

**‘Trundled Along, Almost Unheard of,
Almost Inaccessible’: Understanding
Access to State Compensation for
Victims of Violent Crime in Ireland and
the European Union**

PhD

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Declaration

I hereby certify that this material, which I now submit for assessment on the programme of study leading to the award of PhD is entirely my own work, and that I have exercised reasonable care to ensure that the work is original, and does not to the best of my knowledge breach any law of copyright, and has not been taken from the work of others save and to the extent that such work has been cited and acknowledged within the text of my work.

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Publications

Academic

- L.O'Driscoll, 'Being "Fair and Appropriate" to Victims of Violent Crime: Evaluating the Provision of State Compensation in the European Union' in J.Burchett & A.Weyembergh, *Stronger Victims' Rights in EU Law? Assessment and Prospects* (Hart 2025).
- L.O'Driscoll, 'Victims of Crime and the Right to State Compensation under EU Law in light of the High Court Judgment in Bowes & Brophy v Criminal Injuries Compensation Tribunal' (2023) 25(1) Irish Journal of European Law 63.
- L.O'Driscoll, 'Towards a Rights-based Approach: Victims of Violent Crime, State-funded Compensation and the European Union' (2023) 14(3) New Journal of European Criminal Law 303.
- L.O'Driscoll, 'The Criminal Injuries Compensation Tribunal and the "Same Roof" Rule in Ireland: Exclusion, Inclusion and Reform' (2022) 6(2) Irish Judicial Studies Journal 60.

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- L.O'Driscoll, 'Just Another Victim' (*Law Society Gazette* 6 April 2023).
- L.O'Driscoll, 'State Must Fund a Compensation Scheme for Victims of Violent Crime' (*Irish Examiner* 7 March 2022).

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Abbreviations

AFSJ	Area of Freedom, Security and Justice
FRA	European Union Agency for Fundamental Rights Agency
AGS	An Garda Síochána
APS	Advance Payment Scheme
CFR	Charter of Fundamental Rights of the European Union
CICA	Criminal Injuries Compensation Authority
CICS	Criminal Injuries Compensation Scheme
CICT	Criminal Injuries Compensation Tribunal
CJEU	Court of Justice of the European Union
CJIB	Central Judicial Collections Agency
COE	Council of Europe
DOJ	Department of Justice
DPP	Director of Public Prosecutions
DSGBV	Domestic, Sexual and Gender-based Violence
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EESC	European Economic and Social Committee
EU	European Union
FLO	Family Liaison Officer
GSOC	Garda Síochána Ombudsman Commission
LRC	Law Reform Commission
NAI	National Archives of Ireland
NIDOJ	Northern Ireland Department of Justice
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UN	United Nations

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Abstract

‘Trundled Along, Almost Unheard Of, Almost Inaccessible’: Understanding Access to State Compensation for Victims of Violent Crime in Ireland and the European Union

Liam O’Driscoll

This thesis employs a socio-legal approach to examine the provision of state compensation for victims of violent crime in Ireland, which is provided through the Criminal Injuries Compensation Tribunal (CICT). In bringing together legal and empirical considerations on the issue of state compensation, including perspectives gathered in 21 interviews with victims of violent crime, legal and victim support practitioners and former CICT decision-makers, I find that victims of violent crime face significant barriers and experience considerable re-traumatisation in attempting to access state compensation in Ireland. I also find, however, that advances in European Union (EU) law on victims’ rights, especially the newly developed EU right to state compensation has led to considerable improvements in decision-making at the CICT. In this manner, state compensation is shifting from a social solidarity approach to a rights-based conception of victimisation. Despite this important shift, I argue that several of the underlying challenges in relation to state compensation are likely to remain. These problems include restrictions on the type and amount of compensation available and the presence of eligibility and procedural criteria which fail to take account of the social construction of victimhood, the consequences of criminal victimisation and the need to protect victims from secondary victimisation. Whilst this thesis finds that state compensation provides many practical and symbolic benefits to victims, additional political will and public resources are ultimately needed to bring about the fundamental change necessary to tackle these underlying challenges and provide effective state compensation to all victims of violent crime.

1 CHAPTER ONE: INTRODUCTION AND RESEARCH METHODOLOGY

1.1 Introduction

The victims' rights movement in Ireland has been a prominent voice in legal and policy debate under various guises, including the women's liberation movement, since at least the 1970s.¹ From the 1990s onwards, there has been extensive exposure of child sexual abuse and violence against women in institutional settings. These abuses and crimes have been the subject of widespread media reporting, along with numerous public inquiries and redress schemes.² As a result, the plight of victims has been part of the public consciousness in Ireland for many years, which has led to the development of a more trauma-informed and trauma-responsive approach to victims.³ Indeed, the re-emergence of the victim in the criminal justice system is a feature of most jurisdictions around the world and has received considerable international attention through the international legal order.⁴

The position of victims of crime in the Irish criminal justice system has received considerable legal and political attention in recent years. The Criminal Justice (Victims of Crime) Act 2017, which transposed Ireland's obligations under Directive 2012/29/EU (Victim Rights Directive),⁵ provided victims with rights to information and protection during the criminal process.⁶ The Criminal Law (Sexual Offences) Act 2017 provided for special measures for certain victims during the criminal trial,⁷ whilst the Domestic Violence Act 2018 reformed the legal process in relation to securing safety and barring orders.⁸ More recently, in June 2022, the Irish Government and the Department of Justice (DOJ) published its Third National Strategy on Domestic, Sexual and Gender-based Violence (DSGBV).⁹ Meanwhile, in January 2024, the Irish Government established Cuan (meaning safe haven, harbour or place of shelter), a state agency with specific responsibility for DSGBV services.¹⁰ There has also been the Criminal Law (Sexual Offences and Human Trafficking) Act 2024, which provides for certain measures in respect of human

¹ S.Kilcommans et al, *The Victim in the Irish Criminal Process* (MUP 2018) 33-38.

² S.Ring et al, *Child Sexual Abuse Reported by Adult Survivors: Legal Responses in England and Wales, Ireland, and Australia* (Routledge 2022) 19-26; J.Gallen, *Transitional Justice and the Historical Abuses of Church and State* (CUP 2023).

³ Ring et al (n 2).

⁴ J.Doak, *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties* (Hart 2008) 28-33.

⁵ Directive 2012/29/EU OJNoL315.14.11.2012,p57.

⁶ Criminal Justice (Victims of Crime) Act 2017.

⁷ Criminal Law (Sexual Offences) Act 2017.

⁸ Domestic Violence Act 2018. See also Harassment, Harmful Communications and Related Offences Act 2020, Criminal Justice (Hate Offences) Act 2024.

⁹ DOJ, *Third National Strategy on Domestic, Sexual and Gender-based Violence* (2022).

¹⁰ Domestic, Sexual and Gender-based Violence Agency Act 2023.

trafficking and sexual violence victims in the criminal process.¹¹ Additionally, in the 2025 Programme for Government, there are a number of legislative proposals to further improve victims' rights including a proposal to remove guardianship rights of parents convicted of murdering the other parent, along with a law to establish a register of domestic violence offenders.¹² These legislative developments in the fields of information provision, participation in the criminal trial and victims' services have coincided with considerable changes in societal attitudes concerning victims of crime, especially victims of DSGBV.

In an Irish context, one area which has been a constant feature of the victims' rights landscape, but which has not been a well-known or high profile element, is state compensation for criminal injuries. In Ireland, state compensation is provided through the Criminal Injuries Compensation Scheme (CICS) which is administered by the Criminal Injuries Compensation Tribunal (CICT).¹³ This is a non-statutory tribunal and operates within the DOJ. Established in 1974, the CICS has been amended three times in its history, in 1986 to remove compensation in respect of non-material damages,¹⁴ in 2021 to expand the number of decision-makers and to remove the rule prohibiting compensation in domestic violence cases,¹⁵ and finally in 2024, to provide for a temporarily extended time limit which was applicable to a certain category of violent crime victim.¹⁶ Whilst there has been an awareness of problems at the CICT for some time, including in relation to the issue of delayed decision-making and complicated eligibility and procedural requirements,¹⁷ there has been a considerable lack of interest in the operation of the CICS since its establishment.¹⁸ This is despite the adoption of a European Union (EU) directive on state compensation in 2004, Directive 2004/80/EC (Compensation Directive).¹⁹ In recent years, however, the Law Reform Commission (LRC) and the DOJ have committed to review the CICS and bring forward proposals for reform.²⁰ Additionally, in light of a significant ruling from the Court of Justice of the European Union (CJEU) in 2020, which stipulated that all victims of violent crime in the EU are entitled to state compensation,²¹ there has been several judicial reviews taken against the CICT in the Irish Superior Courts in recent years.

¹¹ Criminal Law (Sexual Offences and Human Trafficking) Act 2024.

¹² Irish Government, *Programme for Government: Securing Ireland's Future* (2025) 120.

¹³ See Appendix A for a full copy of the CICS.

¹⁴ NAI2015/88/612.

¹⁵ DOJ, 'Minister McEntee Announces Reforms to the Criminal Injuries Compensation Scheme' (20 April 2021).

¹⁶ 'Criminal Injuries Compensation Scheme to Temporarily Allow Very Late Applications' (*Irish Legal News* 1 February 2024).

¹⁷ LRC, *Compensating Victims of Crime* (CP67-2022).

¹⁸ *ibid.*

¹⁹ Directive 2004/80/EC OJNoL261.6.8.2004.p15.

²⁰ LRC (n 17); DOJ, *Report of the Working Group to Examine Matters Relating to the Criminal Injuries Compensation Scheme* (2020).

²¹ C-129/19 BV ECLI:EU:C220:566.

