witnesses need?

Complaints and Redress

81. The Victims' Code is most bureaucratic when it comes to redress. It lists thirteen routes of complaint to criminal justice agencies, mainly in writing, leaving the victim to determine to whom they should complain when something goes wrong, plus an ability to refer complaints to the Parliamentary Ombudsman. Only a third (32%) of victims whose cases resulted in a charge recalled being made aware of how to make a

complaint.¹⁵ And only fifty two complaints have been received by the Parliamentary Ombudsman since the Code was introduced.

82. We will work with the Parliamentary and Health Service Ombudsman's Office, criminal justice agencies and victims' groups to develop a more accessible and responsive approach to complaints as part of a new Code. In particular, it will need to be clearer to whom a complaint should be made, and a consistent approach to complaint handling should be adopted.
83. As part of the Government's transparency agenda we will encourage criminal justice agencies to publish much more information on how they handle complaints, including the proportion which are resolved to the victim's or witness's satisfaction and the time taken to provide redress.

Question for consultation

Q15 How can the processes which allow victims and witnesses to make complaints to CJS agencies be improved to make accessing redress easier?

Identifying and targeting need

84. Although all victims of reported crime will directly and individually benefit from the services to which they will be entitled under the new Code, we will prioritise resources towards victims of serious crime, the most persistently targeted and the most vulnerable. This more flexible and tailored model must be supported by a more sophisticated approach to identifying which victims fall into these groups. It is essential that victims' needs are clearly identified, that an assessment of needs is accessible to all the relevant agencies, and that the assessment can be updated as necessary throughout the victim's or witness's engagement with the criminal justice process.
85. The police have transformed their approach to supporting victims in recent years, particularly their support for victims of serious crime, and there has been a cultural change which has seen the police prioritise victims as a core part of their job. We will continue to work with the police and support providers to improve the initial needs assessment, which should include the views of the victim and the nature of the crime.
86. Currently victims have access to emotional and practical support provided by Victim Support through the police automatically referring victims to their services, unless they expressly choose not to be referred. However, this means that Victim Support receive so many referrals that they cannot assess the needs of them all. We propose that support providers commissioned in the future will be expected to work with the police to

¹⁵ WAVES, cases closed in 2009/10. Ministry of Justice. Report forthcoming.

improve needs assessment processes so that those most in need are identified and receive the support they require.

87. A number of voluntary sector organisations – including Victim Support – already work with the police on training. For example, Independent Domestic Violence Advisors and Independent Sexual Violence Advisors, often employed through the voluntary sector, have responsibilities for assessing need, coordinating support and liaising with criminal justice agencies at the very centre of their role. Multi Agency Risk Assessment Conferences are multi-agency panels that bring together the key statutory and voluntary agencies in an area to agree safety planning for high-risk victims of domestic violence
88. We want to see greater use of these types of joint working arrangements so that support providers have a greater role in assessing need at the earliest opportunity and supporting the police to refer the right victims to the right support services as soon as possible. Stronger joint-working should have a dual benefit: a clearer assessment of need by police early in their contact with victims, while prompt referrals mean that the police are able to spend more time on investigations and protecting the public. It will also support our objective of needs assessments which follow the victim, with support providers using their expertise to build on the initial assessment of need carried out by the police.
89. Our new framework for commissioning support services (see Chapter 1) will put greater emphasis on joint working between the police and the voluntary sector. The police should be able to draw immediately upon victim support organisations when dealing with victims most in need, whether in their homes or in police stations. We propose to include effective collaboration with the police as a consideration in the bidding process for victim service providers.

Giving Voice to Victims

90. Ensuring the effective administration of justice – including making sure that the defendant receives the fair trial to which he is entitled – can be a difficult experience for victims and witnesses. The government and criminal justice agencies have worked to improve the information available to victims and witnesses to demystify the process, and have also taken concrete steps to improve the comfort of victims and witnesses – separate areas in court, for example, and special measures for vulnerable or intimidated witnesses.
91. However, some victims still feel that they have little say in the criminal justice process. In particular they can feel that decisions are made without considering the impact that they might have on their lives. Victims and witnesses need to be kept informed of progress in their case and they need to be prepared to go to court to give evidence. The Victims' Code already places duties on criminal justice agencies to engage with victims, and services are provided to ensure that victims and witnesses are made as comfortable as possible with the court process as a whole. Some

enhanced services are already available for bereaved relatives such as the police's Family Liaison Officer scheme. Since 2007 the Crown Prosecution Service (CPS) has run the CPS Service to Bereaved Families (formerly the Victim Focus Scheme), in homicide cases.

92. Under the CPS scheme the crown prosecutor responsible for the case writes to the bereaved family offering a meeting either shortly before or after charge. At this initial meeting, the crown prosecutor explains the role of the CPS, the legal basis of the charges on which the prosecution is proceeding, why it is necessary to use particular evidence, how the prosecution, defence and the judge may deal with it, and what the likely lines of cross examination might be. The meeting may, where appropriate, include giving witnesses advance warning if material relating to their character is being disclosed to the defence, so that they are prepared for possible cross-examination. In addition to this first meeting, bereaved families will be offered further meetings with the crown prosecutor. These meetings will take place at key stages of the process: for example, following a decision to discontinue or substantially alter a charge; following conviction; before and/or after sentence; and following leave to appeal to the Court of Appeal. Bereaved families will also have the opportunity to meet with the trial advocate who will present the case in court.
93. It is also important that, when a defendant in a homicide case is acquitted, bereaved families have the opportunity to meet with the CPS prosecutor after the trial. In such a 'Post-Acquittal Meeting', the relatives are able to ask questions in relation to the trial process and its outcome. This will ensure that all bereaved families with a case anywhere in the criminal justice system receive support from the CPS.
94. All victims of crime should have an opportunity to explain how a crime has affected them. The Victim Impact Statement was first piloted in 1996 and is now known as the Victim Personal Statement (VPS). It provides victims with the opportunity to explain how they have been affected by crime and should be offered at the very start of the criminal justice process, when a victim reports a crime to the police. While all victims of crime are entitled to make a personal statement, the proportion of victims who say they remember being offered the opportunity to do so is low, at 43%.¹⁶ For some groups such as disabled people (39%), and those of black (35%), Asian (37%) and mixed (38%) ethnicity, it is even lower.¹⁷ If this is indicative of a low offer rate we want to improve it for all and ensure that the VPS, when one is made, is considered more in the needs assessment process, and ensure that criminal trials take the perspective of the victim into account.

¹⁶ <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/cjs-stats-bulletin-march2010.pdf>

¹⁷ WAVES, cases closed in 2009/10. Ministry of Justice. Report forthcoming.

95. Currently, individuals representing small businesses can make a VPS, but large businesses cannot. The recent riots were a very visible example of how businesses of all sizes can be affected by crime. We will work with the business community and criminal justice agencies to develop an effective way of businesses being able to explain the impact on the business as whole, and on individual members of staff.
96. The use of the VPS in court is governed by a judicial practice direction which says, "The victim personal statement and any evidence in support should be considered and taken into account by the court prior to passing sentence."¹⁸ The VPS is a means by which the victim can provide the court with information about the harm caused by a crime. Harm and culpability are the elements that the courts assess to determine the seriousness of a crime, and therefore the appropriate sentence.
97. While the VPS can be taken into account in sentencing, that is not always clear to victims or their families. By clarifying what it is, what it does, and how it can help, we will ensure victims are more confident in making a VPS and reassured that their needs are being considered. We will also ensure that guidance for practitioners adequately reflects the need to take account of a VPS, if made, in any pre-sentence report provided to the court.
98. Understanding – and getting the right information to be able to understand – why certain decisions are made during a case is very important for victims. That is why the extended CPS Service to Bereaved Families, with increased access to prosecutors, will help more victims. We also agree with the former Victims' Commissioner that providing bereaved families with written copies of the judge's sentencing remarks, so they have accurate information about that critical part of the case, is particularly important. We propose to provide this information in those cases, subject to judicial permission.
99. We will strengthen our existing processes to ensure that a VPS follows the victim through the system, being handed on from agency to agency – from the police all the way to the Parole Board. This will make the VPS a powerful tool for recording victims' views of the harm caused by the crime which can then inform any assessment of support needs.
100. These changes in relation to the Victim Personal Statement will build on measures announced last summer in the Government's response to its "Breaking the Cycle" consultation and now contained in the Legal Aid, Sentencing and Punishment of Offenders Bill, to ensure that the sentencing framework is made more transparent, easier to understand, and better explained to victims in court.

¹⁸ The Consolidated Criminal Practice Direction III.28.2(a)
http://www.cps.gov.uk/legal/v_to_z/victim_personal_statements/

Protecting Victims and Witnesses at Trial

101. Victims and witnesses giving evidence – and having the courage to do so – is critical to the functioning of the justice system. Citizens need to feel able to give evidence and know that they will be supported and protected whilst doing so. Special measures can be put in place for vulnerable and intimidated witnesses to help them give their best evidence. But even the most confident witnesses can feel intimidated once in the courtroom. There are a number of other measures, such as pre-trial visits and other support from the Witness Service, which can help to minimise the stress and anxiety they experience on the day.

Witness Protection

The offer of “protected status” is a measure that can be taken in the most extreme cases of intimidation, where there is a serious threat to the life of a witness involved in criminal investigations or proceedings. Police have the power to grant protected status under section 82 of the Serious Organised Crime and Police Act 2005. This enables specially trained officers to provide bespoke programmes of care and support to manage and minimise the risk to individuals and their families.

The Government believes there is a good case that the enhanced safeguards provided by these measures should be available to any victim at risk of serious harm, irrespective of their involvement in criminal proceedings. It is therefore considering extending the scope of the police’ powers under the Act to cover any individual the police consider to be in need of such protection.

102. However, even with this support, the impact of cross-examination – particularly on vulnerable and intimidated witnesses – has raised concerns. Recent experiences have also shown how witnesses can be distressed by press reporting of their testimony during the course of a trial. We are proposing a number of measures to help address this.

Ensuring witnesses know what to expect

103. We have considered if we can do more to improve prosecutors’ communication with witnesses whose character may be questioned during the trial. Under the law as it stands, defendants are obliged to provide a statement to the court and prosecution before all Crown Court trials, setting out the lines of their defence. The purpose of these statements is to improve case management and enable the prosecution to discharge its own disclosure duties more effectively. They also allow witnesses to be given fair warning as to the subject matter to be raised by the defence.

104. Where a defendant fails to provide a defence statement, or provides an inadequate statement, the court or prosecutor may comment on that fact, and the court or jury may draw such inferences as to the guilt of the defendant as are appropriate.

105. Defendants still do not supply defence statements meeting the statutory requirements in all cases, begging the question of whether the sanctions for failing to comply with those requirements are sufficient. We are therefore considering how best to strengthen these sanctions.

Protecting the privacy of victims and witnesses

106. An important principle of our criminal justice system is that of open justice – the principle that justice should not only be done but should be seen to be done. This means that, in general, the identities of adult defendants, victims and witnesses will be disclosed in open court. The principle also means that, in the vast majority of cases, the media are able to report the content of proceedings as they happen.

107. There are some circumstances in which restrictions on the principle of open justice are permitted, such as to protect vulnerable people, notably children.

108. In adult trials the court may direct that information identifying any children concerned is not reported. The identities of alleged victims of a wide range of sexual offences are automatically subject to a lifetime anonymity order.

109. We will consult separately on whether courts have sufficient powers to protect details of the private lives of victims and witnesses giving evidence.

Questions for consultation

Q16 How could our existing processes be changed so that Victim Personal Statements are taken into account in sentencing and at other stages of a case, as appropriate?

Q17 What process could be put in place so businesses can explain the impact of crime on individual members of staff and the business as a whole?

Q18 What could be done to improve the experience of witnesses giving evidence in court?

Restoration and reparation

110. In *Breaking the Cycle*, the Government set out its intention to make offenders take greater responsibility for their crimes and do more to repair the damage they had caused. There are three principles:

- Offenders should bear a greater proportion of the costs incurred by the state in supporting victims to cope and recover following crime.

- Offenders paying compensation direct to victims should be the norm, and any compensation awarded should be received by the victim in full.
- There should be greater opportunities for victims and offenders to participate in restorative justice.

Restorative Justice

111. Restorative Justice gives victims the opportunity to make clear to offenders the personal impact of their crimes. It allows offenders the chance to apologise and offer amends. There are several different examples of its use and the Ministry of Justice is working with criminal justice partners and the voluntary sector to test new approaches.

Examples of Restorative Justice in Action

Youth Restorative Disposals (YRDs): Piloted in seven areas, YRDs use restorative justice techniques to allow minor offences committed by young people to be resolved at the scene. They give victims the opportunity to explain to the offender the impact of the offence, and they give the offender the opportunity to apologise and make reparation to the victim, perhaps by repairing damage or replacing stolen items.

Referral Order: A community sentence given to a young person who pleads guilty to an offence when it is their first time in court. The referral process is based on restorative justice principles. The young person is required to attend a youth offender panel, which is made up of two volunteers from the local community and a panel adviser from a youth offending team (YOT). The panel, with the young person, their parents/carers and the victim (where they agree to attend), agree a contract lasting between three and 12 months. The contract must contain reparative and rehabilitative elements. The aim of the contract is to repair the harm caused by the offence and address the causes of the offending behaviour.

Post sentence: Thames Valley Probation Trust's restorative justice service delivers restorative justice as part of a community sentence. A conference is held between the victim and offender. Family members and friends can join the meeting to talk about what happened; who was affected by the offending behaviour; what impact it had and what can be done to repair the harm caused. Where the victim does not wish to take part in a face-to-face meeting they may choose to receive a letter of apology from the offender.