In the context of this renewed interest in the CICS, this thesis examines the provision of state compensation in Ireland and the EU using a socio-legal approach. Various legal materials, including the CICS itself; Irish, EU and comparative caselaw; 685 written CICT decisions, which have been publicly available on the CICT's website since 2021; material from the National Archives of Ireland (NAI); along with various other legal and policy materials, were analysed. Additionally, 21 semi-structured qualitative interviews were conducted with various individuals who have experience of the CICT process. These individuals include applicants to the CICT, lawyers, victim support workers and former CICT decision-makers. This research brings together these legal materials and empirical perspectives and situates them within a victimological framework. Such a framework incorporates insights on the meaning of money justice,²² the social construction of victimhood,²³ the consequences of criminal victimisation,²⁴ and the prevention of secondary victimisation by stakeholders within the criminal justice system.²⁵

This research makes several important and novel findings. I find that victims of violent crime face significant barriers and experience considerable re-traumatisation in attempting to access state compensation in Ireland. I also find, however, that advances in EU law on victims' rights, especially the newly developed right to state compensation, as set down by the CJEU,²⁶ has led to considerable improvements in decision-making at the CICT. In this manner, state compensation is shifting from a social solidarity approach to a rights-based conception of victimisation. Despite this important shift, which should not be understated, I argue that a rights-based reframing of victimisation is unlikely to be the antidote to several underlying problems associated with state compensation schemes. These problems include restrictions on the type and amount of compensation available and the presence of eligibility and procedural criteria which fail to take account of the social construction of victimhood, the consequences of criminal victimisation and the need to protect victims from secondary victimisation. In order to solve these issues, commitments beyond legislative reform are necessary. This research finds that state compensation provides many practical and symbolic benefits to victims and in some respects, the CICT has already committed to ensuring that these benefits are delivered to victims in an optimum manner. However, additional political will and public resources are ultimately needed

²² R.Holder & K.Daly, 'Recognition, Reconnection, and Renewal: The Meaning of Money to Sexual Assault Survivors' (2018) 24(1) International Review of Victimology 25; K.Daly & J.Davis, 'Money Justice' (2021) 54(1) Journal of Criminology 60.

²³ M.Hall, *Victims of Crime: Construction, Governance and Policy* (Palgrave 2017).

²⁴ J.Turanovic & T.Pratt, *Thinking about Victimisation: Context and Consequences* (Routledge 2024).

²⁵ J.Mulder, *Compensation: The Victim's Perspective* (Wolf Legal 2013); M.Kunst et al, 'Performance Evaluations and Victim Satisfaction With State Compensation for Violent Crime: A Prospective Study' (2017) 32(19) Journal of Interpersonal Violence 3027.

²⁶ *BV*(n 21).

to bring about the fundamental change necessary to tackle the underlying challenges and provide meaningful state compensation to all victims of violent crime.

This chapter seeks to introduce the parameters of this thesis. Section 1.2 clarifies the aims, scope, structure and limitations of this research. Section 1.3 situates the issue of state compensation within socio-legal research and victimology and sets out a theoretical, ontological and epistemological framework for this research. Section 1.4 sets out and justifies the methods utilised and the various ethical considerations. Section 1.5 then outlines the approach to data analysis employed.

1.2 Research Question, Structure and Limitations

This section examines the research scope of this thesis, including the research questions, structure of the thesis and limitations. The research purpose of this thesis focuses on improving substantive and procedural access to state compensation for victims of violent crime by clarifying the scope of the right to state compensation in Irish and EU law and understanding the perspectives of those individuals who have experience of the CICT process, including victims of violent crime, legal and victim support practitioners and former CICT decision-makers. This thesis reflects on the nature of violent criminal victimisation and the scope of appropriate state action in response to such victimisation. It reflects on the nature of victims' rights more broadly and the place of victims in the criminal justice system. Furthermore, it explores the role of EU law in Ireland and examines the ability of EU law to positively impact the practical realisation of victims' rights.

1.2.1 Research Question

The key research question of this thesis is:

In light of legal developments at EU level, along with the perspectives of individuals with experience of the CICT process, how can access to state compensation for victims of violent crime in Ireland be improved?

This research question involves a number of sub-research questions including:

1. What is the current legal framework for state compensation in Ireland and the EU?
2. Why should state compensation be available to victims of violent crime?
3. What barriers exist which prevent access to state compensation for victims of violent crime?

The research question has a number of components, each of which lends itself to different methodological approaches including doctrinal and empirical legal research. The research question, therefore, attempts to understand several things including legal frameworks, i.e., the CICT, EU law etc., perspectives and experiences of these frameworks and normative considerations about what these frameworks can and should do. In this manner, this research question is appropriate for this thesis which involves a thematic analysis of semi-structured qualitative interview data, which gathers perspectives and experiences of the CICT process, and is complimented by doctrinal legal analysis and lessons from the field of victimology.²⁷

The research question has evolved and developed over the course of this research.²⁸ Initially, the research question focused on theoretical and doctrinal considerations involving the nature of the right to state compensation for victims. This element of the research question involved doctrinal analysis of the CICS itself, CICT decisions, caselaw and other legal materials, including EU legislation and caselaw. Whilst there was anecdotal evidence of problems in the CICS, and these legal materials did demonstrate failings, to date there has been no empirical research on the scope of state compensation in Ireland. In this light, and after examining empirical literature emanating from other jurisdictions, including the United Kingdom (UK),²⁹ the Netherlands,³⁰ and Australia,³¹ I decided that the research question needed to be altered to include lived experiences of the CICT process, including from applicants, practitioners and decision-makers. Once the semi-structured qualitative interviews were conducted and data analysis completed, the research question further developed to capture the scope and nature of the constructed themes. This reflects my overall reflexive approach to thematic analysis which ‘involves a “dialogue” between the interpretation of the patterned meaning [in the data] and the research question.’³²

1.2.2 Research Structure

This research takes the following structure. The present chapter, Chapter One, introduces the research issues and the methodologies employed. Chapters Two and Three set out the desk-based research conducted as part of this thesis, including doctrinal analysis of the current legal framework in Ireland and the EU. Chapter Two provides further context on the historical

²⁷ V.Braun & V.Clarke, ‘Conceptual and Design Thinking for Thematic Analysis’ (2022) 9(1) Qualitative Psychology 3,10-12.

²⁸ *ibid.*

²⁹ O.Smith & J.Galey, ‘Supporting Rape Survivors Through the Criminal Injuries Compensation Scheme: An Exploration of English and Welsh Independent Sexual Violence Advisors’ Experiences’ (2018) 24(9) Violence Against Women 1091; O.Smith et al, ‘State Compensation as Rape Justice: Are Public Attitudes a Legitimate Foundation for Reform of the UK’s Criminal Injuries Compensation Scheme?’ (2022) 6(1) Journal of Gender-Based Violence 79.

³⁰ Mulder (n 25); Kunst et al (n 25).

³¹ Holder & Daly (n 22); Daly & Davis (n 22).

³² Braun & Clarke (n 27) 12.

development of state compensation schemes comparatively and at the Irish level. This chapter details the early justifications for such schemes and the manner in which the schemes developed in the context of broader victims' rights considerations. This chapter also utilises archival research methods which I undertook in the NAI. The establishment and development of the CICS in Ireland is examined alongside a brief consideration of the victim's place in the Irish criminal justice system. Chapter Three then outlines the development of EU law in relation to victims' rights and state compensation. It tracks the development of criminal justice competencies at the EU level and considers how EU law shapes domestic provision for state compensation in Ireland. Recent law reform processes in Ireland, conducted in the context of these EU law developments, are considered, along with three judgments from the Irish Superior Courts which have been greatly influenced by EU law.³³

Chapters Four to Seven then outline the empirical findings of this research along thematic lines which I constructed. These chapters combine results, findings and analysis of the data gathered in the interviews, along with consideration of legal and victimological insights. Chapter Four considers the aims of state compensation including that it provides practical benefits, acknowledgement, 'solace' and agency to victims. The manner in which these aims are restricted in an Irish context is considered. Chapter Five then explores the social construction of victimhood and how the CICS does not take account of this social construction. This is because of the presence of a number of eligibility criteria which restrict access to compensation on the basis of a victim's conduct before, during or after the victimising event. In this chapter, the Irish High Court judgment in *Cunningham v CICT*, which upheld the validity of some of these criteria, is analysed in detail.³⁴ Chapter Six then analyses the extent to which the CICS takes account of the consequences of criminal victimisation. It examines the time limit, the reasonable assistance rule and the absence of legal assistance and victim support. Chapter Seven then considers procedural justice at the CICT and the manner in which the CICT has caused secondary victimisation to victims through its decision-making process. Furthermore, this chapter highlights how the CICT has improved its processes in recent years. Chapter Eight then provides an overall conclusion to the thesis, sets out priorities for law reform and identifies issues which warrant further research.

1.2.3 Research Limitations

In reflecting on the scope of this thesis, a number of limitations and points of clarification are necessary to set out. First, the CICS itself and state compensation schemes in other jurisdictions encompass a broad definition of violent crime victim. According to paragraph 1 of the CICS,

³³ *Doyle v CICT* [2020] IECA 342; *Bowes v CICT* [2022] IEHC 703; *Blanco v CICT* [2024] IEHC 171.

³⁴ *Cunningham v CICT* [2024] IEHC 143.

applicants must have received a personal injury directly attributable to a crime of violence.³⁵ The definition of a personal injury directly attributable to a crime of violence is quite broad and includes victims of sexual and non-sexual violence.³⁶ Furthermore, paragraphs 3 and 4 set out the categories of individuals who can apply for compensation.³⁷ This includes the person who sustained the injury, i.e., the direct victim, any person responsible for the maintenance for the victim who has incurred loss as a result of the victim's injuries, any dependent of the victim where the victim has died, i.e., indirect victims, and any individual injured whilst coming to the assistance of a member of An Garda Síochána (AGS) or injured whilst attempting to prevent a crime, along with other prescribed circumstances. As the CICS covers a broad range of criminal incidents, from street brawls to sexual violence to non-fatal and fatal crimes, this research, whilst recognising that victims of sexual violence and homicide require specialist support and provision in the criminal justice system, does not evaluate the CICS with reference to any particular type of violent crime victim. Where appropriate, attention is drawn to particular aspects of the CICS relevant to victims of sexual violence and homicide, but the thesis as a whole analyses the CICS with reference to the broad needs and interests of all victims of violent crime.