In Prison: A number of restorative justice programmes have been developed for serving prisoners. The Sycamore Tree course, pioneered by the Prison Fellowship, and the SORI programme, a course developed by the prison chaplaincy based on work pioneered at HMP Cardiff, require prisoners to face up to the impact of their crimes by meeting victims and those representing the communities they have hurt.

112. We think restorative justice has considerable potential for improving criminal justice system outcomes. A recent evaluation of restorative justice pilots,¹⁹ commissioned by the Home Office and Ministry of Justice, found that they resulted in an estimated 14% reduction in the frequency of re-offending.²⁰ More importantly, the evaluation found that 85% of victims who participated in the schemes were satisfied with the experience.
113. It is essential however that cases are appropriately assessed to provide sufficient safeguards for victims and prevent re-victimisation. We must also ensure that victims' views as to the application of restorative justice in their particular case are paramount.
114. In partnership with the Home Office we will develop a framework for restorative justice. This will provide guidance to local practitioners and help support them to develop and deliver effective, best practice restorative justice approaches suited to local need.
115. We have already taken a step towards such a framework by the funding the Restorative Justice Council (RJC) to produce a 'Trainers' Code of Practice'. This sets out the minimum requirements which must be met by practitioners to deliver restorative justice interventions effectively, and to the benefit of the victim as well as the offender. In September this year, the RJC launched the National Register of Restorative Justice Practitioners, endorsed by the Ministry of Justice. This allows criminal justice staff and voluntary sector organisations supporting victims to recommend accredited individuals who can safely and effectively support the victims with whom they work to participate in restorative justice.
116. We will continue to work with the RJC and other organisations to improve best practice and ensure greater availability of restorative justice for those victims who want it and where the offender is prepared to make a genuine contribution to the process.
117. In the case of low-level offending, where the harm caused to the victim is limited and the offender admits culpability, a restorative justice approach can offer closure and redress for the victim as well as providing an opportunity for the offender to face up to the human cost of their crime. The police have already trained some 18,000 officers in restorative justice and are using it widely – either separately or in addition to other disposals – for shoplifting, assault and criminal damage.
118. It is important that victims are able to make an informed decision about taking part in restorative justice. We are already amending the standard victim of crime letter, sent by the police to all victims who report a crime, to provide more information on the criminal justice process. As we support the sector to build the register of practitioners and strengthen

¹⁹ <http://www.justice.gov.uk/publications/restorative-justice.htm>

²⁰ The 14% figure was calculated following further internal MoJ analysis of the data from the original evaluation.

- provision for restorative justice, we will ensure that each victim of crime letter explains the potential benefits of restorative justice and signposts to locally available services.
119. We have already made clear, earlier in this document, our intention to increase uptake of the Victim Personal Statement (VPS) and to ensure that it is used to inform victims' needs assessments as well as sentencing decisions. With the victim's consent, we will ensure that it is used to help assess their suitability for restorative justice, allowing practitioners to make an informed recommendation to the victim as to whether it is right for them, and use it as the basis for explaining to the offender the harm caused by their offence as part of the restorative justice process.
120. We also explained earlier that the VPS should be updated as criminal proceedings progress in order to ensure that it continues to reflect the harm caused to the victim. Where restorative justice interventions take place in parallel with proceedings we will offer victims the opportunity to reflect their experience – good or bad – in an updated VPS which can then, if the case ends in conviction, be considered by the court at the point of sentence.
121. In addition, we are working to improve the advice sentencers receive about pre-sentence restorative justice practices and how they can take restorative justice into consideration in court, as well as establishing guidance to help probation and prison staff undertake better restorative justice practices both before and after sentence.
122. We are in the process of allocating grants to train staff and volunteers and develop guidance so as to build capacity in custody and in the community that will enable more pre-and post-sentence restorative justice. Where an offender is subject to a pre-sentence report and, by accepting culpability early in the criminal justice process, has already undertaken restorative justice by the point of sentencing, the victim's views on the outcome should inform the report. We will develop new guidance on reflecting restorative justice in pre-sentence reports to ensure a consistent approach is taken.
123. We will assist local areas to test out restorative justice approaches. This will help us to learn more about how we can make restorative justice work in practice and how it can be integrated into the criminal justice process. We will also consider putting forward proposals for a new right for victims to request restorative justice as part of the new Victims' Code.
124. We will use the forthcoming consultation on community sentences to expand further on these approaches and consider how we can better integrate restorative justice with sentencing and the criminal justice process as a whole.

Question for consultation

Q19 What measures could be put in place to ensure the safety of the victim when undertaking restorative justice?

Non-financial reparation

125. As well as case conferences and other types of restorative justice which involve dialogue between the victim and offender, we believe there is greater scope for direct, non-financial reparation from offenders to victims, especially in cases of low-level crime where the victim has incurred an identifiable cost, e.g. minor criminal damage.
126. Reparation can already be required of offenders both in and out of court, for example as part of an out-of-court disposal or a community order:
- Reparation to the victim can be informally agreed alongside out-of-court disposals such as simple cautions, reprimands and final warnings.
 - Reparation can also be agreed formally as part of youth and adult conditional cautions, and as part of reparation orders for young offenders. In 2008/09 4,702 reparation orders were made for young offenders.
 - Non-financial reparation can also be agreed more formally as part of Youth Referral Orders and Youth Rehabilitative Orders in the youth system. It can form part of a community sentence in the adult system, e.g. reparation could form part of a specified activity or supervision requirement.
127. In respect of many types of disposal, we lack evidence about the extent to which this happens in practice. However, anecdotal feedback from practitioners suggests that agencies do not always make the best use of this framework to require offenders to make reparation to their victim. As a result, we believe that there is further opportunity to make our system more reparative.

Question for consultation

Q20 How can we change attitudes and behaviour towards reparation and demonstrate how reparative outcomes can be achieved in innovative ways?

The Prisoners' Earnings Act 1996

128. The Coalition Government has now implemented the Prisoners' Earnings Act, which received Royal Assent in 1996. The Act allows deductions to be made from the income of those prisoners held in open conditions, earning wages while working outside the establishment. The Government intends to use the full amount deducted in the first year to fund victims' services; an estimated sum of up to £1m will go to Victim Support.

129. At the moment the Act only applies only to around 480 prisoners. The Legal Aid, Sentencing and Punishment of Offenders Bill includes provisions which will allow deductions to be made from a much wider group of prisoners, including those working in prison workshops.

The Victim Surcharge

130. Of the £66m spent by central government each year on victim and witness support services, offenders only contribute around £10m through the Victim Surcharge. This balance is wrong.

131. The Victim Surcharge was implemented in 2007. Revenue raised through the Surcharge is used to fund non-financial support services for victims and witnesses of crime such as Independent Domestic Violence Advisers, Witness Care Units and various voluntary support groups through the Victims Fund.

132. Currently the Surcharge is ordered at a flat rate of £15 when an offender is sentenced to a fine. In its first full year of operation it brought in £3.8m in revenue. This has since climbed to £10.5m but, as the Surcharge is currently applied only to fines, this reduces capacity for increasing the revenue further. Offenders as a whole are contributing too little towards the costs of providing support services for victims of crime. We believe that offenders should pay greater reparation to victims, both directly through court ordered compensation and by contributing to the cost of victim support services.

133. To ensure that the Surcharge is applied to the maximum number of offenders, we plan to increase the level of the Surcharge ordered with a fine and extend its application to a wider range of sentences. We also propose to increase the level of Penalty Notices for Disorder (PNDs) with the additional revenue to be used for the same purposes as Surcharge revenue. We will ensure that new arrangements are proportionate, that they take into account the seriousness of the sentence imposed, are simple to administer and are realistically recoverable from offenders. The proposals on which we seek your views can be summarised as follows:

Offenders 18 years or over	Proposal
Conditional Discharges	Flat rate Surcharge of £15
Fines	Surcharge of 10% of the fine value with a £20 minimum and a £120 maximum
Community Sentences	Flat rate Surcharge of £60
Penalty Notices for Disorder	Upper and lower tiers both increased by £10 to £90 and £60 respectively
Custodial Sentences including Suspended Sentences	6 months and below – £80 Surcharge Over 6 months and up to and including 2 years – £100 Surcharge Over 2 years – £120 Surcharge

Offenders under 18 years	Proposal
Conditional Discharges	Flat rate Surcharge of £10
Community Sentences	Flat rate Surcharge of £15
Custodial Sentences	Flat rate Surcharge of £20 (all lengths)

134. In all cases the enforcement of court ordered compensation to victims of crime takes priority over enforcement of the Victim Surcharge. We anticipate that the proposals outlined above could raise up to a maximum of £20m additional revenue per year for victims' services once fully implemented. In addition, up to £30m per year from those motoring Fixed Penalty Notices (FPNs) proposed for increase under the Department for Transport's Strategic Framework for Road Safety has been earmarked by the Government for victims' services. In total our proposals could therefore provide a further £50m per year for funding those services.
135. Where an offender is subject to a sentence comprising more than one disposal (for example, a fine and a community sentence), we propose that the Surcharge should be payable on the individual disposal attracting the highest Surcharge.

Extending the Surcharge to conditional discharges

136. We believe that offenders subject to conditional discharges should make a contribution to the costs of supporting victims. The offender has been found guilty and receives a criminal conviction, discharged on the condition that they commit no further offence during a specified period.
137. To reflect the seriousness of the sentence compared to other disposals, we propose that the Surcharge should be extended to conditional discharges at a flat rate of £15 for those over the age of 18. This is below the minimum Surcharge proposed on fines.

Question for consultation

Q21 Should the Surcharge on conditional discharges be set at a flat rate of £15 for those over the age of 18?

Increasing the Surcharge applied to fines

138. There are two options for increasing the Surcharge on fines: a flat rate approach and one based on a proportion of the fine amount. The latter has the benefit of better linking the Surcharge to the sentence imposed by the court which will have taken into account the offender's means in setting the fine.
139. We propose setting the Surcharge at 10% of the value of a fine. To ensure that all offenders ordered to pay a fine contribute more towards victims' services than offenders subject to a conditional discharge, we also propose to set the minimum Surcharge payable on a fine at £20. In

2010 72% of fines ordered were for £200 or less. Therefore the majority of fines would attract the minimum fines Surcharge of £20.

140. We would also welcome views on whether the Government should set a maximum level for the Surcharge on fines. In 2010, the largest fine imposed on an individual was £40,000 which under our proposals would result in a Surcharge of £4,000. In order to ensure the Surcharge remains a reasonable contribution to fund victims' services we do not consider it would be fair for an offender to pay such a large Surcharge amount.
141. We propose that the most serious sentences should attract the highest Surcharge. Therefore the maximum Surcharge on a fine should not exceed the Surcharge on the most serious custodial sentence. Proposals to follow in this consultation set the maximum Surcharge level on a custodial sentence (over 2 years) at £120. We therefore propose setting the maximum Surcharge payable on a fine at £120. In 2010, less than 1% of fines were for £1,200 or more, therefore less than 1% of fines would have been subject to the maximum fine Surcharge of £120.

Questions for consultation

Q22 When applied to fines, should the Victim Surcharge be set as a percentage of the fine amount? If so, should the percentage be set at 10%?

Q23 Should there be a minimum Victim Surcharge amount applied to fines? If so, should this be set at £20?

Q24 Should the maximum level for Surcharge on fines be set below the Victim Surcharge on a custodial sentence of over 2 years?

Applying the Surcharge to Adult Community Sentences

142. We believe it is also important that offenders subject to community sentences should make a contribution to supporting victims. To reflect the seriousness of the sentence compared to other disposals we propose that the level of Surcharge applied to community sentences should, in most cases, be greater than that applied to fines.
143. A community sentence can comprise several types of activity or supervision to punish and help rehabilitate offenders. These sentences do not readily provide the basis for a simple percentage calculation in the same way as fines. For that reason, we think that a variable Surcharge on community sentences is unworkable in practice and propose that a flat rate should be imposed.
144. We propose that the flat rate be set at £60 to ensure most offenders subject to community sentences pay a greater Surcharge than those sentenced to a fine. In 2010 98% of fines were for £600 and below. This would result in the vast majority of Surcharges ordered on fines not exceeding the Surcharge payable on community sentences.

145. We will work to ensure the robust enforcement of the Surcharge payable on a community sentence, including full use of existing powers to make deductions from earnings and benefits in suitable cases and close working with Probation Trusts.

Question for consultation

Q25 Should the Victim Surcharge, as applied to adult community sentences, be set at a flat rate? If so, should the flat rate be set at £60?

Penalty Notices for Disorder

146. Penalty Notices for Disorder (PNDs) are on-the-spot penalties administered by the police where there is reason to suspect that a person has been involved in low-level offending, such as being drunk and disorderly. The recipient of the PND can choose either to pay the penalty amount or request to be tried in court. If an individual requests a trial and is subsequently convicted of the offence he is likely to face a fine in excess of the penalty amount.
147. We do not believe it right that people who receive PNDs should escape responsibility for contributing to the cost of victim support services. We will therefore increase the value of PNDs and use the additional revenue for the same purposes as the Victim Surcharge.
148. PNDs are set at £50 (lower tier) or £80 (higher tier). We propose that each should be raised by £10 which is half of the proposed minimum Surcharge on fines. This reflects the fact that a PND, whilst a penalty, has not been imposed by a court following a conviction.

Questions for consultation

Q26 Should Penalty Notices for Disorder be increased by £10? Should the additional revenue this raises be used to fund victim support services?

Q27 Should the same increase be applied to both lower and higher tier Penalty Notices for Disorder?

Extending the Surcharge to custodial sentences (including suspended sentences)

149. The Government is committed to ensuring that offenders sentenced to custody should contribute to the costs of supporting victims. It is right that those subject to the most serious sentences should take responsibility for their crimes and contribute to the costs of repairing the damage caused to victims. We therefore propose that the Victim Surcharge be applied to custodial sentences, including suspended sentences, at value bands according to length of sentence. To reflect the seriousness of the sentence compared to other disposals we propose that the starting point

for these bands be set at a higher value than the £60 Surcharge proposed for adult community sentences:

Sentence length	Custodial Surcharge values
Sentences of 6 months and below	£80
Sentences of over 6 months and up to and including 2 years	£100
Sentences over 2 years	£120

150. We believe that all offenders should pay greater reparation to victims. Those subject to the most serious sentences should not escape paying the Surcharge. We therefore propose to legislate to ensure that the Victim Surcharge ordered with a custodial sentence cannot be discharged by the offender as additional time served in prison.
151. The Surcharge on a custodial sentence will be payable from the point at which it is imposed and will be enforceable from that point onwards. Under our proposals there are 3 stages during which we consider an offender could make payment:
- At the point the sentence is handed down and before the offender arrives at prison;
 - In prison whilst the offender is serving their sentence;
 - After release.
152. Initially we will focus on collection of the Surcharge at the point of sentence and upon release, using existing HMCTS enforcement processes, including deductions from earnings and benefits where appropriate and close working with Probation Trusts.
153. We will continue developing proposals to enable the payment of the Surcharge in prison, including options for making deductions from earnings.
154. We propose that for multiple offences resulting in either concurrent or consecutive sentences, the Surcharge is ordered on the highest individual sentence, that being the most serious sentence.

Questions for consultation

Q28 Should the Surcharge on custodial sentences be set at a higher value than that for adult community sentences? If so, should this be set according to length of sentence?

Q29 For multiple offences, resulting in concurrent or consecutive orders, should the Surcharge be ordered on the highest individual sentence?

Q30 Should offenders be required to pay the Victim Surcharge whilst in prison?

Applying the Surcharge to offenders under the age of 18

155. The key principle underpinning our proposals to reform the Victim Surcharge is that all offenders should contribute towards the care and support of victims. The Surcharge is currently ordered on all fines, including those imposed on offenders under the age of 18 (juveniles). We propose to extend the use of the Surcharge to a greater range of disposals for juvenile offenders.
156. In the vast majority of cases, juvenile offenders aged 16 or over are responsible for paying their own compensation orders, Surcharge, costs and fines. If the offender is under the age of 16, the parent or guardian is usually responsible for paying the Surcharge. This would continue to be the case if we extend the use of the Surcharge to cover more disposals for juveniles. We propose to set the level of the Surcharge lower than for adults, to reflect the differences between sentencing principles for juvenile and adult offenders.
157. We propose three levels of Surcharge for juveniles:
- a. For conditional discharges, the Surcharge would be set at £10.
 - b. For fines and community sentences, the Surcharge would be set at £15.
 - c. For a custodial sentence of any length, the Surcharge would be set at £20.
158. This reflects our proposals as they apply to adults – that the level of Surcharge should be proportionate to the severity of the sentence. An alternative option would be to impose an easier to administer, but less nuanced, Surcharge of £15 on all disposals for juveniles.

Questions for consultation

Q31 Should the Surcharge be extended to the full range of disposals for juvenile offenders?

Q32 Should the Surcharge for juvenile offenders be set at three levels: £10 for conditional discharges; £15 for fines and community sentences; and £20 for custody of any length?

Fixed Penalty Notices (FPNs)

159. As part of its new Strategic Framework for Road Safety,²¹ which aims to reduce death and injuries on our roads, the Department for Transport proposes to increase the level of some FPNs for traffic offences to bring them in line with other penalties which deal with low-level offending.

²¹ Strategic Framework for Road Safety – Publications – Department for Transport published by the Department for Transport, 11 May 2011.

160. Penalty levels for many offences have not increased during the last ten years. The current levels have fallen behind other fixed penalties and therefore risk trivialising the offences. The proposed increases for motoring offences include those in relation to excessive speed, control of a vehicle, mobile phone use, ignoring signals and pedestrian crossings, and failure to wear a seatbelt. The exact amount of the increase will depend on a detailed assessment of what effect the increases would have on payment rates, and on public consultation by the Department for Transport early this year.
161. To ensure that these offenders contribute to the cost of supporting victims, the Government has committed up to £30m per year from increased FPN receipts to support victims of crime, including victims of road traffic crime.

Strengthening Court-Ordered Compensation

162. In cases where there is an identifiable victim who has suffered harm, damage or loss, compensation orders are a tried and tested way for the court to require direct financial reparation to be made to the victim by the offender.
163. In our *Breaking the Cycle* consultation we made clear our view that compensation orders can be an effective way of ensuring an offender provides reparation to their victim and that they should be seen as an integral part of an overall sentence. Through the Legal Aid, Sentencing and Punishment of Offenders Bill we are introducing a positive duty for courts to consider making a compensation order in all eligible cases.
164. Where compensation is ordered as part of the sentence, it takes priority for enforcement over all other financial impositions. Under the existing enforcement regime, money paid to the court is applied first to discharge a compensation order, then the Victim Surcharge, then prosecutors' costs, and finally to fines.
165. We plan to seek views on reforms to compensation orders and other financial impositions as part of our forthcoming consultation on community sentences. This will include proposals to increase the average value of compensation orders, such as removing the current £5,000 limit on compensation orders in the magistrates' courts.
166. Offenders can already be required to make reparation directly to their victims through a compensation order. In 2010/11 the courts collected £30m of compensation paid by offenders to their victims. Where appropriate, compensation orders payable to victims can be enforced through seizure of offenders' assets through the issue of a distress warrant. This can help victims receive the compensation to which they are entitled. Our consultation on reforming community sentences will include proposals for making greater use of asset seizure within the sentencing framework.

Part 2 – Compensation for victims of violent crime in Great Britain and victims of terrorism overseas

Introduction

167. Since 1964 there has been a state scheme to compensate victims of violent crime. Until 1996 a series of non-statutory schemes were administered by the Criminal Injuries Compensation Board. It made awards on the same basis as the courts, namely common law damages, after detailed individual assessment. The first statutory Scheme came into force in 1996 following passage through Parliament of the Criminal Injuries Compensation Act 1995. Subsequent Schemes were made under the same legislation in 2001 and 2008.²²
168. These statutory Schemes have been administered by the Criminal Injuries Compensation Authority (CICA) in relation to incidents occurring in Great Britain (England, Wales and Scotland). Decisions are made by claims officers independently of the Secretary of State. There are separate arrangements in Northern Ireland.
169. Compensation is given to victims of violent crime in recognition of a sense of public sympathy for the pain and suffering of the victim. The majority of these payments are made under a **tariff of injuries**. The current tariff is made up of 25 bands with the least serious injuries in band one (e.g. a fractured toe or temporary anxiety) receiving £1,000, and the most serious in band 25 (e.g. quadriplegia and brain damage) receiving £250,000.
170. Victims can also apply for payments for loss of earnings and for special expenses for things like home adaptations and care costs. The maximum overall award someone can receive from the Scheme (i.e. from one or more of its three components combined) is capped at £500,000. The Scheme also makes awards to dependants and the bereaved in fatal cases.
171. Claims officers can reduce, and in some cases withhold, payments where an applicant has unspent criminal convictions, based on a sliding scale of reductions dependent on the length and type of sentence and when it was passed. Reductions (up to the full value of the award) may also be made where the applicant's conduct has contributed to the offence or injury, and where they have failed to co-operate with the criminal justice system or with CICA.

²² References to "the Scheme" refer to the Criminal Injuries Compensation Scheme 2008 <http://www.justice.gov.uk/guidance/compensation-schemes/cica> A guide to the operation of the Scheme is also available at this link.

Reforming the Scheme

172. Earlier in this consultation document we set out the case for reforming the CICS and the financial context. In formulating our proposals we have taken a number of principles into account. They are:

- **The need to protect payments to those most seriously affected by their injuries**, measured by the initial severity of the injury, the presence of continuing or on-going effects, and their duration.
- **Recognition of public concern for particularly vulnerable groups and for those who have been the victims of particularly distressing crimes**, even though the injury may not be evident, or the effects are particularly difficult to quantify, for example sexual assaults and physical abuse of adults and children.
- **Consideration of alternative provision**. Our proposals take into account the availability of other services and resources (e.g. state benefits) a victim may be entitled to receive to meet the needs arising from the injury.
- **Making the scheme simpler and easier for victims to understand**. Our proposals clarify the eligibility criteria and the evidence victims need to provide to make an application to the scheme.
- **Ensuring proposals comply with our legal obligations, both domestic and European**, and that we have shown due regard, through analysis and consultation, to the effects on those protected under equality legislation, for example disabled people, women and those from minority ethnic communities.²³

173. In determining the proposals for reform of the Scheme, Ministers have considered the relative importance of these principles and what the balance between them should be. They will reflect further in light of the responses they receive to this consultation.

174. The Government's proposals for reform are set out in the coming pages. A high level summary of those proposals, which we believe are consistent with the principles set out above and our financial objectives, is as follows:

Eligibility

We propose that eligibility to claim from the Scheme should be tightly drawn so as to restrict awards to blameless victims of crime who fully co-operate with the criminal justice process, and close bereaved relatives of victims who die as a result of their injuries. Applicants should have a connection to the UK which is more than temporary.

²³ The core legal framework is the Criminal Injuries Compensation Act 1995; Directive 2004/80/EC relating to compensation to crime victims; the European Convention on the Compensation of Victims of Violent Crimes (COE No 116 (1983)); and Article 6 of the European Convention on Human Rights so far as it relates to applications under the Scheme.

The Tariff

We propose that tariff payments should be made to those most seriously affected by their injuries and those that have been the victim of the most distressing crimes.

Loss of Earnings

We propose that loss of earnings payments should be made on an administratively less complex basis to those who can no longer work and those who have very limited capacity to do so.

Special Expenses

We propose to continue to make special expenses payments (for example, care costs not available from other sources) except for private health care not available on the NHS.

Fatal Cases

We propose that the bereavement award, funeral payments and parental service payments will be protected. We propose to make dependency payments in fatal cases in line with our loss of earnings proposals.

Process

We want to make the scheme easier to understand and simpler to administer. Proposals to improve the process of making an application and receiving an award include making it clearer what evidence the applicant will be required to provide as a minimum to make out their case, and tightening the circumstances where CICA will meet the costs of obtaining medical evidence.

175. Our proposals in relation to each of these elements of the Scheme will now be set out in detail.

Eligibility

The Scope of the Scheme

176. Most payments under the Scheme are made to victims of “crimes of violence”.²⁴ This term has featured in successive Schemes and, though not having a definitive legal meaning, is generally well-understood. In most cases it is clear whether or not an applicant has been the victim of a crime of violence, but there are difficult cases where the position may be less clear.

177. The scope of the Scheme is a matter of policy rather than something directly dictated by the criminal law, which is complex and subject to change. There are also differences between the law in England and Wales and that in Scotland.

²⁴ Paragraph 8 (a) of the Scheme.

178. The main purpose of the Scheme is to provide payments to those who suffer serious physical or mental injury as the direct result of deliberate violent crime, including sexual offences, of which they are the innocent victim. This purpose underpins all of our proposals, and it reflects the current Scheme.
179. The terms of the Scheme and all the relevant circumstances must be considered in each case. Our policy in relation to the scope of the Scheme also includes these principles:
- A crime of violence will generally involve a direct, hostile, physical attack, against a person rather than property, which immediately causes mental or physical injury.
 - The fact that a person's actions are technically capable of being a crime – even a crime giving rise in some way to injury – does not mean the crime will definitely be a crime of violence. All the relevant circumstances must be considered.
 - The greater the chance a person's actions will lead to very serious injury, and the more obvious this should have been to the offender, the more likely it is that something technically capable of being a crime will be a crime of violence for the purpose of the Scheme. But the mere fact that there was some possibility of some harm will not of itself mean that there was necessarily a crime of violence.
 - The threat of an attack is capable of being a crime of violence if it would place a reasonable person in fear of an immediate physical attack, and the victim was in fact in such fear. An offence committed from a distance (e.g. harassment by telephone or electronically) will not normally be a crime of violence, unless there are direct threats which put the recipient in fear of immediate physical harm.

A crime must normally have been committed

180. Payments under the revised Scheme may be made whether or not anyone has been convicted of the offence from which the injury arose. This reflects the current Scheme under which a claims officer will assess whether the facts are established on the balance of probabilities. But it will be a very rare case indeed where a payment is made in relation to circumstances which did not amount to a criminal offence for technical legal reasons.
181. Exceptional cases include some cases where an injury arises from a criminal act done by a child even where the child could not be criminally responsible for it. Payments will not normally be made, though, where injuries arise from risks against which those responsible for children should be expected to guard, for example, where injuries arise in controlled situations (in schools or clubs, or where there should be supervision) or from accidents caused by children. A payment will not normally be made in relation to anyone who suffers an injury resulting from willing participation in a dangerous game.

182. A second exception would be a crime of violence committed by an offender who is not criminally responsible by reason of mental abnormality. Innocent victims in these cases should not be denied payments simply because their assailant is deemed not capable of forming the intention to commit the crime. Similarly payment might be made in circumstances where the person responsible for the injury cannot be prosecuted due to their having diplomatic immunity.

Express inclusions

183. There are some other crimes which, for the removal of any doubt, we consider should always be considered to be a crime of violence. This is because they might not otherwise be considered to be violent (in the sense of involving the direct application of physical force), but in almost all cases are nonetheless very likely to cause, or create a very serious risk of, serious bodily injury. They are – as under the current Scheme – arson and acts of poisoning.