Somewhat separately, this thesis draws on lessons from a number of different scholars who have conducted research on state compensation schemes in the UK, the Netherlands and Australia. Often times, these scholars focus on the provision of state compensation for victims of sexual violence.³⁸ I am cognisant of the specialist focus of this literature and the potential pitfalls of applying this to my research on the CICS, which takes a more generalist approach to violence and victimisation. These pitfalls include this literature giving due regard to the unique trauma and broader consequences inflicted as a result of sexual violence. Despite this, I maintain that much of the lessons to be gathered from this literature, in relation to how to design a compensation scheme which meets the needs of victims of sexual violence, can be applied more broadly to all victims of violence. This approach is in keeping with the EU victims' rights architecture which has the Victims' Rights Directive, which applies to all victims of crime, at its centre and is complemented by sectorial legislation for specific categories of victims.³⁹ This sectorial legislation includes the Violence Against Women Directive and the Human Trafficking Directive.⁴⁰

³⁵ CICS [1].

³⁶ *Earls v CICT* [2022] IEHC 679 [15]-[20]; 53537/23.July.2023.

³⁷ CICS [3]- [4].

³⁸ Holder & Daly (n 22); Smith et al (n 29); Smith & Galey (n 29); H.Soleto Muñoz et al, 'Ineffectiveness of the Right to Compensation for Victims of Sexual Violence: A Comparison Between Five EU Member States' (2024) 4 International Criminology 93.

³⁹ European Commission, *EU Strategy on Victims' Rights* COM(2020)258.

⁴⁰ Directive 2024/1385 OJNoL1385.24.5.2024.p2/36; Directive 2024/1712 OJNoL1712.24.6.2024.p1/13.

Of course, a key limit of state compensation schemes is that they only apply to victims of violent crimes and not to other types of crimes such as property damage and theft. Whilst consideration ought to be given to this broader question in relation to other types of crime, this research focuses on violent crime due to the severity of the harms inflicted.

1.3 Theoretical Framework: Socio-Legal Research and Victimology

In bringing together the various legal materials and empirical perspectives gathered in the semi-structured qualitative interviews, this research takes a socio-legal approach to examining issues pertaining to state compensation for victims of violent crime. This socio-legal approach is underpinned by victimological research on the causes and consequences of criminal victimisation. This research, therefore, has a doctrinal legal approach as its starting point but this is complemented by empirical data gathered in the interviews which could not be gathered from the existing legal materials. In utilising these methods, this thesis presents important situated accounts of how state compensation operates in practice, whilst attempting to reveal an underlying truth about how the state does, can and must provide for victims' needs through state compensation. In this regard, the socio-legal methodology adopted in this research is informed by a particular critical and feminist legal approach to law and criminal justice, which sees engagement with the criminal law as 'a complex equation' which involves 'harness[ing] its transformative power, while resisting its capacity to distract and reinforce disadvantage' not just on the basis of gender,⁴¹ but also on the basis of class, race and other characteristics possessed by victims which make them less 'ideal' and less 'deserving' of victimhood status. In this section, I define the doctrinal and empirical elements. I then link these elements to the specific theoretical, ontological and epistemological positions of the thesis.

1.3.1 Defining the Doctrinal and Empirical Elements

Reliance is commonly placed on Hutchinson and Duncan's description of doctrinal research as a process involving the organisation and systematisation of legal materials in such a way as to make them as coherent and clear as possible.⁴² Doctrinal research understands the law's perspective to be internal, meaning it is 'autonomous [and] self-legitimising'.⁴³ In other words, the process of legal reasoning concerning particular questions or issues does not require non-legal solutions, reasons, justifications or considerations.⁴⁴ Overall, the aim of doctrinal research is to create an

⁴¹ C.McGlynn & K.Johnson, *Cyberflashing: Recognising Harms, Reforming Laws* (CUP 2022) 61-74.

⁴² T.Hutchinson & N.Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17 Deakin Law Review 83,101; R.Kennedy, 'Doctrinal Analysis: The Real "Law in Action"' in L.Cahillane & J.Schwepp (eds), *Legal Research Methods: Principles and Practicalities* (Clarus 2016) 23.

⁴³ Kennedy (n 42).

⁴⁴ S.Kilcommens, 'Doctrinal Legal Method (Black-Letterism): Assumptions, Commitments and Shortcomings' in Cahillane & Schwepp (n 42) 10.

‘over-arching theory of the law [...] that is consistent within itself, not one that is consistent with external values.’⁴⁵ On the other hand, according to O’Donovan, empirical legal scholars view the law, not ‘as an autonomous force to which society is subjected’, but rather something that ‘is shaped by broader social, political and economic logics, contexts and relations.’⁴⁶ The core consideration, for O’Donovan, on whether a scholar is engaging in empirical research is if they are criticising the law, not purely on doctrinal considerations such as ‘clarity, internal logic and consistency’, but rather on the effects of the law on society.⁴⁷

The aim of the initial comprehensive doctrinal analysis of the relevant legal regime is to develop proposals for legal reform which make the law more logical, certain, fair and comparatively consistent. According to Kennedy, if a doctrinal analysis cannot bring about this result in a particular piece of research, then the researcher ought to question whether the analysis was adequate. If the analysis was adequate, then the researcher ought to consider ‘whether some perspective external to the law ... would be useful in explaining the lack of coherence or consistency.’⁴⁸ This external perspective can act as a mechanism in which to assess the adequacy of the legal position once the law has been set out comprehensively.⁴⁹ In deciding whether to adopt an extra-legal methodology, O’Donovan requests that the researcher identify what yardstick they are using to criticise the law. ‘[A]re they relying upon purely doctrinal values such as clarity, internal logic and consistency? Or is the focus upon policy, namely the effects which law has on society?’⁵⁰ O’Donovan advises that researchers should ask themselves a number of questions in deciding whether to conduct empirical research. First, in calling for law reform, they should ask what they want the law to achieve and if they are asking the law to do too much. Furthermore, they should ask ‘[d]o legal interventions need to be supported by or to support a process of broader social change’ and ‘[a]re there other policy innovations necessary to support [the] reform?’⁵¹ Whilst O’Donovan encourages researchers to ask these various questions, he also warns that researchers must clearly define and explore the ‘legal’ element of the project and how this interacts with the non-legal. According to O’Donovan, the aim of this is to ‘marry them with an awareness of the danger of fostering intellectual silos.’⁵²

⁴⁵ Kennedy (n 42) 30.

⁴⁶ D.O’Donovan, ‘Socio-Legal Methodology: Conceptual Underpinnings, Justifications and Practical Pitfalls’ in Cahillane & Schweppe (n 42) 109.

⁴⁷ *ibid* 111.

⁴⁸ Kennedy (n 42) 34.

⁴⁹ *ibid* 35.

⁵⁰ O’Donovan (n 46) 111.

⁵¹ *ibid*.

⁵² *ibid* 129.

In applying this approach to my research, it should be emphasised that the doctrinal elements to this research identify some of the issues pertaining to state compensation, but do not identify all the problems and indeed do not fully explain why these challenges exist and how they can be overcome. Empirical methods are employed to further investigate the nature of the difficulties experienced by victims and stakeholders in relation to state compensation in Ireland. The socio-legal approach adopted in this research, with a doctrinal element as a starting point which clearly defines the legal dimensions to the issues and which is complemented by empirical approaches, utilises lessons from the field of victimology as a yardstick in which to determine the effects law has on society and whether broader social or policy changes are needed to bring about effective reform of the state compensation framework. These lessons include conceptions of ‘money justice’ which seek to understand the aims of monetary compensation in relation to the broader needs of victims in the aftermath of violent victimisation.⁵³ Additionally, the field of victimology provides lessons on the distinctions between ‘ideal’ and ‘non-ideal’ victims and the factors which result in victims gaining, losing and retaining the status of victimhood. Whilst there is a legal definition of a victim of crime under the Criminal Justice (Victims of Crime) Act 2017, victimhood is not a static concept, is socially constructed and changes depending on societal perceptions of different types of victim behaviour or characteristics. My research specifically utilises victim-blaming theories which seek to examine a victim’s behaviour and characteristics as key indicators of whether victimhood status is obtained, and therefore, whether state compensation is awarded.⁵⁴ Furthermore, this research applies Hall’s conception of victim capital to state compensation which demonstrates that victimhood status can be gained, lost and retained depending on differing levels of economic, social and cultural capital possessed by victims.⁵⁵ Victimology has also developed considerable scholarship in relation to the consequences of criminal victimisation and how these consequences are not taken into consideration by the criminal justice system.⁵⁶ This research examines these consequences as a means to evaluate state compensation frameworks. Finally, this research also looks to theories of procedural justice as a means to prevent secondary victimisation in the criminal justice system.⁵⁷

1.3.2 Ontology and Socio-legal Research

Ontologically, i.e., examining what is the nature of reality or being,⁵⁸ a socio-legal approach, underpinned by the field of victimology, is appropriate when researching criminal victimisation and state compensation. As outlined above, socio-legal research seeks to examine the relationship

⁵³ Holder & Daly (n 22); Daly & Davis (n 22).

⁵⁴ N. Christie, ‘The Ideal Victim’ in E. Fattah (ed), *From Crime Policy to Victim Policy* (Palgrave 1986).

⁵⁵ Hall (n 23).

⁵⁶ Turanovic & Pratt (n 24)

⁵⁷ Mulder (n 25); Kunst et al (n 25).

⁵⁸ V. Braun & V. Clarke, *Thematic Analysis: A Practical Guide* (Sage 2022) 166.

between law and society. In this research, the primary legal sources are the CICS itself, Irish caselaw, CICT decisions and relevant EU law provisions and caselaw. The societal dimensions relevant to the research include the needs and interests of victims of violent crime, along with the other stakeholders in the criminal justice system including offenders, lawyers, judges, lawmakers, victim support workers and the general public who are after all potential future victims. The field of victimology establishes that victims possess different needs and interests at different times and different victims react and cope differently with similar victimising events, depending of course also on the nature of the event itself, the specific crime and its severity.⁵⁹ Additionally, the field of victimology shows that victimhood is a status that is socially constructed depending on economic, social and cultural attitudes.⁶⁰ Furthermore, victimology highlights that procedural justice can work to prevent secondary victimisation in the criminal justice system.⁶¹ Taking these lessons together, and in deciding to conduct semi-structured qualitative interviewees with victims, practitioners and decision-makers, a socio-legal approach is appropriate as my ontological position falls somewhere between a realist approach and a relativist approach. A purely realist approach is rejected in that a singular and objectively true account of how state compensation frameworks operate is not possible.⁶² Equally, a purely relativist approach, where objective knowledge is not possible to obtain, is rejected in that I believe there has to be law and a legal system to find solutions to particular societal issues.⁶³ In relation to state compensation, if it is decided that such a system should operate, a particular framework must be established and can be designed in an optimum manner to meet the needs of victims.