184. We believe that it is important to support the work of the police and those individual citizens who take action to prevent crime. We therefore propose to continue to make awards to those accidentally injured while taking an exceptional risk which in the circumstances was justified, either while trying to catch an offender or while helping the police to do so.²⁵

Express exclusions

185. There are a number of circumstances which, though technically involving the commission of a criminal offence, should in the Government's view, never be capable of being a crime of violence for the purposes of the Scheme. Under the current and former Schemes it is not always clear whether these situations are 'crimes of violence'. We intend to make it clear these cases are outside the scope of the revised Scheme, because as a matter of public policy we do not consider that it is consistent with the main purpose of the Scheme set out at paragraph 178 to use taxpayers' money to compensate under the CICS in these cases.

186. The kinds of circumstances we intend to exclude are:

- Offences connected with trespass on the railway, including suicide or attempted suicide,²⁶ which we propose to remove from the Scheme.
- Offences committed by a driver in relation to road traffic, except where a vehicle is used as a weapon deliberately to cause injury.²⁷ Dangerous or reckless driving causing injury in other circumstances will not give rise to a payment under the Scheme. This is in accordance with current policy.

²⁵ Paragraphs 8(b) and 12 of the Scheme.

²⁶ Paragraphs 8(b) and 9(d) of the Scheme.

²⁷ Paragraph 11 of the Scheme.

- Injuries sustained by children in utero injured by the consumption of alcohol by their mother. This is current policy.
- Where a person is injured accidentally as the result of an intervening event (e.g. a passing cyclist being knocked off his bike when impacted by a person who had been forcibly ejected from a pub). This is current policy.
- Where a verbal (spoken) assault leads sometime later to a person doing physical harm to themselves. This is current policy.
- Where a person has been the victim of an animal attack, unless the animal itself was used deliberately to inflict an injury on that person. This is a tightening of current policy under which claims have in some cases been considered from applicants attacked by dangerous dogs not kept under proper control.
- Third parties injured inadvertently by an act the sole purpose of which is suicide (e.g. someone jumps off a building and someone below runs into another person, injuring them, in an attempt to get out of the way of the suicide). We wish to clarify the Government's position that such circumstances should not be "crimes of violence".
- Certain criminal offences, or any sexual activity, to which the claimant has consented in fact but is deemed not to have consented as a matter of criminal law.²⁸ The current practice in respect of sexual offences is explained below.²⁹ We intend to continue this practice in relation to consensual activity and extend the principle to where the victim has consented in fact to a violent offence.

Questions for consultation

Q33 How should we define what a "crime of violence" means for the purposes of the Scheme? What are your views on the circumstances we intend to include and exclude from the definition?

Q34 What other circumstances do you believe should, or should not, be a "crime of violence" for the purposes of the Scheme?

²⁸ Paragraph 9(c) of the Scheme.

²⁹ Current practice assumes that a child under 13 who is the victim of sexual assault will be eligible for compensation if an offence is reported to the police and the child co-operates so far as reasonably practical with the CJS. Between 13 and 15 a more difficult assessment must be made in each case. Consensual sexual activity between young people in this age group who are of similar age and circumstances should not attract criminal injuries compensation. However, the more unbalanced a sexual relationship involving a young person becomes, the more likely it is that he or she will suffer harm such that they should be compensated (whether they in fact consented or not). Factors that claims officers consider in assessing this include age and emotional maturity (and the disparity in either), vulnerability, the reality of consent in all the circumstances, and the nature of the relationship between the parties.

Connection to the UK

187. Currently, anyone injured by a crime of violence whilst in Great Britain³⁰ is entitled to claim, subject to claims officers withholding or reducing an award based on conduct, character or other specified grounds.
188. We believe that applicants to the Scheme should have a defined connection to the UK. We propose to award compensation only to those who have been lawfully resident in the UK for at least six months at the time of the incident. We consider that a minimum requirement of 6 months' residence demonstrates sufficient connection with UK society, such that it remains right that they should be eligible to claim under the Scheme. We propose this period – which is shorter than that for victims of terrorism overseas – to take into account the fact that the injury will have been sustained in Great Britain. The intention is that those in the UK in the short-term (i.e. less than 6 months) for whatever reason, will no longer be eligible.
189. While we believe that a residence test is the best way of determining connection with the UK, we are under a number of international and EU obligations which mean that some people will be exempt from the new test:
- a. Nationals of EU and EEA Member States and their family members (who are in the UK exercising their rights under EU law); and
 - b. Nationals (not falling within (a)) of States party to the European Convention on the Compensation of Victims of Violent Crimes;
 - c. Victims of human trafficking in accordance with EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.
190. As the existing international and EU legal framework already requires us to pay awards to the nationals of many countries, we also propose that no British citizen will have to satisfy the residence test. This is because we do not consider that British citizens should face additional eligibility hurdles and should be on the same footing as EU, EEA and certain Council of Europe nationals who will remain eligible.
191. Finally, we propose that serving members of the armed forces and their families, who would not otherwise be eligible and cannot satisfy the residence test due to their service, should also be eligible. This is because we consider that they are connected to the UK by virtue of their service and it is right that should they be injured here, they should remain eligible to claim.
192. For reasons of administrative simplicity, we will take the date of the incident as the relevant date for assessing whether the residence condition is met. If a person who at the date of the incident had been

³⁰ Paragraph 8(a) of the Scheme.

resident for six months has since left the UK, that will not affect their eligibility to make a claim.

193. However, asylum seekers who have made a claim at the date of the incident and who are subsequently granted refugee status or discretionary leave to remain will be allowed to request that the decision on their application for compensation be deferred until the question of their refugee status is settled, provided they submit their CICS application within two years of the incident in accordance with the usual time limits for a claim. Asylum seekers who are not ultimately given leave to remain in the UK will have their claim rejected.
194. In fatal cases, bereaved families who apply to the Scheme will need to meet the residency requirements in the same way as other applicants. However, we do not intend to apply the residence condition in respect of the deceased, so long, as now, that the incident giving rise to the claim takes place in Great Britain.
195. We are also considering an alternative proposal that applicants must at least have been legally present in the UK at the time of the incident. This would mean those who were here illegally would not receive compensation, but everyone else, including short-term visitors, would remain eligible.

Questions for consultation

Q35 To be eligible for compensation, should applicants have to demonstrate a connection to the UK through residence in the UK for a period of at least six months at the time of the incident?

Q36 What are your views on our alternative proposal to exclude from eligibility for compensation only those who were not legally present in the UK at the time of the incident?

Reporting and cooperation

196. Currently a claims officer can withhold or reduce an award under the Scheme³¹ where:
- The applicant failed to take, without delay, reasonable steps to report the offence to the police or other appropriate body.
 - The applicant has failed to cooperate with the criminal justice process.
 - The applicant has failed to assist CICA or other body with their claim.
197. We propose to:
- Clarify and strengthen reporting provisions, requiring that the offence must be reported to the police (rather than any other body) as soon as

³¹ Paragraph 13 of the Scheme.

reasonably practicable after the incident, unless the claims officer is satisfied that the usual rules in respect of timing should not apply due to the age or mental capacity of the applicant or particular circumstances relating to the incident. This would include cases in which trauma resulting from a sexual offence has led to a delay in reporting it to the police.

- Require that the applicant cooperate so far as reasonably practicable in bringing any assailant to justice (for example, by agreeing to become a witness at trial) in order to qualify for any award. Considerations which might be taken into account in determining what cooperation is reasonably practicable for the victim would include their age and mental or physical capacity.
- Retain provisions permitting claims officers to withhold or reduce an award where the applicant has failed to cooperate in determining the claim. This will include (as now) failure to respond to communications from CICA to the most recent address provided by the applicant.

198. Where the incident is not reported to the police as soon as reasonably practicable after the incident (subject to the exception outlined above) or the applicant does not cooperate, so far as it is reasonably practicable for them to do so, in bringing the assailant to justice, we propose that no award will be made.

Question for consultation

Q37 What are your views on our proposal not to make any award:

- Where the crime was not reported to the police as soon as reasonably practicable?
- Where the applicant has failed to cooperate so far as practicable in bringing the assailant to justice?

Q38 What considerations should be taken into account in determining what is reasonably practicable for the applicant with respect to reporting the incident and co-operating with the criminal justice system?

Q39 Do you agree that there should be an exception to the rule that the incident should be reported as soon as reasonably practicable in certain cases? What should those cases be?

Where the assailant may benefit or the applicant is under 18

199. Currently a claims officer may withhold an award if he or she believes it may be in the best interests of the child.³² In practice this is primarily used in cases of sexual or physical injury to a very young child where there is no long term effect.

³² Paragraph 16(b) of the Scheme.

200. We propose to change this rule so as not to deprive the child victim of an award that might assist them later in life. An award can be placed in trust, and the family or carers of the child can explain the origin of the award, as they see fit at an appropriate time.

Question for consultation

Q40 What are your views on our proposal to make an award where previously it would have been deemed to be against the applicant's interests (e.g. in cases of sexual or physical injury to a very young child)?

Conduct

201. We propose to maintain the discretion to withhold or reduce an award because the conduct of the applicant before, during or after the incident makes it inappropriate for an award to be made.³³
202. We also propose that use of alcohol or drugs will only be a ground for reducing or withholding an award where it has contributed to the injury or its effects, and that payment should not be withheld or reduced solely because alcohol or drugs increased an applicant's vulnerability to attack. We believe this is particularly pertinent in the case of rape victims and, in clarifying our policy in this way, our approach takes into account the recommendations of Baroness Stern's independent review into how rape complaints are handled by public authorities.³⁴

Previous convictions

203. The Scheme has always been intended to benefit blameless victims of crimes of violence. Under the current Scheme a claims officer may withhold or reduce an award on the basis of the applicant's character – this assessment is evidenced by an applicant's criminal record or other evidence available to the claims officer. Spent convictions under the Rehabilitation of Offenders Act 1974 (ROA) at the date of application or death do not count for the purposes of this rule.³⁵
204. In practice, claims officers apply a system of points linked to the sentence and the time that has passed since it was imposed to decide if a reduction or refusal of an award is appropriate and, if so, what the impact on the award should be. In exceptional circumstances claims officers may still make an award or reduced award outside the points system.

³³ Paragraphs 13(1)(d) and (14)(2) of the Scheme.

³⁴ The Stern Review (2010): A report by Baroness Vivien Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales.

³⁵ Paragraphs 13(1)(e) and 14(3) of the Scheme. We do not propose to change the rule that other evidence may be taken into account in respect of character.

205. We propose to tighten existing provisions relating to an applicant's unspent criminal convictions. The options we have considered are:

- **Option A:** all those with any unspent criminal conviction should be excluded from claiming under the Scheme, retaining a discretion to depart from this rule only in exceptional circumstances. Those who have spent convictions under the Rehabilitation of Offenders Act 1974 at the date of application or death will still be eligible to claim.
- **Option B:** To exclude from the Scheme those who have unspent convictions for offences which could give rise to an award under the Scheme (namely, for violent or sexual offences). Those with unspent convictions relating to other offences would continue to have their awards reduced or withheld unless there are exceptional circumstances justifying the making of a full or partial award.

Reductions for other unspent convictions would be based on the following factors, as at present:

- the nature of the offence;
- the sentence passed for the offence;
- the length of time elapsed since the sentence was passed;
- the circumstances giving rise to the claim.

206. We favour Option A. Under this option, we also propose to include a discretion to depart from this rule in exceptional circumstances. This would allow the claims officer to make a full or reduced award to an applicant where the exceptional nature of the case would make it unjust not to do so. The exercise of the discretion will be a matter for claims officers but we envisage that the discretion might be used, for example, where the victim was assaulted in attempting to prevent a crime or where the victim had engaged in serious criminal activity in their youth (resulting in more than 30 months imprisonment, meaning that their conviction can never be spent) but had shown themselves to have fully reformed later in life.

207. We acknowledge that our proposals in relation to the Scheme rules on unspent convictions, although a development of the existing position, could impact in particular on those who have on their record relatively minor unspent convictions. However, we consider that tougher rules are warranted. The Scheme is a taxpayer-funded expression of public sympathy and it is reasonable that there should be strict criteria around who is deemed "blameless" for the purpose of determining who should receive a share of its limited funds. We consider that, in principle, awards should only be made to those who have themselves obeyed the law and not cost society money through their offending behaviour. Minor convictions will, under the Rehabilitation of Offenders Act 1974, become spent (and therefore no longer count for the purpose of the Scheme) so long as the offender does not reoffend.

208. We invite consultees to address the potential impacts of each option in the questions below. We would expect Option A (excluding all those with unspent convictions from making a claim under the scheme) to save between £4 million and £5 million a year. Option B would save less, though it is not possible to quantify the precise amount.

Character Provisions in Fatal Cases

209. We propose to change the current practice of considering the previous convictions of both the applicant and the deceased as relevant in cases of fatal injury.³⁶ We propose that, in general, the character of the deceased should not be relevant. Given the proposals to tighten the existing provisions relating to unspent convictions, we believe that continuing to consider the character of the deceased in all cases would be unfair on blameless applicants who were dependent upon the deceased. However, we would continue to apply character provisions to applicants in fatal cases under either Option A or B.

210. We do however intend to have a discretion to depart from this rule in exceptional circumstances where the deceased's convictions were so serious that to pay for their funeral, or to make other payments in fatal cases, would be considered inappropriate (for example if they were subject to a life sentence themselves or had unspent convictions for serious sexual offences against children).

Questions for consultation

Q41 What are your views on the options for limiting eligibility to the scheme for those with unspent convictions:

- Option A, our preferred option, to exclude from the Scheme all those with unspent criminal convictions? Or
- Option B, to exclude those with unspent criminal convictions for offences that could lead to an award under the Scheme (i.e. violent and sexual crimes), with a discretion to withhold or reduce an award in the case of other unspent convictions?