A critical realist approach, which combines ontological realism and epistemological relativism and constructionism,⁶⁴ which is explained further below, is perhaps the more appropriate approach to the issue of access to state compensation for victim of violent crime. In this context, ‘situated, interpreted realities, not simple, decontextualised truths’ are a key element to this research in that in interviewing CICT applicants, it is clear that a multitude of conflicting perspectives exist on the various issues concerning state compensation.⁶⁵ When practitioners and former CICT decision-makers are added, further differences are present, each of which is shaped by the individual lived experiences of each research participant. Indeed, the data and its interpretation, which itself goes beyond merely the interviews and includes the various other legal, policy and archival material gathered in this research, are also influenced by me as the

⁵⁹ S.Green & A.Pemberton, ‘The Impact of Crime: Victimation, Harm and Resilience’ in S.Walklate, *Handbook of Victims and Victimology* (Routledge 2018) 78.

⁶⁰ Hall (n 23) 245.

⁶¹ Mulder (n 25); Kunst et al (n 25).

⁶² Braun & Clarke (n 58) 168-169.

⁶³ *ibid* 173-175.

⁶⁴ *ibid* 169.

⁶⁵ *ibid* 171.

researcher in that research participants are likely to have responded in particular ways depending on the my age, gender, ethnicity and communication style.⁶⁶ It can be said that socio-legal research presents particular ontological challenges in that a multitude of perspectives must be balanced and taken on board when making recommendations on how to improve the legal framework. This is a challenge which is often not addressed adequately in socio-legal research.⁶⁷ The assortment of realities gathered in this research are all valid truths about the reality of the state compensation system and each is expressed in a language unique to each participant depending on how they come to experience the CICT.⁶⁸ How these realities are reconciled within and through the law, which seeks to provide a single universal truth or framework about how state compensation operates, is a key question which is considered in this thesis.

1.3.3 Epistemology and Socio-legal Research

In researching state compensation for victims of violent crime, a socio-legal approach, involving the gathering of both legal materials and perspectives collected through semi-structured qualitative interviews, supported by victimological research, is also suitable epistemologically speaking, i.e., theorising what it is possible to know.⁶⁹ According to Braun and Clarke, a contextual epistemological approach, where knowledge is viewed as partial, incomplete, interpretative and provisional, ‘broadly maps’ onto an ontologically critical realist approach.⁷⁰ A contextualist approach has a concern for grounding data analysis in the subjective accounts of research participants, whilst also seeking the ‘truth’ within these accounts.⁷¹ Maxwell and Mittapalli argue that a constructionist approach is also appropriate for an ontologically critical realist outlook.⁷² There are many different types of constructionism but what each agree on is that ‘knowledge is situated and tied to human practices’.⁷³ All knowledge is socially constructed and realities are ‘made’, typically by those in positions of power.⁷⁴ Whilst a purely constructionist approach rejects contextualism’s position that situated and contextual knowledge can be anchored to a particular truth,⁷⁵ e.g., the law itself, a constructionist approach is still useful in the context

⁶⁶ K.Woodthorpe, ‘Sticking Your Head Above the Parapet: On the Importance of Researcher Resilience in Auto/biographical Writing’ in B.Clift et al (eds), *Qualitative Researcher Vulnerability: Negotiating, Experiencing and Embracing* (Routledge 2023) 127.

⁶⁷ D.Cowan & D.Wincott, ‘Exploring the “Legal”’ in D.Cowan & D.Wincott (eds), *Exploring the ‘Legal’ in Socio-Legal Studies* (Palgrave 2015) 16-17; A.Philippopoulos-Mihalopoulos, ‘Conclusion: A Socio-Legal Metatheory’ in Cowan & Wincott (n 67) 252.

⁶⁸ Braun & Clarke (n 58) 164.

⁶⁹ ibid 166.

⁷⁰ ibid 178-179.

⁷¹ ibid.

⁷² J.Maxwell & K.Mittapalli, ‘Realism as a Stance for Mixed Methods Research’ in A.Tashakkori & C.Teddlie (eds), *Sage Handbook of Mixed Methods in Social & Behavioral Research* (Sage 2010) 153.

⁷³ Braun & Clarke (n 58) 182.

⁷⁴ ibid 180.

⁷⁵ ibid 183.

of the socio-legal study of victims and their entitlements to state compensation. In this manner, the type of socio-legal research I conduct in this thesis fits an epistemological approach which sees law and the process of acquiring, retaining and losing victimhood status as socially constructed. At the same time, whilst recognising the potential for law to cause injustice, I believe in the power of law, independent from socially constructed human practices, to bring about positive change and meet the needs of victims.⁷⁶ In the context of state compensation for victims of violent crime, the law as is currently constituted, i.e., the CICS, as is demonstrated throughout this thesis, excludes victims on the basis of a particular social construction of victimhood. At the same time, the law, i.e., EU law provisions, is influencing the process of positive change. This thesis demonstrates an additional added layer in that legal change alone is not sufficient to tackle the various underlying challenges. Rather, the manner in which such legal change is supported by political will and resource allocation is vital.

1.4 Research Methods

With the broad theoretical framework, along with the ontological and epistemological positions, outlined, this section sets out the methods employed in this thesis to answer the research question. First, it is necessary to clarify the various legal materials gathered as part of this research. Then, details in relation to the semi-structured qualitative interviews are outlined.

1.4.1 Doctrinal Analysis of Legal and Associated Materials

There are several primary legal materials relevant to this thesis. Under national law, there is the CICS, which itself is a non-statutory instrument having merely an administrative status under the discretion of the Irish Government. It is the means by which Ireland has transposed the requirements of the Compensation Directive. Alongside the CICS, this thesis analyses 685 written CICT decisions which are publicly available on the CICT's website. Prior to the 2020 judgment of the Court of Appeal in *Doyle v CICT*, no such decisions were published.⁷⁷ Several of these CICT decisions date from between 2010 and 2021. Many of them, however, date from between 2021 and 2024 when significant changes were made to CICT practice and procedure. When these CICT decisions are discussed in this thesis, where relevant, I clarify if a particular change in practice and procedure may have impacted a particular CICT decision, which may explain inconsistencies when compared with other CICT decisions where similar circumstances exist. In most instances, however, it is not possible to definitely determine where amended practice and procedure impacted individual cases. I have, therefore, attempted to analyse these CICT decisions

⁷⁶ C.Smart, *Feminism and the Power of the Law* (Routledge 1989) 161-165; H.Douglas, 'Battered Women's Experiences of the Criminal Justice System: Decentring the Law' (2012) 20 Feminist Legal Studies 121,132; McGlynn & Johnson (n 41).

⁷⁷ *Doyle* (n 33).

in light of this challenge. Furthermore, it is important to clarify that these 685 CICT decisions do not reflect any published decisions after 17 May 2024. For data analysis reasons, a cut-off point had to be maintained. Throughout this thesis, these decisions are referenced in the following manner: [CICT Application Number]/[Day of Decision].[Month of Decision].[Year of Decision] for non-fatal decisions and F[CICT Application Number]/[Day of Decision].[Month of Decision].[Year of Decision].[Year of Decision] for fatal cases. In addition to these 685 decisions, there are several judgments from the Irish Superior Courts, three of which are most relevant: *Doyle*,⁷⁸ *Bowes*,⁷⁹ and *Blanco*.⁸⁰ Furthermore, there are several judgments from the CJEU, the most important of which is the *BV* judgment.⁸¹ Alongside these legal materials, there are other national and EU legal instruments relevant to this thesis including the Criminal Justice (Victims of Crime) Act 2017, the Victims' Rights Directive and other relevant provisions of Irish and EU law. Comparative legal materials emanating from the UK, the Netherlands and Australia were also utilised throughout this research.

Alongside these legal materials, collected via desk-based research, documentation pertaining to the establishment and early development of the CICS was gathered in the NAI. This involved me visiting the NAI on a number of occasions between 2022 and 2024. Searches of the NAI catalogue were conducted using four terms: 'Criminal Injuries Compensation Scheme', 'Criminal Injuries Compensation Tribunal', 'Criminal Injuries Compensation' and 'Criminal Injuries'. As a result, a number of Irish departmental files, including from the Department of the Taoiseach, the DOJ and the Attorney General's Office, were examined which assisted in understanding the origins of the CICS and the attitude of Irish Government ministers and officials at the time to the issues presented in relation to state compensation.⁸² Various other desk-based research endeavours gathered other historical and contemporary policy materials at Irish, EU and comparative levels, all of which contribute to understanding legal frameworks in respect of state compensation for victims of violent crime. A freedom of information request was also made to the DOJ in respect of the ongoing law reform process. From this, an important DOJ report was ascertained on an administrative basis in relation to the scope of future reform measures.⁸³ A research exchange at Vrije Universiteit Amsterdam from May to September 2023 also contributed to the me gathering and understanding legal and policy material emanating from the Netherlands, which greatly influenced elements of this thesis.

⁷⁸ *ibid.*

⁷⁹ *Bowes* (n 33).

⁸⁰ *Blanco* (n 33).

⁸¹ *BV* (n 21).

⁸² L.Cahillane, 'The Use of History in Law - Avoiding the Pitfalls' in Cahillane & Schweppe (n 42) 68.

⁸³ Working Group (n 20).