Q42 Under option A, what circumstances do you think are exceptional such that it might be appropriate for claims officers to exercise their discretion to depart from the general rule on unspent convictions?

Q43 Are there any further impacts that you consider that we should take into account in framing our policy on unspent convictions, and any discretion to depart from the general rule?

³⁶ Paragraph 37 of the Scheme.

- Q44 What are your views on our proposal to ignore the convictions of the deceased in bereavement claims?
- Should claims officers have discretion to depart from this rule and withhold payments when the deceased had very serious convictions?
 - If so, what convictions should we consider as very serious for this purpose?

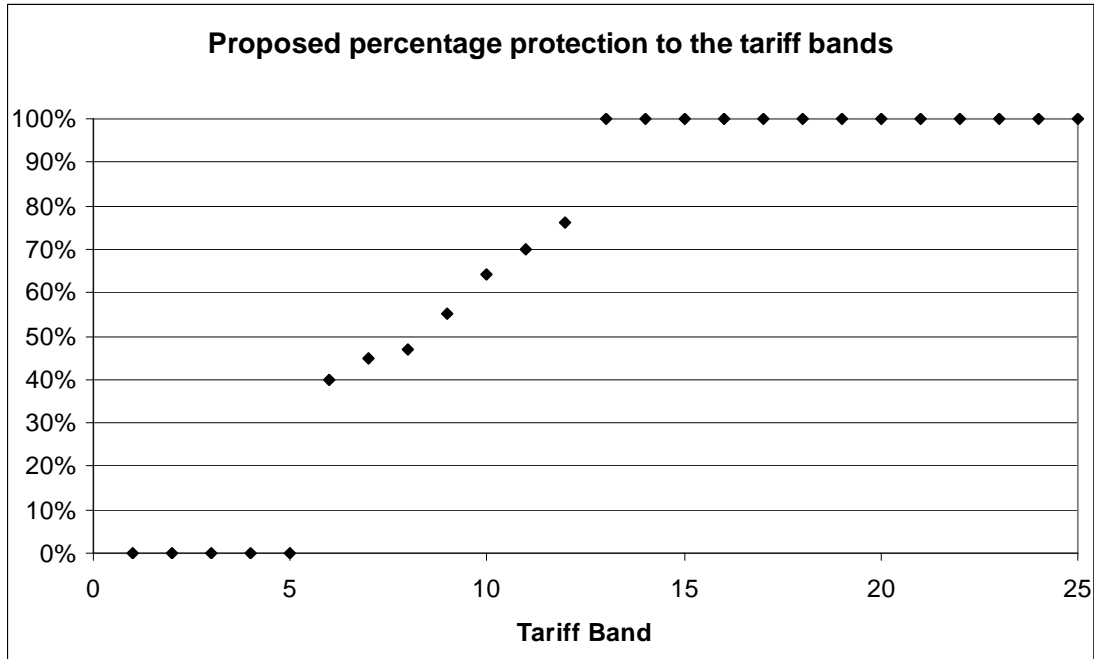
Tariff of injuries and offences

211. The tariff sets out payments in recognition of the victim's pain and suffering.³⁷ The current tariff is based on bands of injury or offence which are grouped together according to the relative severity of the injury suffered. The severity gradually increases from one band to the next, with the least serious injuries in Band 1 and the most severe in Band 25. The tariff was introduced in 1996, following the enactment of the Criminal Injuries Compensation Act 1995. The values assigned to various types of injury were drawn up based on an analysis of around 20,000 settled decisions made by the Criminal Injuries Compensation Board which were made on the basis of common law damages. The resulting tariff of injuries largely reflected past practice in common law assessments, the very significant difference being that awards under the tariff are fixed and are not adjusted up or down to take account of the particular circumstances of individual cases. Changes were made to the tariff in 2001 and 2008.³⁸
212. Our proposals aim to strike a balance between protecting the most seriously injured and making reductions to the overall cost of the Scheme.
213. We propose to protect the tariff awards at their current levels in relation to fatal cases, sexual offences and patterns of physical abuse, and for the loss of a foetus.
214. We propose to reform the tariff in respect of physical and mental injuries by removing bands 1–5, making reductions to the size of awards in bands 6–12 and protecting awards for the top 13 bands – over half of all current tariff bands – in their entirety.

³⁷ Paragraphs 26–29 of the Scheme.

³⁸ 2001 changes included increasing awards for sexual offences, changing the formula used to calculate awards in multiple injuries and changing eligibility for fatal cases to include homosexual and lesbian partners. 2008 changes included bringing descriptions of awards for sexual offences into line with terminology from the Sexual Offences Act 2003, increased awards payable for injuries to teeth and substantial recasting of the section dealing with brain damage to recognise the wide range of brain injuries.

215. Under our proposals, the revised tariff bands and corresponding awards would be as follows:



Band	Old tariff	New tariff	Proposed percentage protected
1	£1,000	£0	0%
2	£1,250	£0	0%
3	£1,500	£0	0%
4	£1,750	£0	0%
5	£2,000	£0	0%
6	£2,500	£1,000	40%
7	£3,300	£1,500	45%
8	£3,800	£1,800	47%
9	£4,400	£2,400	55%
10	£5,500	£3,500	64%
11	£6,600	£4,600	70%
12	£8,200	£6,200	76%
13	£11,000	£11,000	100%
14	£13,500	£13,500	100%
15	£16,500	£16,500	100%
16	£19,000	£19,000	100%
17	£22,000	£22,000	100%
18	£27,000	£27,000	100%
19	£33,000	£33,000	100%
20	£44,000	£44,000	100%
21	£55,000	£55,000	100%

Band	Old tariff	New tariff	Proposed percentage protected
22	£82,000	£82,000	100%
23	£110,000	£110,000	100%
24	£175,000	£175,000	100%
25	£250,000	£250,000	100%

216. The reasons for our proposals are explained more fully below.

Less serious injuries (bands 1 to 5)

217. We do not believe that small compensation payments after the event are the most effective way to help victims recover from the effects of crime. More minor injuries will be catered for by the NHS and we will invest more money in support services for victims, available at the point of need. We believe, as we set out in Part 1 of this consultation document, that resources are better spent on immediate services for victims of the most serious crimes, the persistently targeted and the vulnerable. As discussed earlier in Part 1 we aim to raise up to £50m from offenders to pay for new services. We propose to reduce the domestic compensation budget by approximately the same amount to reduce the burden on taxpayers while retaining overall spending on victims.

218. We propose to remove tariff bands 1–5 altogether (except in relation to sexual offences and patterns of physical abuse). These bands contain the less serious injuries in the Scheme and awards for multiple minor injuries. At band 6 the injuries become more serious and are described as such: for example a sprained ankle in band 5 is described as disabling for 6–13 weeks, while a sprained ankle in band 6 is described as disabling for more than 13 weeks. Furthermore, the injuries in bands 1–5 do not generally have long-lasting physical effects but should they lead to long lasting psychological effects victims can still make a claim in respect of their mental injury. We consider that injuries in band 6 and above are more likely than those in the lower bands to be serious or have longer-lasting effects. We propose to retain the injuries in the tariff but pay those falling within bands 6–12 at a lower rate than at present.

Mid-tariff injuries (bands 6–12)

219. We propose to make reductions to the size of the awards for injuries in current bands 6–12 of the tariff in proportion to their relative seriousness (see table above). As the table indicates, an injury in Band 6 which currently results in an award of £2,500 would receive an award of £1,000, while an injury in band 12 which currently results in an award of £8,200 would receive an award of £6,200.

The most serious injuries (bands 13–25)

220. We propose to protect tariff payments for all injuries currently in bands 13 and above. The purpose of drawing the line at this point is to enable us to protect payments, in their entirety, in over half of all the current tariff bands, while focusing financial reductions to the tariff on the lower and mid-bands, where, relatively speaking, the less serious injuries sit. The vast majority of the injuries in bands 13 and above will have severe, and either long-term or permanent effects. For example, awards for brain damage, other than that which is slight and short-lived, fall in bands 15 and above; for total deafness (in one ear) in band 15; for loss of sight (in one eye) in band 17; and major paralysis falls within bands 21 to 25. Our proposals on sexual offences are dealt with fully below, but rape also currently falls within band 13, indicating the comparative seriousness of injuries and offences at that level in the tariff.

Protecting awards for victims of sexual and physical abuse³⁹

221. Evidence suggests that victims of sexual offences may suffer a wide range of effects that go beyond the physical and psychological, including reduction in the quality of life, relationship problems and long lasting emotional distress.⁴⁰ We think that the public views these crimes as particularly serious and this is backed up by research⁴¹ which indicates that people are more concerned to avoid sexual violence than physical violence. We think that this wider impact upon victims and the level of public concern make these offences particularly significant. For these reasons we think awards specifically in respect of sexual offences merit being safeguarded, wherever in the tariff they currently appear.

222. We also believe that injuries arising from patterns of physical abuse, such as domestic violence, child abuse, or abuse of adults in care homes, are similarly serious and can have a significant and wide ranging impact on victims. Campaigns to raise awareness of domestic violence, together with recent cases of physical child abuse and institutional abuse, have indicated the level of public concern over the particular breach of trust where vulnerable adults and children are subject to crime in what should be the safety of their homes. Given the nature of claims for this award we propose to make explicit in the heading of the tariff award for physical abuse of adults that domestic violence victims who suffer a series of assaults can apply for compensation under these award categories.

³⁹ Paragraphs 9 and 17 of the Scheme.

⁴⁰ Romans et al (1997) Childhood sexual abuse and later psychological problems: neither necessary, sufficient nor acting alone. *Criminal Behaviour and Mental Health*; Resick (1993) The psychological impact of rape. *Journal of Interpersonal Violence* 8(2).

⁴¹ Wolfgang et al. (1985) *The National Survey of Crime Severity*; Miller et al. (1993) *Victim Costs of Violent Crime and Resulting Injuries*; Dolan et al. (2005) *Estimating the Intangible Victim Costs of Violent Crime*.

223. We therefore propose to retain at their current level awards, in whatever band, for injuries in respect of sexual offences and physical abuse (these range from minor sexual physical acts currently in band 1 to patterns of repetitive and severe abuse in band 12). The most serious sexual offences, including rape, currently appear in bands 13 and above, where we are already planning to protect all of the awards in their entirety.⁴²

Protecting tariff awards in fatal cases

224. We have taken into consideration the very particular position of those who lose a loved one as a result of a crime of violence. We believe that it is right, as an expression of public sympathy, for these payments to be protected at their current level. (See paragraphs 242 to 244). We also propose this principle should extend to protecting the level of award for loss of a foetus, whether as a result of sexual or violent crime.

Other proposed changes to the tariff

225. Multiple injuries are compensated using the following formula: the highest 'rated' injury is awarded in full, the second injury is awarded 30% of the tariff value, and the third injury is awarded 15% of the tariff value.⁴³ However, where a person suffers a physical and a mental injury and the amount for the physical injury is higher, there is no award for the mental injury. We intend to amend this rule so as to apply the multiple injury formula in cases where both the physical and mental injury are sufficiently serious to be listed in the tariff.

226. Where an applicant makes a claim for an injury which is not listed in the tariff but which is of equivalent seriousness to those which remain in the tariff, we will enable claims officers to make payments to applicants of up to the full amount of the tariff award that appears to be most appropriate to the injury in question, while revisions to the Scheme to include the injury are considered (as opposed to half the proposed tariff in the current Scheme).⁴⁴

Impact of proposed changes

227. We estimate that our proposed changes to the tariff will save between £35m and £45m each year if we protect payments relating to sexual offences and patterns of physical abuse. Further information about the amounts currently paid out and the number of recipients in each band is provided in **Annex B**.

⁴² Awards in respect of mental injury, which may arise from a violent or sexual offence, will be subject to the reform proposals set out at paragraphs 211 to 220 (remove bands 1–5; reduce bands 6–12 and protect band 13 and above).

⁴³ Paragraph 27 of the Scheme.

⁴⁴ Paragraph 29 of the Scheme.

Questions for consultation

Q45 What are your views on our proposed reforms to the tariff:

- Removing awards for injuries in bands 1 to 5 from the tariff except in relation to sexual offences and patterns of physical abuse?
- Reducing awards in bands 6 to 12 of the tariff except in relation to sexual offences, patterns of physical abuse, fatal cases and for loss of a foetus?
- Protecting all awards in bands 13 and above?

Q46 Do you agree that we should protect tariff awards for sexual offences, patterns of physical abuse, bereavement and loss of a foetus and re-categorise the award for patterns of physical abuse to clarify that it can be claimed by victims of domestic violence?

Loss of Earnings

228. A payment in relation to loss of earnings may be made under the Scheme to applicants who have lost earnings or earning capacity for more than 28 weeks.⁴⁵ Calculating the amount can be complex as payments are based on the principle of actual loss (net of taxes, national insurance and pension contributions) and based upon earnings prior to the incident with deductions for any income received after the incident (generally these deductions consist of state benefits and any employment related pensions).

229. Loss of earnings claims are made up of two types of payment. 'Past loss of earnings' is paid after the first 28 weeks of loss (based on the point at which statutory sick pay stops) up to the date the claim is decided. 'Future loss of earnings' is paid based on the number of years the applicant would be expected to have worked, up to retirement or to their life expectancy, if earlier. To be eligible for a lump sum payment applicants are expected to demonstrate their likely future earnings and earning capacity had it not been for the injury.

230. An applicant receives an amount for each year of loss but it has never been the Government's intention that the Scheme *should pay actual* lost earnings. For the purpose of current calculation net pre-injury salary is capped at 1.5 times the median gross weekly earnings, which at present is £751.50 per week⁴⁶ (around £39,000 per annum).