1.4.2 Qualitative Interviews

To date in Ireland there has been no detailed study where the perspectives of CICT applicants and other stakeholders who have experience of the CICT process have been considered.⁸⁴ In this light, as part of this thesis, semi-structured qualitative interviews were conducted with five applicants to the CICT (A1, A2, A3, A4, A5), 13 individuals who assist victims in the CICT claims process - including six solicitors (S1, S2, S3, S4, S5, S6), four barristers (B1, B2, B3, B4) and three individuals working or volunteering in the victim support sector (VSW1, VSW2, VSW3) - and three former CICT members (independent decision-makers in the CICT) (FTM1, FTM2, FTM3). Participants are referred to by their respective Participant Group, followed by a number to denote order. A = CICT applicant, S = solicitor, B = barrister, VSW = victim support worker or volunteer and FTM = former CICT member. In certain instances, in order to further ensure that participant anonymity was protected, I do not mention the number of the participant but rather just the Participant Group associated with a particular quote. Overall, 21 individuals participated in this research. This section sets out the participant profiles of each of these individuals, approaches to recruitment, research ethics and details about the interviews themselves and the questions asked.

1.4.2.1 Participant Profiles

There are broadly three categories of research participant in this thesis. First, there is Participant Group 1 which consists of victims of violent crime who have submitted applications to the CICT. Second, there is Participant Group 2 which consists of persons who have assisted victims of violent crime in submitting applications to the CICT. Third, there is Participant Group 3 which consists of former members of the CICT who act as decision-makers in individual applications.

In relation to Participant Group 1, the CICT applicants recruited as part of this thesis include both direct and indirect victims of violent crime. In total, five individuals were recruited in this category. Two of these individuals were direct victims of violent crime and three were family members of an individual fatally injured as a result of violent crime. Braun and Clarke highlight the importance of securing a diversity of perspectives in relation to sample size and type.⁸⁵ Research participants in this category had a variety of positive and negative experiences of the CICT process. They varied in terms of the time period when they went through the CICT process, some before the significant changes to processes and procedures in 2021 and some after this time period. Additionally, they varied in terms of broader experience of the criminal justice system,

⁸⁴ State compensation did arise, but only to a limited extent, in S.Kilcommens et al, *The Needs and Concerns of Victims of Crime in Ireland* (Commission for the Support of Victims of Crime and University College Cork 2010) 160-164. For an empirical study involving professional perspectives, see also V.Carroll, 'At the End of the Day, a Victim is a Victim: A Critical Analysis of the Irish State Compensation Scheme' (MA, Dublin Institute of Technology 2021).

⁸⁵ V.Braun & V.Clarke, *Successful Qualitative Research: A Practical Guide for Beginners* (Sage 2013) 56.

some going through the criminal process whilst others did not due to the absence of evidence or the identification of an offender. They also varied in terms of injuries inflicted and losses suffered, some receiving significant and life-altering physical and non-physical injuries, whilst others experienced small financial losses but major psychological trauma.

On Participant Group 2, this group consists of 13 individuals who assist or represent applicants in submitting and processing their claims before the CICT. Within this group, this assistance or representation varies from individuals who have actively represented victims before the CICT and have detailed knowledge of CICT practices and procedures, including several of the solicitors and barristers and one of the victim support representatives who took part in the research, to individuals who advise or help CICT applicants on an intermittent basis and in relation to specific parts of the CICT process (e.g. in relation to informing victims about the CICS, filling in the application form, how to gather documentation, and appeal hearings), including some of the solicitors, several of the barristers and the remaining victim support representatives. Overall, there are six solicitors, four barristers and three victim support representatives. Participant Group Three then consists of three former members of the CICT, each with varying years of experience on the CICT.

1.4.2.2 Participant Recruitment

Non-probability sampling was used via the snowballing method.⁸⁶ In relation to Participant Group 1, it was important to distinguish between two potential sub-groups, namely, victims of violent crime and the family members of fatally injured victims. These two sub-groups can each apply to the CICT for compensation. It was anticipated that recruitment would be difficult due to the small number of CICT applicants in comparison to the wider population of crime victims. Originally, I aimed to recruit 10 participants in this category. However, due to there being no public record of CICT applicants and with there being only approximately 200-300 CICT decisions per year, recruitment proved quite difficult.⁸⁷ This is especially the case as victims might be reluctant to discuss their experience once they have completed the process. A further challenge was that I only recruited CICT applicants who had completed the CICT process and received a decision in relation to their application. CICT applicants who are currently involved in the CICT process did contact me about taking part in the research but I decided, in conjunction with my supervisor, that it was better to only recruit people who had completed the CICT process. This was so that there was no risk that my research would prejudice their CICT applications in any way. Equally, it was necessary so that perspectives gathered about the CICT process included

⁸⁶ *ibid* 55-57.

⁸⁷ CICT, *Annual Report* (2023) 18-19.

applicants' entire experience of the CICT from start to finish. Additionally, whilst occasionally CICT applicants may be represented by a lawyer in the process or may have access to support from a victim support professional or volunteer, especially if it is a complex claim, the nature of the CICT process is that victims generally apply to the CICT without any legal assistance or victim support. Overall, recruitment presents particular challenges as CICT applicants are incredibly difficult to reach as they fall outside the networks and social media reach of academia and legal practice. As a result of promoting my research on social media, including my call for research participants, along with contacting all the victim support organisations listed in the Victims' Charter,⁸⁸ and asking them to distribute my call for research participants to their network of CICT applicants, expressions of interest were received via email from CICT applicants. Notwithstanding the difficulties in relation to recruitment, securing five CICT applicants adds considerably to this thesis.

In contacting these victim support organisations, I also asked their representatives whether they themselves had any experience in assisting victims of crime specifically in relation to claims before the CICT. In some instances, these representatives did have this experience and agreed to take part in the research. In other instances, these representatives put me in contact with other individuals. In this way, I could recruit participants for Participant Group 2. In addition to contacting victim support organisations, I also contacted solicitors and barristers in my existing network and asked them to participate if they had the necessary experience or asked them to put me in contact with suitable colleagues. My supervisor also distributed a call for research through her network of legal professionals. Originally, I planned to recruit 10 research participants in this participant group, so securing 13 in total provided a very good sample. Recruitment was easier in this category as these participants discussed their experience of the CICT process as professionals.

Contact with former CICT members, in respect of Participant Group 3, was also made through existing academic and legal practitioner networks. Up until April 2021, when the CICS was amended to allow for 14 members to be appointed,⁸⁹ there were only seven members of the CICT, with regular vacancies arising, which were not filled. The population of former CICT members is, therefore, quite small. Because of this reason, I aimed to interview at least 5 individuals in this participant group. According to the CICS, members must be practicing solicitors or barristers.⁹⁰ Therefore, the individuals interviewed in this category were practicing solicitors or barristers at the time of their appointment to the CICT. At the time of interview, however, they were no longer CICT members. It should be noted that I had hoped to interview current CICT members but after

⁸⁸ Irish Government, *Victims Charter* (2020).

⁸⁹ DOJ (n 15).

⁹⁰ CICS [16].

writing to the CICT chairperson, I was informed of the chair's view that this would not be appropriate as that, whilst CICT members are independent in their decision-making in relation to individual CICT applications, it was the DOJ who administered the CICS.

It should also be acknowledged that some of the individuals recruited for this research had particularly bad experiences of the CICT process. Despite this, I am confident that the interview data as a whole is sufficiently rich in that whilst some individuals had very poor and re-traumatising experiences, others had better experiences.⁹¹ Whilst recognising that the nature of qualitative research and the type of reflexive thematic analysis employed in this research does not require a strict sampling and quota requirement,⁹² I hope that by recruiting five CICT applicants and three former CICT members, in addition to the 13 legal and victim support practitioners, an appropriately balanced sample was secured.

1.4.2.3 Research Ethics

Ethical approval was obtained in respect of these qualitative interviews in advance from Dublin City University's (DCU) Research Ethics Committee (REC).⁹³ The application was submitted to REC in February 2023 and approval was granted in April 2023. In preparing for this approval and throughout conducting the semi-structured qualitative interviews, I was acutely aware of the research ethics challenges present in this research, particularly in relation to potential risks to participants, especially the CICT applicants, and indeed to me as the researcher. Individuals in Participant Group 1 are potentially vulnerable from a research ethics standpoint. As victims of violent crime, these participants have survived a highly traumatising and violent criminal event. As family members of violent crime victims, these individuals have experienced the aftermath of a violent fatal crime and the grief of losing a family member because of a violent crime. The harmful psychological, emotional, physical and economic consequences of violent crime on victims and their families has been extensively discussed in the relevant literature.⁹⁴ Victims of violent crime and families are therefore vulnerable persons and in participating in this research, there is a risk of secondary victimisation as participants discuss their victimisation experience. Despite this, it was necessary to conduct the research with this participant group. It is necessary to comprehensively study the problems experienced by victims under the current legal regime. As applicants to the CICT often lack support in submitting their applications to the CICT and are regularly left to interact with the CICT on their own, it is necessary to directly seek their opinions and attitudes as to the specific problems which the CICT are experiencing.

⁹¹ Braun & Clarke (n 58) 28.

⁹² Braun & Clarke (n 85) 55-57.

⁹³ See Appendix B.

⁹⁴ L. Wolhuter et al, *Victimology, Victimisation and Victims' Rights* (Routledge 2009) 44-47.

Whilst recognising that all research participants may become distressed because of discussing these issues in the context of a research interview, due to victims of violent crime being a vulnerable participant group and the risks which this research could potentially pose to participants because of their vulnerability, I sought full committee review for this research.⁹⁵ Full committee review was necessary as this research involves the use of qualitative methods to investigate a highly sensitive topic, namely, the lived experiences of violent crime victims with the CICT. Such interviews involved asking questions and receiving answers of a highly personal nature including in relation to the trauma suffered by victims and family members because of a violent crime and because of their interactions with the criminal justice system generally. It is recognised that such research involves a risk of harm for participants as discussing such details can be re-traumatising. In addition to this reason for full committee review, such high-level review is necessary as this research exposes participants in this participant group to risks which are higher than in everyday life. Whilst victims of violent crime and their families face adversity in everyday life in terms of dealing with their victimisations, victims are not asked about their victimisations and their experiences of the criminal justice system on an everyday basis. The risk, in this regard, is heightened as the interview questions not merely focused on victims' experiences with the CICT but also focused on the actual victimising event. This is because the CICT decides claims for compensation in respect of personal injuries sustained during violent criminal offences. In questioning victims on their experiences of this process, the circumstances in relation to how these injuries were sustained inevitably arose.

The consequences for victims in discussing these matters is also relevant. Consequences include social consequences, namely, if victims are re-traumatised because of discussing matters in the context of this research, then the consequential upset and distress can have an impact on their social and family lives.⁹⁶ Additionally, there might be legal consequences if the CICT process is ongoing. For this reason, only participants where CICT proceedings have ended were included in the research. Finally, full committee review was required as participants might have identified and discussed prior criminal and illegal activities which they may have been involved in. In relation to participants in Participant Groups 2 and 3, if recruitment was limited to these individuals, I would have sought expedited review or review at faculty level as interviewing professionals in their professional capacity regarding their professional activities is a lower-risk research project.⁹⁷ As both professionals working in the victim support sector and as legal

⁹⁵ Dublin City University, *Research Ethics* <<https://www.dcu.ie/researchsupport/research-ethics#tab-198261-3>> accessed 22 March 2025.

⁹⁶ J.Shapland et al, *Victims in the Criminal Justice System* (Gower 1985) 106; M.Iliasdis, *Adversarial Justice, and Victims' Rights: Reconceptualising the Role of Sexual Assault Victims* (Routledge 2020) 19.

⁹⁷ DCU *Research Ethics* (n 95).

professionals, these participants are well-aware of the need to discuss their work in a sensitive manner where the confidentiality of their clients is protected, and discussion of their work is limited to their own professional viewpoints and perspectives.

Apart from risks to the research participants, there is a risk of vicarious trauma in the context of this research.⁹⁸ As the researcher, in interviewing victims of violent crime, I have exposed myself to the pain and suffering experienced by victims in the context of their initial victimisations and in relation to their potentially negative experiences of the criminal justice system. Exposing myself to the trauma of others in this way potentially impacted my well-being.⁹⁹ In order to counteract this risk, I undertook training in trauma informed and responsive interview techniques, and mental health first aid, which included modules on how I as the researcher can protect myself. Additionally, talk therapy and self-care strategies, including approaching my work practice in a structured manner with regular breaks, exercise and social interaction, were utilised at different periods to ensure that I was safeguarding my own well-being.¹⁰⁰ Despite having no children or additional caring responsibilities beyond typical family relationships or friendships, and despite receiving comprehensive funding to conduct this research, I found prioritising self-care and well-being difficult, especially in the context of being an early career researcher, balancing research tasks with teaching responsibilities. In this regard, support received from my family, friends and supervisor were essential in addressing these concerns.

A number of other important research ethics issues are relevant including consent, ensuring the anonymisation of interview data and the secure storage of interview data. In relation to consent, consent forms were sent to participants prior to the scheduled interviews via Google Forms and participants were given an opportunity to ask questions prior to the interview via email or prior to the commencement of the interview.¹⁰¹ In my introductory email, participants were also provided with the relevant plain language statement. There were three plain language statements, one for each participant group.¹⁰² Importantly, I offered to telephone all research participants prior to the interview to discuss with them the various aspects of the consent form and plain language statement. Such a call took place with most interviewees. Prior to commencing the interview, I confirmed with them that they understood the information in the plain language statement and the consent form and that they were happy to continue with the interview. In the plain language

⁹⁸ K.McLachlan, *Trauma-informed Criminal Justice: Towards a More Compassionate Criminal Justice System* (Palgrave 2024) 149-151.

⁹⁹ *ibid.*

¹⁰⁰ *ibid* 157-160.

¹⁰¹ See Appendix F.

¹⁰² See Appendices C-E.

statement for Participant Group 1, contact details for the Crime Victims Helpline were included so that participants could seek out supports after the interview if needed.

As well as ensuring full and proper consent, anonymisation of interview data and data storage were also important ethical concerns. Subject to disclosure requirements in relation to freedom of information, subpoena and reporting obligations, all set out to participants in the plain language statement and informed consent form, I took several steps to respect the anonymity of the participants. Recordings and signed consent forms were held and retained securely on the DCU Google Drive. Once anonymous interview transcripts were generated and initially reviewed, these audio recordings and consent forms were deleted. No personal data was, therefore, retained. Data cleaning of interview transcripts also took place, whereby I removed all names and identifiable details from the transcripts to ensure anonymity. I was fortunate to be in receipt of research expenses which allowed me to use a professional transcription service to type up the recordings. In this regard, a confidentiality agreement was signed.¹⁰³ There were specific challenges in anonymising data in relation to each of the different participant groups due to the small size of the samples, which is a consequence of the small size of the relevant populations. I took extra care to remove any detail, form of words or statement which might identify a participant when writing up the research findings. Additionally, I thematically analysed the data. This means that any reference to the data in the dissemination outputs does not include any participants' individual stories.¹⁰⁴

1.4.2.4 The Interviews

Interviews were conducted between September 2023 and September 2024. Most interviews took approximately one hour, with some lasting 30-40 minutes, whilst others lasted one hour and 30 minutes. I had planned to conclude interviews by May 2024, however, due to delays in finalising recruitment, I decided, in conjunction with my supervisor, that an extension of time was necessary to allow for further recruitment. A full calendar year also allowed for appropriate and ongoing reflexive analysis of progress in relation to data collection. This also allowed me to organise and schedule interviews across a substantive time period, which assisted in me taking regular breaks from the interview process. All interviews, apart from three, were conducted via Zoom. In some instances, the Zoom technology did not work so a telephone call was used. In recognising the benefits of in person interviews and acknowledging the need for further research on this issue, research has demonstrated the integrity of remote interviews.¹⁰⁵ Additionally, in reflecting on the

¹⁰³ See Appendix G.

¹⁰⁴ Braun & Clarke (n 85) 63.

¹⁰⁵ *ibid* 98; S.Ullman, 'Conducting Virtual Interviews With Sexual Assault Survivors and Their Informal Supports During COVID-19 and Beyond' (2024) 39(7-8) *Journal of Interpersonal Violence* 1398.

use of remote interviews in this research, interviewees could take part in the research in a physical space which best suited them. For Participant Group 1, this generally was in their own home, but this was typically also the case for practitioners whose working practices relied on home working.¹⁰⁶ I also found it suited me as the researcher in that research participants were geographically located across Ireland. Additionally, apart from solicitors and victim support representatives, research participants generally did not have access to their own workspace or office which would have meant that I would have had to rent meeting rooms in a location which suited interviewees.

The qualitative interviewees were semi-structured meaning that I had a list of questions or issues I wanted to ask, ensuring that interviews were comparable, but the flow of the interview itself was research participant led.¹⁰⁷ Questions, appropriately adapted according to each participant group via four distinct interview schedules, direct victims, indirect victims, legal and victim support practitioners and former CICT members, focused on a number of areas relevant to the CICT process and the wider criminal justice system. These included participants' expectations of the CICT process prior to their first contact with it, the aims of the CICT, relevant injuries and criminal incidents, where they first heard about the CICT and their impressions of the time limit. There were also questions on the application forms, the gathering of supporting documentation such as medical and other expert reports, the garda report, communication and interaction with the CICT and their impression of the first instance and appeal decision-making processes. Furthermore, questions covered impressions of CICT staff and members, the issue of legal assistance and victim support at the CICT, the part-responsibility rule, the conduct, character and way of life rule, the 'same roof' rule, any reforms that need to be made, whether they had experience of compensation in the criminal process and their impression of the EU legal framework. Whilst building rapport was somewhat easier in the three in person interviews, I commenced each interview by engaging in a conversation with the participant prior to recording. I used this time to thank the participant for taking part in the research, I clarified if there were any issues in terms of the plain language statement and informed consent form and generally whether the participant had any questions about the research. I also used this time to explain to the participant more about my background and the research itself. This approach, along with taking time after the conclusion of the interviews to talk to participants and allow them to ask questions, contributed to rapport building, despite the difficulties inherent in doing so in an online context. During the interview itself, where the various questions were asked, I always attempted to listen carefully to the participant and pause for several seconds after they concluded their particular

¹⁰⁶ Braun & Clarke (n 85) 98.

¹⁰⁷ ibid 81-85.

remarks to ensure that they were in fact finished with their particular answer. I would rarely interject so as to ensure that they could speak about whatever came to mind in response to a particular question. During the interview, I took notes and circled back to particular issues or topics to seek further clarification. In the interviews with Participant Group 1, I was acutely aware of looking out for signs of distress. One interviewee did become upset during the interview. This was an online interview. Immediately, this interviewee expressed a desire to pause the interview and went to get a glass of water. After several minutes, they returned and confirmed with me that they were happy to continue. I followed up the next day with an email to check in on this participant. In all interviews, I followed up with an email thanking participants for their participation.

1.5 Data Analysis

I used a reflexive thematic analysis when analysing the interview data and situating this data within the legal and victimological contexts. A reflexive thematic analysis recognises the active position of the researcher in relation to meaning making and knowledge production.¹⁰⁸ It demands intellectual humility,¹⁰⁹ values researcher subjectivity,¹¹⁰ and ultimately involves critically reflecting on the research process and the various design choices made when carrying out the research.¹¹¹ In the context of researching issues pertaining to victims of crime and their treatment by the state through the operation of state compensation frameworks, and indeed the wider criminal justice system, a reflexive thematic analysis is appropriate due to the diversity of criminal victimisation and the varied experiences of victims in the justice system.¹¹² Additionally, there are a variety of other relevant stakeholders and interests, all of which must be balanced within an overarching legal framework. A reflexive thematic approach, therefore, provides a suitable analytical framework which offers flexibility in relation to the diverse and conflicting accounts, priorities, experiences and outlooks presented by individuals with experience of the CICT process. It also provides a suitable framework for me as the researcher to reflect on these experiences and how they align with my values and outlooks on the issues.¹¹³ These values include a recognition that victims of crime are at the periphery of the justice system and that action should be taken to better provide for their rights. Furthermore, my values acknowledge the broader rights and interests at play in the criminal justice system, including the defence, the state and the community at large.

¹⁰⁸ Braun & Clarke (n 58) 294.

¹⁰⁹ R. Hoskin, 'Femme Praxis: Using Femme Theory to Foster Vulnerability within Research Design and Institutions' in Clift et al (n 66) 193.