231. Loss of earnings payments are adjusted with respect to an applicant's other sources of income (from earnings, employer-funded pensions and benefits). Loss of earnings payments are not adjusted in relation to personal insurance payments or other private income such as a wholly self-funded pension.

⁴⁵ Paragraphs 30–34 of the Scheme.

⁴⁶ Office for National Statistics: Annual Survey of Hours and Earnings 2011. Based on median gross weekly earnings for full-time employees

232. To account for the fact that loss of earnings payments are made in a lump sum, which claimants might reasonably be expected to invest, the payments are reduced according to multiplier tables and discount factors which are set out in the notes to the Scheme (see paragraphs 255 to 257 below).

233. In 2009/10, CICA paid loss of earnings to around 1,100 people out of a total of some 65,000 applicants to the Scheme and 37,000 awards made. Loss of earnings payments totalled £45 million, at a total average payment of approximately £40,000 per person. Data from a sample⁴⁷ of applicants suggest the average net pre-incident earnings of this group is relatively low – approximately £14,000 per annum, with average annual loss of earnings payments being in the region of £8,500 for each year of loss (after around £5,500 per year is deducted for income received after the incident). In 2009/10 there were around 90 successful claims arising from claims in bands 1–5 of the tariff. Under our proposals these would no longer be eligible.

Principles for reforming loss of earnings

234. Our loss of earnings proposals⁴⁸ are based on the following principles:

- A payment is made in respect of each year (or part year) of past and future loss, after the first 28 weeks of lost earnings;
- Loss of earnings payments should be limited to those most seriously affected by their injuries, in particular those who can no longer work;
- Loss of earnings payments will be restricted to those who can show a work history at the time of the incident (or a good reason for not having a work history, such as age or caring responsibilities);
- It is reasonable to take account of additional state benefits to which someone who has been seriously injured and is unable to work will be entitled;
- The calculation of loss of earnings should be more administratively straightforward for both victims and claims officers; and,
- While adhering to these principles, we wish to reduce loss of earnings payments in order to contribute to overall Scheme savings.

235. We have developed two possible options:

- **Option A:** Payments would be calculated broadly as now, but net loss of earnings or earnings capacity would be capped at 60% of the median gross weekly earnings at the time of assessment.⁴⁹ As an

⁴⁷ A sample of around 10 per cent of 2009.10 LoE claimants, stratified by age and gender.

⁴⁸ Paragraphs 30–34 of the Scheme.

⁴⁹ Based on the latest figures for all employees published by the Office for National Statistics. <http://www.ons.gov.uk/ons/rel/ashes/annual-survey-of-hours-and-earnings/ashes-results-2011/ashes-statistical-bulletin-2011.html>

example, if the calculation were to be made in this way based on current median earnings, it results in a maximum annual loss of earnings payment of around £12,600 (based on £242 a week x 52 weeks). This is broadly equivalent to the annual salary someone would receive if they worked full time (38 hours a week) and were paid the minimum wage.⁵⁰ Payments would continue to be reduced to reflect other benefits to which an applicant may be entitled, and also adjusted if the applicant receives another award of compensation or civil damages from the offender in respect of the same injury. Payments would not be adjusted in relation to any insurance payments wholly funded by the victim.

- **Option B:** To pay an administratively simple flat-rate payment based on the Statutory Sick Pay rate. Statutory Sick Pay is paid to employees at a standard weekly rate of £81.60 for a maximum of 28 weeks. If the calculation were based on that figure, the flat rate payment would be around £4,200 for each year of loss (pro rata for part years).⁵¹
- We have two proposals for considering other sources of income with respect to option B, either:
 - B.1, we do not make any reductions (other than where the applicant receives another award of compensation or civil damages from the offender in respect of the same injury); or,
 - B.2, if the applicant has employer-funded income (e.g. an ill-health pension) which exceeds £12,600 in any year (the cap we propose in Option A) for which loss of earnings is claimed we would not pay the flat-rate for that year. We would continue to disregard state benefits.

236. In relation both to Option A and to Options B1 and B2:

- We would retain the principle of reducing loss of earnings payments in accordance with the Scheme multiplier tables.
- We propose that loss of earnings in the revised scheme should apply to applicants with no capacity to earn and those with very limited earning capacity. Payment will no longer be made to those who have diminished earning capacity as a result of their injury but whose capacity is not very limited. This is consistent with our principle of protecting payments for those most seriously injured. Claims officers will use their discretion to determine what constitutes 'very limited earning capacity' for this purpose, in light of all the circumstances of the case. The factors to be considered would include the nature of the injury, the number of hours that someone is capable of working (we consider someone with very limited earning capacity would only be capable of working for a few hours a week) and the salary that a

⁵⁰ £6.08 x 38 hours x 52 weeks = £12,014.

⁵¹ Weekly Statutory Sick Pay £81.60 x 52 weeks.

person could expect to earn if they had any residual earning capacity. We would expect that salary to be negligible in order for a person to qualify for loss of earnings payments on the basis of their very limited earning capacity.

237. There is considerable variation in the financial circumstances of loss of earnings applicants, and the impact of our proposals will differ from case to case. Medium to high earners without other sources of income are likely to be the most affected by proposals. Savings estimates are difficult but overall we expect each option to make modest savings of somewhere up to £10m a year.

238. Option A would still make payments with reference to the earnings lost and we would continue to protect the incomes of the lower earners (just under half of our sample had net annual earnings of less than £12,600). It is however possible that some applicants with a long term disability would get very little or no award for loss of earnings because the total amount of benefits they would receive would exceed £12,600 a year. Option B is administratively simpler. Eligible applicants, regardless of their previous earnings will receive a clear, predictable sum that will supplement amounts they may receive from other sources such as state benefits.⁵² It might also lead on to victims getting their loss of earnings payments more quickly.

Questions for consultation

Q47 What are your views on the options for changes to loss of earnings payments:

- Option A, to cap annual net loss of earnings at £12,600 and continue to reduce payments to reflect an applicant's other sources of income?
- Option B.1, to pay all applicants a flat rate equivalent to Statutory Sick Pay and not reduce payments to reflect to an applicant's other sources of income?
- Option B.2, as option B.1 but we would not make payments in any year where the applicant had employer-funded income in excess of £12,600?

Q48 What are your views on our proposal that applicants must demonstrate that they have no capacity to earn, or very limited earning capacity, to qualify for a loss of earnings payment? What should be taken into account when deciding whether an applicant has very limited earning capacity?

⁵² A Personal Injury Trust can be set up for compensation awards. The value of the trust is ignored for the assessment of eligibility for most means tested benefits and/or local authority support.

Special expenses

239. The Scheme currently pays special expenses to compensate those victims who have incurred certain costs as a result of their injury.⁵³ To be eligible the applicant must have lost earnings or earning capacity for more than 28 weeks as a result of their injury. There are around 350 awards for special expenses made each year, totalling approximately £15m.

240. Special expenses are currently paid for:

- Loss of or damage to property and equipment relied upon as a physical aid and damaged as a direct result of the incident (such as glasses or hearing aids).
- Costs associated with NHS treatment (for example, car parking, prescription costs etc.).
- Special equipment, home adaptation or care costs not available from other sources (for example a wheelchair, adapting a house for wheelchair use, assistance with dressing, bathing, and preparation of food where these are not available free of charge from the NHS, local authority or other agency).
- Necessary and reasonable fees and costs associated with the administration of awards (e.g. fees payable to the Public Guardian or Court of Protection, costs associated with setting up and administering a trust, and those associated with the administration of the applicants affairs due to incapacity).
- Reasonable private medical care not available on the NHS.

241. Special expenses are paid to those most seriously injured and, as such, we propose to continue to pay all categories of special expenses except private medical care. The NHS provides a good standard of care. If applicants choose to purchase health care beyond that which the NHS provides they can use some of their tariff award for this purpose.⁵⁴

Question for consultation

Q49 Should we retain all categories of special expenses other than for private medical care?

Fatal Cases

242. In reviewing the scheme we have taken into consideration the very particular position of those who lose a loved one as a result of a crime of violence.

⁵³ Paragraph 35 of the Scheme.

⁵⁴ Paragraph 39 of the Scheme.

Fatal Injury Tariff Payment ('Bereavement awards')

243. Under the Scheme, the current tariff payment for a fatal injury is £11,000 (Band 13 of the tariff) for one qualifying applicant,⁵⁵ and £5,500 each (Band 10) in the event of multiple qualifying applicants. Payments under this category, known as 'bereavement awards', currently go to around 1,000 applicants per year and cost around £8m.⁵⁶

244. We propose to protect the current level of award and continue to make payments to the same qualifying applicants.

Question for consultation

Q50 Should we retain the bereavement award at its current level, and the existing categories of qualifying applicant for the bereavement award and other fatal payments?

Loss of parenting

245. We propose to continue to pay compensation for loss of parenting to qualifying applicants who were under the age of 18 and dependent on the victim at the time of the victim's death.⁵⁷ A payment is made at an annual rate of £2,000 for each year of loss up to the age of 18. This currently costs approximately £3m per year.

246. We also propose to retain the provision in the current Scheme that provides for additional payments that the claims officer considers reasonable to meet other specific losses the child may suffer.

Question for consultation

Q51 What are your views on our proposals on parental services:

- To continue making payments for loss of parental services at the current level (£2,000 per annum up to the age of 18)?
- To continue to consider other reasonable payments to meet other specific losses the child may suffer?

Dependency Payments

247. Qualifying applicants can currently receive additional payments if they were financially or physically dependent on a victim who died as a direct result of their injuries. Payments are made on the same basis as loss of earning payments but divided by the number of claimants with a

⁵⁵ Paragraph 38 of the Scheme.

⁵⁶ Paragraph 39 of the Scheme.

⁵⁷ Paragraph 42 of the Scheme (loss of parental services).

deduction made for the deceased's living costs.⁵⁸ There are about 100 cases per year costing around £4 million.

248. We propose to continue to pay dependency payments in line with our revised loss of earnings proposals (paragraphs 234 to 238). If we were to make dependency payments in line with our loss of earnings option A (capped at £12,600) we propose to continue to make a reduction (of up to one third) to account for any personal and living expenses the victim would have incurred⁵⁹ and to adjust for any benefits paid as a result of the death. Personal insurance policies and pensions schemes paid solely by the deceased or a dependent of the deceased would not be counted.

249. If we were to pay the flat-rate of around £4,200 (equivalent to statutory sick pay – option B1) we do not propose to make reductions to account for the victim's personal and living expenses and we would disregard any benefits paid as a result of the death.

250. As now, the dependency award will continue to be divided by the number of qualifying applicants in each year of loss (so if two people qualify for dependency payments they would get half each). Children cease to be qualifying applicants when they reach the age of 18.

251. We propose to make dependency payments as follows:

- in the case of a dependent child, until the applicant's 18th birthday

252. In other cases, until whichever is the sooner of:

- state pension age of the deceased;
- the deceased's life expectancy prior to the incident;
- the dependant's life expectancy;
- the 50th anniversary of the death of the deceased.

253. Dependency payments may sometimes be made for physical dependency alone (for example, where the deceased was a carer for an applicant but made no financial contribution to their up keep).⁶⁰ We propose to retain payments in these circumstances.

Question for consultation

Q52 Should we retain dependency payments and pay them in line with loss of earnings proposals?

⁵⁸ Paragraph 40 of the Scheme.

⁵⁹ Deductions are currently determined by the claims officer, but are typically 33% of the deceased's net income where there is a surviving spouse or civil partner and 25% where there are also surviving dependent children.

⁶⁰ Paragraphs 35(2) and 40 of the Scheme.

Funeral Expenses

254. We intend to continue to make payments for reasonable funeral costs⁶¹ and propose that payments can be made to the person who pays the bill as well as to the deceased's estate. In line with our proposals in paragraphs 209 to 210 we would not seek to make deductions based on the deceased's previous convictions unless they were very serious. We would however still consider the character of the applicant(s) when deciding whether to make an award.

Question for consultation

Q53 Should we continue to make payments for reasonable funeral costs?

Discount Tables

255. Loss of earnings, special expenses, dependency and loss of parental services payments are paid in a lump sum. They are discounted to account for the fact that applicants receive their money in respect of future losses and the lump sum can be invested and interest earned. Similar discount rates are applied in many other circumstances where a lump sum payment is awarded in respect of future financial losses.

256. At present discounts are applied on the basis of three tables⁶² loosely based on the Actuarial Tables for Use in Personal Injury and Fatal Accident Cases (commonly referred to as the "Ogden tables") produced by the Government Actuary's Department. The three tables in the Scheme have not been changed since the first tariff Scheme came into force in 1996.

257. We propose to continue to use multipliers⁶³ to reflect the potential for investment and years of loss and will take account of any changes in mortality. We recognise that the existing multipliers are out of date and intend to review the CICS multiplier tables in conjunction with the Government Actuary's Department. Consultees are invited to consider the impact of the proposals on loss of earnings, special expenses and dependency payments on the basis that multipliers will continue to be applied to lump sum awards.

Process

Making Applications to the Scheme

258. Applicants to the Criminal Injuries Compensation Scheme have two years to apply following the incident.⁶⁴ Where the applicant could not

⁶¹ Paragraph 37 of the Scheme.

⁶² Note 3 of the Scheme

⁶³ Paragraph 32 and Note 3 of the Scheme.

⁶⁴ Paragraphs 18 and 19 of the Scheme.

reasonably have made an application within the two year period (for example in cases of historic sexual abuse), and is still practicable for the application to be considered, the time limit can be extended.

259. The current Scheme states that it will be for the applicant to make out their case; this will continue. However, there is currently little detail about the information that the applicant is expected to provide.