¹¹⁰ Braun & Clarke (n 58) 12-13.

¹¹¹ *ibid* 5.

¹¹² Green & Pemberton (n 59).

¹¹³ Braun & Clarke (n 58) 14.

According to Braun and Clarke, thematic analysis involves six recursive phases including data familiarisation, coding, theme generation, theme review, defining and naming themes and reporting.¹¹⁴ In this research, familiarisation involved reading the completed transcripts several times. It also involved note taking where I reflected on the interviews, including the differences between perspectives put forward by each of the participant groups, any new information about the CICT provided by participants, especially examples of recent good practices, along with how interviewees framed the aims of the CICT and how it should provide for the needs of victims. This reflection in relation to the familiarisation process assisted in coding and theme development.¹¹⁵ Codes then are patterns of meaning across the data set.¹¹⁶ Coding of interview transcripts initially took place using Nvivo software. These initial codes and data extracts were then exported to Microsoft Word where codes were further refined.¹¹⁷ This process of coding and coding refinement involved reducing repetition and categorising codes according to specific elements of the CICT process. This author mainly took a deductive approach to the coding process,¹¹⁸ where existing academic literature, along with the doctrinal analysis conducted in relation to the CICS in Ireland and the EU, informed the development of codes and code refinement. At times, an inductive approach was taken,¹¹⁹ where participants highlighted new issues which I had not previously considered in the doctrinal analysis, along with particular issues unique to the CICT context. Both semantic and latent coding took place. In assigning particular code labels to certain patterns of meaning across the dataset, the codes express broader meaning which are abstracted beyond the content of the data extracts.¹²⁰ In reflecting on my coding process, a criticism could be levelled that some of the code labels developed do not properly summarise the meanings contained in the dataset.¹²¹ Despite this, in moving towards theme development, and recognising that reflexive thematic analysis involves moving backwards as well as forwards in relation to each step of the process,¹²² the code labels developed broadly do capture the richness, diversity and contradiction of the dataset.¹²³

¹¹⁴ ibid 35 – 36; D.Byrne, ‘A Worked Example of Braun and Clarke’s Approach to Reflexive Thematic Analysis’ (2021) 56 Quality and Quantity 1391; M.Naeem et al ‘A Step-by-Step Process of Thematic Analysis to Develop a Conceptual Model in Qualitative Research’ (2023) 22(11) International Journal of Qualitative Methods 1.

¹¹⁵ Braun & Clarke (n 58) 46; Byrne (n 114) 1398-1399.

¹¹⁶ Braun & Clarke (n 58) 53.

¹¹⁷ See Appendix H.

¹¹⁸ Braun & Clarke (n 58) 56-57.

¹¹⁹ ibid.

¹²⁰ ibid 57-58.

¹²¹ ibid 71.

¹²² ibid 36.

¹²³ ibid 72.

It should be said at this stage that the 685 CICT decisions were also coded in the same manner. This separate coding process,¹²⁴ along with the coding of the interview data, alongside the doctrinal analysis and victimological considerations, contributed to the process of developing themes. Themes are not present in and do not emerge from the dataset. Rather, themes are actively constructed by the researcher by organising codes around a ‘central organising concept’ which is the idea or meaning underlying a theme.¹²⁵ In this research, a deductive approach to theme development was taken where existing theories, concepts and knowledge in relation to state compensation for victims of violent crime were used to construct themes.¹²⁶ This was complemented by an inductive approach where novel aspects of the CICT process were evident.¹²⁷ Four overarching themes, with a number of subthemes, were developed each of which are respectively set out in Chapters Four, Five, Six and Seven. These are that the CICT struggles to define its aims, struggles to take into account the social construction of victimhood, struggles to take account of the consequences of criminal victimisation and struggles to prevent secondary victimisation. In constructing these themes, I have attempted to ensure that a central organising concept is present in each, that there is a clear delimitation between themes and that each theme ultimately addresses the research question.¹²⁸ I have also attempted to reflect on how I have constructed these themes. In researching issues pertaining to state compensation, I seek reform of the legal and administrative framework in Ireland, whilst recognising that the law struggles to ensure comprehensive and proper access for victims to state compensation.

1.6 Conclusion

This introductory chapter sets the scene for this thesis by presenting the key issues relevant to state compensation for victims of violent crime in Ireland and the EU. The research question, scope and limitations of this thesis are considered, along with the theoretical, ontological and epistemological positions. Furthermore, the socio-legal approach adopted in this thesis is set out which includes a detailed consideration of the various legal materials in relation to the CICT, along with 21 semi-structured qualitative interviews with individuals with experience of the CICT process. This chapter also clarifies the scope of these interviews in detail by setting out the profiles of the research participants and the recruitment methods adopted. Additionally, the various ethical issues are explored and details in relation to the interviews themselves and the data analysis are provided. The next chapter, Chapter Two, considers the background of state

¹²⁴ See Appendix I.

¹²⁵ Braun & Clarke (n 58) 77-78.

¹²⁶ *ibid* 209.

¹²⁷ *ibid* 210.

¹²⁸ *ibid* 111.

compensation schemes globally and in Ireland. This development is situated within a broader victims' rights landscape in Ireland and comparatively.

2 CHAPTER TWO: VICTIMS' RIGHTS AND STATE COMPENSATION

2.1 Introduction

A basic principle underpinning our criminal justice system is that crime is a public wrong, prosecuted in the public interest, with punishment of the offender as a primary objective.¹ The state's role in preventing crime does not encompass restitution for the crime victim.² Whilst the state has established various mechanisms to support victims, often at an incremental pace and only in response to specific and high-profile crimes of violence,³ this basic principle dictates that restitution is principally a matter for the victim to pursue as a private wrong remedy against the offender in the civil and not criminal courts.⁴ Despite this, criminal injuries compensation is increasingly available in criminal courts. Additionally, state compensation for criminally inflicted personal injuries has been a core feature of the victims' rights landscape in the common law world, Europe and elsewhere since the early 1960s. In 1963, New Zealand established a state compensation scheme, followed by Britain in 1964, and much of Europe and the United States throughout the 1960s and 1970s. Indeed, collective community responsibility for criminal conduct and other types of wrongs has been a typical feature of many legal systems throughout history.

This chapter introduces the background and context in which state compensation schemes were established and developed, with a particular focus on the CICS in Ireland. Section 2.2 examines the origins of state compensation schemes and the various justifications underpinning their establishment. This section situates the origins of state compensation within the development of legal and policy responses to crime and victimisation in the second half of the 20th century. Section 2.3 briefly explores the legal and policy framework in relation to crime and victimisation in an Irish context. Section 2.4 then outlines the origins of the CICS in Ireland, whilst sections 2.5 and 2.6 set out some of the problems present in the operation of the CICS, along with laying out some background information in relation to EU law, offender compensation and recent reform efforts at the EU level, more details of which are provided in Chapter Three. This chapter demonstrates that state compensation schemes, and the development of victims' rights law and policy generally, encapsulate the state's limited aspirations in relation to crime control and victimisation. State compensation schemes are understood as applying to only certain categories

¹ A.Ashworth, 'Punishment and Compensation: Victims, Offenders and the State' (1986) 6(1) Oxford Journal of Legal Studies 86,87.

² *ibid* 89-90.

³ D.Miers, *State Compensation for Criminal Injuries* (Blackstone 1997) 10.

⁴ J.Doak, *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties* (Hart 2008) 25-28.

of ‘deserving’ victims, with the compensation itself representing a symbolic payment to victims, as an expression of social solidarity, and not the full compensation victims would receive through the civil process. In setting out this understanding of the origins of state compensation in this chapter, Chapter Three then examines how EU victims’ rights law and policy, especially in relation to state compensation, is altering this original understanding of state compensation and expanding state compensation provision.

2.2 Origins and Early Justifications

One of the first proponents of state criminal injuries compensation was Fry, a prominent British penal reform advocate, active in the 1940s and 1950s, whose campaigning influenced the establishment of the British criminal injuries compensation scheme in 1964.⁵ Fry argued that as criminal offenders often do not have the means to pay compensation themselves through the imposition of civil liability, the state should step in and take the place of the offender due to society’s ‘collective responsibility’ to victims of misfortune.⁶ Fry maintained that as victims of workplace accidents are entitled to state welfare benefits in accordance with their injuries, then so should victims of crime who are injured in the commission of a violent offence.⁷ Fry submitted that crimes of violence against persons are particularly egregious so much so that the state has a responsibility to intervene and mitigate the consequences of criminal activity when they fail to prevent crime and protect members of the public from the harmful consequences of crime, in this case criminally inflicted injuries.⁸ This section examines the original justifications for state criminal injuries compensation in detail. Both Miers and Cane are critical of these justifications on the basis that they contradict each other and lack coherence with the wider legal system.⁹ Overall, there were broadly five original justifications for the establishment of state criminal injuries compensation schemes. These justifications, some of which are applicable in today’s victims’ rights landscape and some of which are not, are common to many jurisdictions which set up these schemes from the 1960s onwards. One of these justifications, based on the law of negligence is not considered for reasons of space, but it is important to say that whilst the European Court of Human Rights (ECtHR) has held that states are under positive obligations to prevent crime in certain instances, and victims have a right of access to justice and compensation

⁵ R.Elias, *Victims of the System: Crime Victims and Compensation in American Politics and Criminal Justice* (Routledge 1983) 26.

⁶ M.Fry, ‘Justice for Victims’ (1959) 8 Journal of Public Law 191,191-192.

⁷ *ibid* 192.

⁸ *ibid* 193.