260. We will make clearer the evidence the applicant will be required to submit in support of their application. This will include:

- a. Evidence of the identity and residence status of the applicant, along with a declaration of any criminal record the applicant might have.
- b. Evidence that the applicant has been a victim of a crime of violence. The applicant should state that they have made a report to the police. CICA will then approach the police for a copy of the report.
- c. Initial medical or other expert evidence to show that an injury has been sustained (e.g. GP notes or an A&E discharge note). Our proposals in respect of any costs attached to this evidence are set out in full below. Where there is a cost attached to this which an applicant is unable to meet, CICA will continue to meet the cost of the medical evidence.
- d. If the applicant is claiming loss of earnings, evidence of the applicant's employment history and any loss of earnings as a result of the injury.
- e. Details of any alternative sources of compensation or insurance for which the applicant might be eligible, and which are relevant to the calculation of an award under the CICS. If, for example, an injury was sustained in the course of the applicant's employment, this might include confirmation from the employer that there was no liability on their part, or that there were no injury-based workplace Schemes available.

Question for consultation

Q54 What are your views on our proposals to require applicants to supply the information set out above?

261. Currently the collection of medical evidence costs CICA in the region of £3.5m per year with approximately £2.8m of this being for routine reports. We propose to tighten the circumstances where CICA will meet the costs of obtaining expert evidence. In particular we want to avoid spending money (currently around £270,000 per annum, with the potential to rise under these consultation proposals) procuring medical reports for people who do not have sufficiently serious injuries to qualify for compensation.

262. Following preliminary eligibility checks, CICA currently request and pay for a medical report. However, we believe the responsibility should, within reason, lie with the applicant to provide the necessary medical evidence to make their claim. NHS guidance states that a fee of £10 may be

charged to get a copy of records held on computer and up to £50 for records that are only held manually (or in part manually). We believe it is reasonable for applicants to bear costs in this range, up to an overall maximum of £50 (the current maximum for a copy of NHS records). However, where an applicant cannot afford to meet these costs or where more costly expert evidence, such as a full psychiatric report, is required, CICA will continue to pay for those reports. Where CICA continues to cover these initial costs we propose that claims officers should have the power to deduct the costs incurred from any final award, again up to an overall maximum of £50.

263. Where a claims officer considers that a further medical report is needed, for example to confirm the extent of the injury or its cause, CICA will continue to commission and pay for these reports.⁶⁵

264. We also propose that there should be other limited circumstances where claims officers would be able to deduct costs associated with medical examinations from an award:

- Where an applicant has without reasonable excuse missed medical appointments for which CICA are paying; or
- Where CICA has incurred the cost of obtaining further evidence due to an applicant commissioning additional medical evidence which the claims officer did not consider necessary to determine the claim, and which could not reasonably have been expected to add materially to the existing medical evidence.

265. Any deductions from an award on these grounds will be subject to review and appeal.

Questions for consultation

Q55 Please let us have your views on our proposal that applicants should pay a small cost (up to a maximum of £50) to obtain the initial medical evidence to make out their claim?

Q56 Where CICA continues to cover the initial medical costs, should this be deducted from the final award (up to a maximum of £50)?

Q57 Should costs associated with medical expenses be deducted when:

- An applicant misses medical appointments that CICA is paying for?
- The applicant commissions additional medical evidence that is not required to determine the claim?

⁶⁵ Paragraph 21 of the Scheme.

Decisions

266. We propose to shorten the current 90 day period that applicants have in which to notify CICA that they either accept or reject the award.⁶⁶ Typically applicants take around three weeks to respond so we consider that allowing 56 days is reasonable while contributing to speeding up the process overall. We also propose to shorten the period of applying for review from 90 to 56 days,⁶⁷ and that this period should be subject to one extension of up to 56 days where there are exceptional reasons to grant an extension.

Question for consultation

Q58 What are your views on our proposal to reduce the time available for applicants either to accept the claims officer's decision, or seek a review, from 90 to 56 days, with a further 56 day extension for exceptional reasons?

Reconsideration and repayment

267. A decision may currently be reconsidered at any time before payment of the final award where there is new evidence or a change in circumstances (for example the applicant receives compensation from another source).⁶⁸ Where an interim payment has been made this does not prevent a claims officer reconsidering the case.

268. We intend to retain the current arrangements and propose to extend the circumstances where repayment of all or part of the award may be requested to cover circumstances where the applicant has not cooperated so far as practicable in bringing any assailant to justice, or the applicant deliberately misled a claims officer when making their claim.

Question for consultation

Q59 What are your views on our proposals to extend the circumstances where repayment of all or part of the award may be requested?

Medical re-opening

269. The scheme currently allows cases to be re-opened on medical grounds at the applicant's request if there has been a material change in their medical condition or where the victim has died as a consequence of their injury. There is always an element of uncertainty in any assessment of future loss, and the possibility that an injury might worsen at some point in the future but in order for the Scheme to be as administratively efficient as possible we propose to remove this provision from the scheme but to

⁶⁶ Para 50 of the Scheme.

⁶⁷ Para 59 of the Scheme.

⁶⁸ Paragraphs 48–49 of the Scheme.

allow deferral of the case in a wider range of circumstances than at present (see below).

Question for consultation

Q60 What are your views on our proposal to remove the option to request a reopening of a case on medical grounds?

Deferral

270. Where an applicant believes the long term impact of their injuries has not yet been established we propose to enable them to request that a decision on the case be deferred for an initial period of two years with a further period of up to two years upon request.

271. Claims officers currently have powers⁶⁹ to make such arrangements for determination of the claim as they consider appropriate. This could include waiting for the outcome of any related criminal proceedings, for example where the facts are not sufficiently clear from the evidence initially provided to determine whether a crime of violence has taken place. We propose to make this power to defer determination clearer in the Scheme. Cases should still be determined as quickly as possible and the power should only be used where it is necessary to wait for the criminal proceedings to determine the claim. It is not proposed that the outcome of the criminal proceedings will be determinative of the claim: claims officers will continue to reach their decisions on the balance of probabilities.

272. As explained in paragraph 193, we also propose to enable asylum seekers to request their applications are deferred until the question of their refugee status is settled, provided they submit their application within two years of the incident in accordance with the usual time limits for a claim.

Question for consultation

Q61 What are your views on our proposal for deferral of Scheme decisions?

⁶⁹ Paragraph 20 of the Scheme.

Appeal⁷⁰

273. An applicant who is dissatisfied with a decision may request a review of their case by another claims officer. If they are still dissatisfied the applicant may appeal against that decision to the First-tier Tribunal (Criminal Injuries Compensation). If it becomes apparent that the claims officer's decision on review was in error there is currently no power enabling a claims officer to withdraw the decision and issue a fresh one, so the appeal must proceed.
274. We propose that when it becomes apparent that a claims officer has made an error on review, a claims officer should be able to withdraw the review decision under appeal and issue a decision in the applicant's favour. The applicant can then decide whether to accept the decision and may, with the consent of the First-tier Tribunal, withdraw his appeal. This is in order to avoid unnecessary costs and inconvenience for both the applicant and CICA.

Question for consultation

Q62 What are your views on our proposal to enable claims officers to withdraw a review decision under appeal and issue a decision in the applicant's favour?

Recovering CICS compensation from offenders

275. There are unimplemented powers in the Criminal Injuries Compensation Act 1995 which would allow the Secretary of State for Justice or in Scotland, Scottish Ministers, to make Regulations to provide for the recovery from offenders by the state of the criminal injuries compensation paid to their victims. The legislation, if commenced, would enable a CICS claims officer to issue a recovery notice and, if the amount is not paid, to initiate debt recovery action through the civil courts.
276. Implementing these provisions would depend on whether it was practically possible to design an effective process. Two key challenges are to ensure that any process is cost-effective and that recovery does not have an adverse effect on the victim in the case. Victims' Groups have previously raised concerns in relation to the impact on victims because it would be necessary to give the offender details of the compensation paid to their victim, and how the compensation decision was arrived at, as part of the recovery process.

⁷⁰ Paragraphs 61–65 of the Scheme.

Question for consultation

Q63 What are your views on our proposal to implement powers to recover money from offenders, where criminal injuries compensation has been paid to their victims, if a cost effective process for recovery can be developed? How could this process work?

Equality effects of proposals and request to improve evidence base

277. Towards the front of this consultation document we explained the Government's responsibilities under the Equalities Act 2010 and we are publishing Equality Assessments of our proposals as part of the consultation.

Questions for consultation

Q64 Do you think we have correctly identified the range and extent of effects of these proposals on those with protected characteristics under the Equality Act 2010?

Q65 If not, are you aware of any evidence that we have not considered as part of our equality analysis? Please supply the evidence. What is the effect of this evidence on our proposals?

Q66 Given the fiscal climate in which these proposals are made, are there any other ways that you consider we could mitigate against the potential effects identified in the equality analysis?

Victims of Terrorism Overseas

278. The current domestic Scheme does not offer compensation to individuals injured as a result of crimes of violence occurring abroad, nor is the United Kingdom under a legal duty to compensate in these circumstances. Individuals must generally look to the offender, to insurance arrangements, or to the state in which the criminal injury occurred. Nevertheless, some countries do compensate individuals for injuries sustained on foreign territory, albeit under schemes with tightly restricted criteria paying limited amounts of compensation. EU Directive 2004/80/EC places legal obligations on all EU Member States to have in place arrangements which guarantee fair and appropriate compensation to victims of intentional, violent crime which occur on their territory. Such schemes might compensate citizens from the United Kingdom injured in incidents in other parts of Europe but the amounts of compensation and circumstances in which it is payable varies significantly between states.

Support for those caught up in terrorist attacks overseas

279. In the United Kingdom we currently provide the following support to those injured in terrorist incidents abroad and are seeking to improve provision:

- The Exceptional Assistance Measures (EAM) scheme aims to alleviate the immediate needs of British nationals affected by terrorist incidents abroad via emergency assistance with flights, accommodation and repatriation. It is run by the Foreign and Commonwealth Office (FCO) and is available to all eligible British victims, apart from those who have travelled to a region where the FCO had advised against all travel, on an exceptional basis where costs cannot be met from alternative arrangements such as insurance.
 - The British Red Cross Relief Fund for UK Victims of Terrorism Abroad makes available immediate grants of £3,000 to anyone normally resident in the United Kingdom affected by a terrorist attack to assist with essential costs, with a further grant of £12,000 payable to help with ongoing needs.
 - Where compensation schemes exist in EU Member States the Criminal Injuries Compensation Authority assists victims resident in the United Kingdom to make a claim in those countries.
 - Following repatriation to the United Kingdom, victims are able to access support from a wide range of sources. They may access support and treatment from the NHS, NHS National Services Scotland or from Health and Social Care in Northern Ireland. They may also be eligible for benefits from the Department for Work and Pensions, or the Department for Social Development in Northern Ireland, and receive further help from local authority services.
 - Victims of terrorist attacks overseas can access support made available via the £38m grant to Victim Support, over £4m to Victim Support Scotland and some £2.2m to Victim Support Northern Ireland. Additionally, bereaved relatives can receive support from the Lucie Blackman Trust, which has been funded through the Homicide Fund for 2011/12.
 - The FCO helps to keep bereaved families informed of any developments. Where appropriate, a Family Liaison Officer may also be appointed by the relevant police force to liaise with the investigating authorities overseas.
280. Although not provided by the Government but strongly recommended when travelling abroad, insurance may be available to help cover some of the costs that may arise as a result of being caught up in a terrorist attack.

Compensation from Government

281. Parliament passed the Crime and Security Act in 2010 to enable the creation of a scheme to compensate future victims of terrorism abroad injured on or after 18 January 2010. Sections 47–54 of the Act contain the framework under which such a scheme can be made. The scheme itself would not be set out in legislation but, in accordance with the provisions in the Act, a draft of the scheme would be laid for approval before both Houses of Parliament before it was made. For the purposes of shorthand we refer to this as the ‘statutory scheme’.

282. The previous administration also indicated that special payments would be made to eligible victims injured on or after 1 January 2002 who have an ongoing disability as a result of injuries sustained.

283. We support this general policy. Whether attacks are targeted at individuals or indiscriminately, terrorism is intended as a political statement and as an attack on a state and its people as a whole. We propose to introduce two new schemes with respect to victims of terrorism overseas:

- A statutory scheme to compensate future victims of terrorist attacks abroad, based on the revised domestic Scheme described in this consultation. It will mirror the types of payments available and the amounts payable but different eligibility criteria will apply.
- An ex gratia scheme to make payments to eligible victims injured on or after 1 January 2002 and who continue to have an ongoing disability as a direct result of injuries sustained. Consistent with what was announced by the previous administration, payments will be based on the current domestic Scheme tariff alone; there will not be additional payments for loss of earnings or special expenses, nor will there be payments for the bereaved.

284. The two new schemes will offer payments to British and EU/EEA victims of terrorism overseas, who are resident in the United Kingdom, in respect of attacks subsequently designated for the purposes of the schemes. We will publish detailed eligibility criteria when we publish the ex gratia scheme.

285. As these plans are not new policies, we are not seeking views on them in this consultation document.

286. We do not propose to make state-funded compensation available to victims of other crimes of violence overseas.

Designating attacks for the purposes of the schemes

287. Designation of attacks for the purposes of these schemes will be a pre-condition before payments can be made under either scheme. For the statutory scheme section 47(2) of the 2010 Act provides that the Secretary of State may designate an act if:

- a. It took place outside the United Kingdom;
 - b. It took place on or after 18 January 2010 (in practice the scheme is likely to provide a later commencement date than this);
 - c. In the view of the Secretary, the act constitutes terrorism within the meaning of the Terrorism Act 2000 (see section 1 of that Act); and
 - d. Having regard to all the circumstances, the Secretary of State considers that it would be appropriate to designate it.
288. The same criteria will apply to the ex gratia scheme save that it will apply to incidents that took place on or after 1 January 2002 up until the commencement of the statutory scheme.
289. As suggested in the debates in Parliament during the passage of the 2010 Act, we propose to include travel advice as a circumstance relevant to designation in paragraph (d) above with a view to ruling out, subject to exceptional circumstances, claims from people who travelled to a country or region in respect of which the FCO had advised against all travel. We consider that this is reasonable as there is greater opportunity for individuals to ensure they have adequate provisions in place, such as additional employer or possibly private insurance cover, for travel to these regions.
290. We believe this strikes the right balance between safeguarding limited resources and demonstrating solidarity with British and EU/EEA victims who have been caught up in terrorist acts overseas.
291. We will provide full details when we publish the ex gratia scheme in April.

Defining ongoing disability with respect to the ex gratia scheme only

292. In keeping with the statements made by the previous administration, the ex gratia scheme will be open to eligible persons with an ongoing disability as a direct result of an injury sustained during a terrorist attack overseas, subsequently designated for the purposes of the scheme.
293. We propose to define 'ongoing disability' in accordance with the Equality Act 2010 which means that:
- The person must have an impairment that is either physical or mental;
 - The impairment must have adverse effects which are substantial;
 - The substantial adverse effects must be long-term; and
 - The long-term substantial adverse effects must be effects on normal day-to-day activities.
294. All of the factors above must be considered when determining whether a person has an ongoing disability.

295. The ongoing disability must have arisen or been exacerbated as a direct result of an injury sustained during a terrorist attack overseas subsequently designated for the purposes of the scheme. It must further be present when an application is made to the ex gratia scheme.
296. We believe evidence of an ongoing disability can be best demonstrated through evidence of treatment, an assessment made by a General Practitioner, or in cases of mental impairment an independent psychiatrist, confirming the presence, nature and likely cause of the disability.
297. As indicated by the previous administration, the ex gratia scheme will not be open to those who have fully recovered from their injuries or in cases of fatal injuries.

Implementation

298. We intend to lay the statutory scheme for compensating potential future victims of terrorism overseas before Parliament, alongside a revised domestic Scheme, which will commence once it has been approved by Parliament.
299. We will launch the ex gratia scheme in April when it will open to receive applications. It will run until the commencement of the statutory scheme.

Annex A: Award amounts and examples of injuries in each tariff band for the current scheme and for the proposed revised scheme

Band	Current scheme		Revised scheme			
	Current award amount	Number of injuries in current scheme		Injuries to be removed under revised scheme	Injuries to be reduced under revised scheme	Injuries to be protected under revised scheme
1	£1,000	26	Number of injuries	23	0	3
			Injury examples	Minor sprains and fractures, lasting on average 6-13 weeks with substantial recovery, temporary mental anxiety	N/A	Minor physical abuse of children, injuries arising as a result of sexual offences
			Award amount	£0	N/A	£1,000
2	£1,250	4	Number of injuries	4	0	0
			Injury examples	Finger fractures with recovery	N/A	N/A
			Award amount	£0	N/A	N/A
3	£1,500	19	Number of injuries	18	0	1
			Injury examples	Minor and temporary injuries, e.g. fractured toes, temporary partial deafness	N/A	Injuries arising as a result of sexual offences
			Award amount	£0	N/A	£1,500

Band	Current scheme		Revised scheme			
	Current award amount	Number of injuries in current scheme		Injuries to be removed under revised scheme	Injuries to be reduced under revised scheme	Injuries to be protected under revised scheme
4	£1,750	6	Number of injuries	6	0	0
			Injury examples	Minor/moderate injuries to upper limbs and head and neck with substantial recovery, e.g. blurred vision, dislocated shoulder	N/A	N/A
			Award amount	£0	N/A	N/A
5	£2,000	38	Number of injuries	34	0	4
			Injury examples	Moderate injuries with substantial recovery, e.g. fractured hand, knee surgery, and dislocated jaw, injuries to teeth	N/A	Serious intermittent physical abuse of adults or children, injuries arising as a result of sexual offences
			Award amount	£0	N/A	£2,000
6	£2,500	35	Number of injuries	0	35	0
			Injury examples	N/A	Injuries to the eye, scarring to the limbs and torso, moderate injuries with recovery, e.g. fractured cheek bones	N/A
			Award amount	N/A	£1,000	N/A

Band	Current scheme		Revised scheme			
	Current award amount	Number of injuries in current scheme		Injuries to be removed under revised scheme	Injuries to be reduced under revised scheme	Injuries to be protected under revised scheme
7	£3,300	31	Number of injuries	0	28	3
			Injury examples	0	Moderate fractures with substantial recovery, minor head injuries and loss of teeth	Injuries arising as a result of sexual offences
			Award amount	N/A	£1,500	£3,300
8	£3,800	17	Number of injuries	0	17	0
			Injury examples	N/A	Permanently disabling moderate injuries, e.g. fractured foot bones, partial deafness	N/A
			Award amount	N/A	£1,800	N/A
9	£4,400	39	Number of injuries	0	38	1
			Injury examples	N/A	Moderate burns, moderate injuries resulting in continuing significant disability, e.g. fractured collar bone	Injuries arising as a result of sexual offences
			Award amount	N/A	£2,400	£4,400

Band	Current scheme		Revised scheme			
	Current award amount	Number of injuries in current scheme		Injuries to be removed under revised scheme	Injuries to be reduced under revised scheme	Injuries to be protected under revised scheme
10	£5,500	54	Number of injuries	0	48	6
			Injury examples	N/A	Patterns of severe physical abuse, damage to eyesight, e.g. detached retina, significantly disabling fractures, e.g. fractured vertebrae	Fatal injury – each qualifying claimant, severe physical abuse of adults or children, injuries arising as a result of sexual offences, loss of foetus
			Award amount	N/A	£3,500	£5,500
11	£6,600	15	Number of injuries	0	13	2
			Injury examples	N/A	Injuries to more than one limb or organ, e.g. punctured lungs, damaged ligaments in both legs or arms	Injuries arising as a result of sexual offences
			Award amount	N/A	£4,600	£6,600
12	£8,200	52	Number of injuries	0	48	4
			Injury examples	N/A	Brain injuries, e.g. minor brain damage, well controlled epilepsy, permanent disabling dislocations and fractures	Patterns of physical abuse of adults or children, injuries arising as a result of sexual offences
			Award amount	N/A	£6,200	£8,200

Band	Current scheme		Revised scheme			
	Current award amount	Number of injuries in current scheme		Injuries to be removed under revised scheme	Injuries to be reduced under revised scheme	Injuries to be protected under revised scheme
13	£11,000	33	Number of injuries	0	0	33
			Injury examples	N/A	N/A	Loss of an organ, e.g. spleen, kidney, severe burns and scarring, significantly disabling fractures and dislocations, fatal injury – one qualifying claimant, injuries arising as a result of sexual offences
			Award amount	N/A	N/A	£11,000
14	£13,500	14	Number of injuries	0	0	14
			Injury examples	N/A	N/A	Disabling mental illness (psychiatric diagnosis), and permanent serious injuries, e.g. blurred or double vision, loss of big toes, severe pattern of physical abuse against children, injuries arising as a result of sexual offences
			Award amount	N/A	N/A	£13,500

Band	Current scheme		Revised scheme			
	Current award amount	Number of injuries in current scheme		Injuries to be removed under revised scheme	Injuries to be reduced under revised scheme	Injuries to be protected under revised scheme
15	£16,500	18	Number of injuries	0	0	18
			Injury examples	N/A	N/A	Severe burns to the head and neck, minor brain damage, loss of digits (fingers, thumbs) or senses (smell, taste), injuries arising as a result of sexual offences
			Award amount	N/A	N/A	£16,500
16	£19,000	5	Number of injuries	0	0	5
			Injury examples	N/A	N/A	Severe impairment, e.g. impaired speech, partial loss of vision, permanent disabling mental illness
			Award amount	N/A	N/A	£19,000
17	£22,000	14	Number of injuries	0	0	14
			Injury examples	N/A	N/A	Minor brain damage, loss of sight in one eye, injuries arising as a result of sexual offences, non-sexual infection with HIV/Hepatitis B/Hepatitis C
			Award amount	N/A	N/A	£22,000

Band	Current scheme		Revised scheme			
	Current award amount	Number of injuries in current scheme		Injuries to be removed under revised scheme	Injuries to be reduced under revised scheme	Injuries to be protected under revised scheme
18	£27,000	10	Number of injuries	0	0	10
			Injury examples	N/A	N/A	Seriously disabling mental illness, severe burns and loss of key function, e.g. leg (paralysis), eye, injuries arising as a result of sexual offences
			Award amount	N/A	N/A	£27,000
19	£33,000	9	Number of injuries	0	0	9
			Injury examples	N/A	N/A	Multiple burns, internal bodily injury, loss of a key function or limb, e.g. speech, non-dominant arm or hand, injuries arising as a result of sexual offences
			Award amount	N/A	N/A	£33,000
20	£44,000	8	Number of injuries	0	0	8
			Injury examples	N/A	N/A	Internal bodily injury and loss of a key function, e.g. tongue, hearing, uncontrolled epilepsy, injuries arising as a result of sexual offences
			Award amount	N/A	N/A	£44,000

Band	Current scheme		Revised scheme			
	Current award amount	Number of injuries in current scheme		Injuries to be removed under revised scheme	Injuries to be reduced under revised scheme	Injuries to be protected under revised scheme
21	£55,000	8	Number of injuries	0	0	8
			Injury examples	N/A	N/A	Moderate brain damage, paralysis and loss of a function, e.g. fertility, both kidneys
			Award amount	N/A	N/A	£55,000
22	£82,000	7	Number of injuries	0	0	7
			Injury examples	N/A	N/A	Moderate significant brain damage, paralysis of limbs, e.g. both arms
			Award amount	N/A	N/A	£82,000
23	£110,000	6	Number of injuries	0	0	6
			Injury examples	N/A	N/A	Moderately severe brain damage requiring care, loss of sight, loss of limbs
			Award amount	N/A	N/A	£110,000
24	£175,000	2	Number of injuries	0	0	2
			Injury examples	N/A	N/A	Major paralysis of lower limbs and very serious brain damage requiring some full time care
			Award amount	N/A	N/A	£175,000

Band	Current scheme		Revised scheme			
	Current award amount	Number of injuries in current scheme		Injuries to be removed under revised scheme	Injuries to be reduced under revised scheme	Injuries to be protected under revised scheme
25	£250,000	2	Number of injuries	0	0	2
			Injury examples	N/A	N/A	Total paralysis and very serious brain damage requiring full time care and resulting in loss of movement, sense and functions
			Award amount	N/A	N/A	£250,000

Annex B: Average number of claims and estimated spend in each tariff band and impact of proposed revisions to the scheme estimated using 2008/09 and 2009/10 data

Band	Number of claims ¹				Estimated spend (£m) ²			
	Current scheme	Injuries to be removed under revised scheme ³	Injuries to be reduced under revised scheme ³	Injuries to be protected under revised scheme ³	Current scheme	Injuries to be removed under revised scheme ³	Injuries to be reduced under revised scheme ³	Injuries to be protected under revised scheme ³
1	5,610	5,240	0	370	5.6	5.2	0	0.4
2	2,070	2,070	0	0	2.6	2.6	0	0
3	6,310	6,250	0	60	9.5	9.4	0	0.1
4	640	640	0	0	1.1	1.1	0	0
5	4,010	3,470	0	530	8.0	6.9	0	1.1
6	2,660	0	2,660	0	6.6	0	6.6	0
7	3,830	0	2,990	840	12.6	0	9.8	2.9
8	2,220	0	2,220	0	8.4	0	8.4	0
9	3,300	0	3,150	140	14.5	0	13.8	0.7
10	1,630	0	700	920	8.9	0	4.2	4.8
11	400	0	150	250	2.6	0	0.9	1.7
12	1,310	0	1,080	240	10.7	0	8.7	2.0
13	1,490	0	0	1,490	16.3	0	0	16.3
14	310	0	0	310	4.2	0	0	4.2
15	660	0	0	660	10.9	0	0	10.9
16	100	0	0	100	2.0	0	0	2.0
17	480	0	0	480	10.4	0	0	10.4
18	60	0	0	60	1.7	0	0	1.7
19	10	0	0	10	0.4	0	0	0.4
20	60	0	0	60	2.5	0	0	2.5
21	10	0	0	10	0.8	0	0	0.8
22 ⁴	0	0	0	0	0.0	0	0	0.0

Band	Number of claims ¹			Estimated spend (£m) ²				
	Current scheme	Injuries to be removed under revised scheme ³	Injuries to be reduced under revised scheme ³	Injuries to be protected under revised scheme ³	Current scheme	Injuries to be removed under revised scheme ³	Injuries to be reduced under revised scheme ³	Injuries to be protected under revised scheme ³
23	20	0	0	20	2.5	0	0	2.5
24	10	0	0	10	1.0	0	0	1.0
25	30	0	0	30	7.0	0	0	7.0

1. These data are taken from a large administrative system and therefore should be treated as estimates. The numbers are an average of the 2008/09 and 2009/10 estimates, rounded to the nearest 10 claims; numbers may not sum to 'Current scheme' totals due to rounding. The number of claims for unprotected injuries and the number of claims for protected injuries may not sum to the total due to rounding. Protected injuries are those injuries arising as a result of sexual offences, physical abuse and bereavement awards.
2. The estimated spend is an average of the 2008/09 and 2009/10 spend, rounded to the nearest £100,000; spend may not sum to 'Current scheme' totals due to rounding.
3. The impact of the proposed revisions is estimated using data on past claims (2008/09 and 2009/10) and therefore is only indicative of the potential impact on the future number of claims and likely spend.
4. No claims were made in Band 22 in 2008/09 and 2009/10.



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