⁹ Miers (n 3); Cane, *Atiyah's Accidents, Compensation and the Law* (CUP 2018).

for specific state failings,¹⁰ this duty does not arise generally in relation to crime and it is difficult to justify state compensation schemes solely with reference to the law of negligence.¹¹

2.2.1 Inadequate Offender Compensation

One of Fry's primary reasons for advocating for the creation of a state criminal injuries compensation scheme in Britain was due to the challenges victims of violent crime experience in securing compensation directly from the offender through the imposition of civil liability. If offenders are successfully prosecuted and punished by the state through the criminal courts, the victim is forced to instigate separate civil proceedings to secure compensation in respect of their injuries. If a victim successfully overcomes this barrier and secures judgment in their favour, they may struggle to collect payment due to an offender's lack of resources.¹² This issue remains today, despite the availability of compensation orders in the criminal courts which remove a significant procedural obstacle for victims in their attempts to secure compensation.¹³ The procedural challenges involved in the civil process are particularly unwieldy for victims of crime. For example, the impetus is on the victim to prove liability and it is common that a successful criminal prosecution cannot influence the process or outcome of civil proceedings.¹⁴ In addition to this issue, if the offender was subjected to a lengthy sentence of imprisonment as a result of the commission of the crime, then they are less likely to possess the means to pay compensation, although Cane maintains that this particular argument is flawed as most offenders avoid lengthy prison sentences.¹⁵ Despite this, if the offender is not even apprehended or identified, then there is no person to issue proceedings against in the civil courts, which further disadvantages victims of crime.¹⁶ As a result of the problems victims of crime face in their pursuit of compensation in the civil courts, Fry argued strongly that the state has a responsibility to step in and take the place of the offender through the establishment of a criminal injuries compensation scheme.¹⁷

Both Miers and Cane submit that the same logic could also be employed to justify state compensation schemes for victims of property damage offences, victims of fraud or victims of other misfortunes which are typical of modern life.¹⁸ Are criminally inflicted injuries, whether these injuries be physical or otherwise, a sufficiently distinctive harm to justify the establishment

¹⁰ *Osman v Ferguson* [1993] 4 All ER 344; *Osman v UK* (1998) 29 EHRR 245; *O'Keeffe v Ireland* (ECtHR 35810/09).

¹¹ *Hill v Chief Constable of West Yorkshire* [1988] UKHL J0428-1; Miers (n 3) 4-5.

¹² Fry (n 6) 191-192.

¹³ LRC, *Compensating Victims of Crime* (CP672022) [7.1]-[7.35].

¹⁴ Elias (n 5) 20.

¹⁵ Cane (n 9) 291.

¹⁶ Miers (n 3) 3.

¹⁷ Fry (n 6) 193-194.

¹⁸ Miers (n 3) 3; Cane (n 9) 291-292.

of a state compensation scheme? Ashworth states that when the difficulties involved in securing compensation from the offender are considered in light of the significant harmful effects of particular criminal offences, compensation for criminal injuries can be seen as ‘a largely unsolved social problem unless the state takes action.’¹⁹ The question is, therefore, what is the extent of the state’s duty to take action in response to the need for compensation in respect of criminally inflicted injuries? This question is discussed in the next section where the contractarian justifications for state compensation schemes are examined.

2.2.2 The Contractarian Relationship between State and Citizen

The state has monopolised the investigation, prosecution and punishment of public wrongs as the sole arbitrator of criminal liability. Whilst the aggrieved citizen, when subjected to a criminal offence, can seek limited rectificatory justice in the civil courts, which involves significant challenges, their role in the criminal courts is limited to that of a state witness. In agreeing to comply with this system and allowing the state to acquire their dispute with the offender,²⁰ the contractarian contention would dictate that the state must in return compensate victims of crime in respect of their criminally inflicted injuries.²¹ There have been several principled objections to this contractarian justification. First, Miers argues that in exercising its crime detection and prevention roles, the state and its law enforcement bodies, including the police, have never aimed ‘to protect all people at all times.’ In other words, the state’s duty to prevent crime is owed to the public at large and not to individual members of the public. To suggest otherwise would place a significant undue burden on the state’s limited capacity to protect the community from the harmful effects of crime.²² A further objection was set out by Cane who comments that as citizens ‘gain much more than they lose’ from the state fulfilling its crime prevention obligations, the further benefits provided by a criminal injuries compensation scheme cannot be warranted under this contractarian justification. Cane queries why it is that this justification is not also used to insist on the establishment of state compensation schemes in other contexts, outside that of violent crime, such as for property offences or fraud.²³

Ashworth comments that that ‘if public funds are limited they should properly be devoted to compensation for the rarer and more serious offences’, which includes criminally inflicted injuries arising out of violent crime. According to Ashworth, citizens are then free to take out insurance in relation to property damage caused by criminal activity. Indeed, such insurance is

¹⁹ Ashworth (n 1) 99.

²⁰ *ibid* 91.

²¹ Miers (n 3) 4; D.Miers, *Criminal Injuries Compensation: State and Offender Compensation for Violent Crime* (OUP 2018) [1.06].

²² Miers (n 3) 4.

²³ Cane (n 9) 289-290.

far more affordable and available in the context of such damage in comparison to criminal injuries to the person which insurance companies generally do not insure against.²⁴ Additionally, it is important to point out that whilst Britain, which is the context in which Cane is commenting, did not have a state scheme in respect of property damage, Ireland does operate such a scheme. This property damage compensation scheme applies rather restrictively only in respect of damage caused by riots or by members of unlawful organisations.²⁵ Further to Ashworth's comments, Miers recognises that criminal violence particularly disrupts 'the moral balance' in society and state compensation is a mechanism which can restore the balance by ensuring that trust in the system is maintained.²⁶ Again, in this regard, the state undertakes a residual obligation to compensate victims of violent crime in recognition of the distinctive harm caused by violent criminal activity.²⁷ A final objection to the contractarian justification relates to Haldane and Harvey's argument which recognises that, whilst the state claims to have taken upon itself a crime prevention role, with the consequence that it will mitigate the consequences of criminal activity when it does occur, this right to mitigation on the part of victims of crime 'is to no more than a fair share of that which the state may reasonably be expected to provide within the limits of its economic circumstances', such as is the case in relation to rights to healthcare and education.²⁸

2.2.3 The Role of the Welfare State

In this regard, a further justification for the establishment and continued operation of state criminal injuries compensation schemes refers to the general welfare function of the state. In section 2.2.2, the notion of a contract between state and citizen was discussed. The citizen agrees to respect the state's monopoly in relation to crime prevention in return for state compensation in respect of criminally inflicted injuries. The concept that state and citizen each possess mutually beneficial rights and obligations is related to the early development of the welfare state in the UK in the aftermath of the second-world war. Indeed, Mawby and Walklate link this development with the early conceptual justifications for the establishment of state criminal injuries compensation schemes.²⁹ In the UK, the Beveridge Report concluded that state social security 'must be achieved by co-operation between the State and the individual' where '[t]he State should offer security for service and contribution.'³⁰ In other words, in response to citizen's working and contributing to society, the state should assist citizens in times of hardship such as in times of

²⁴ Ashworth (n 1) 103.

²⁵ Malicious Injuries Act 1981, as amended.

²⁶ D.Miers, 'Rebuilding Lives: Operational and Policy Issues in the Compensation of Victims of Violent and Terrorist Crimes' (2006) Criminal Law Review 695,715; Cane (n 9) 292.

²⁷ Cane (n 9) 292.

²⁸ J.Haldane & A.Harvey, 'The Philosophy of State Compensation' (1995) 12(3) Journal of Applied Philosophy 273,279; Miers (n 3) 4.

²⁹ R.Mawby & S.Walklate, *Critical Victimology* (Sage 1994) 72.

³⁰ W.Beveridge, *Social Insurance and Allied Services* (HM Stationery Office 1942) 6.

unemployment, during health problems, in old age and as a result of disability. The Beveridge Report was the catalyst for the creation of many health and social care programs in the UK.³¹ As the state developed this welfare function in response to instances of unemployment, illness and disability, advocates for state criminal injuries compensation argued that criminally inflicted injuries are a similar hardship for citizens which justifies a specific state response as part of the welfare function of the state.³² Advocates argued that it is better that the losses that are incurred as a result of criminal injuries are evenly distributed across the population through the state welfare system as opposed to on the individual victim of crime.³³

There are two core objections to this particular justification for state criminal injuries compensation. The first objection relates to the original underlying philosophy of the welfare state, which stipulates that you must make a contribution in order to be deemed deserving of social security.³⁴ In other words, the more you work and the more tax you pay, the greater benefits you receive from the system when in need. This contractual basis is a core assumption of the welfare state and Walklate argues that this results in distinctions being drawn between the deserving and undeserving poor.³⁵ According to Walklate, this distinction resulted in state compensation schemes being aimed at only those victims considered truly innocent in relation to their victimisation. As set out in more detail in Chapter Five of this thesis, this has resulted in the schemes blaming victims for their own victimisation.³⁶ A further objection to this welfare justification relates to the question of crime as a distinctive harm. Cane asks why victims of violent crime are any more deserving of higher state payments than victims of other misfortunes including victims of work-place accidents or road-traffic accidents.³⁷ Ashworth notes the argument that injuries inflicted as a result of intentional or reckless violence might be regarded as more harmful than accidental injuries because intentional or reckless violence is a more ‘morally questionable invasion of the highest individual right, the right to personal security.’³⁸ Despite this, Ashworth also notes that victims of accidental injuries are more likely to be innocent and therefore more deserving of state support than victims of violent crime who might have provoked the offender in some way.³⁹ In the context of offender compensation, Cavadine and Dignan suggest that victims of violent crime experience a ‘special harm’ through the reduction of

³¹ Mawby & Walklate (n 29) 72-73.

³² Miers (n 3) 7.

³³ *ibid.*

³⁴ S. Walklate, *Understanding Criminology: Current Theoretical Debates* (OUP 2003) 96.

³⁵ *ibid* 97.

³⁶ *ibid.*

³⁷ Cane (n 9) 290.

³⁸ Ashworth (n 1) 107.

³⁹ *ibid* 105.

their positive freedom to go about their lives free from violence at the hands of others.⁴⁰ Arguably, the same principle applies in relation to state compensation, especially where there is no criminal prosecution due to the offender not being identified or due to there being insufficient evidence.

2.2.4 The Victims Movement and Political Capital

Many jurisdictions established state compensation schemes in recognition of the peripheral role crime victims play in the criminal justice system. The marginal position of victims of crime became increasingly recognised in the 1950s and 1960s where the criminal trial was dominated by the state, on the one hand, and the suspect, on the other, with the victim having no participatory role in the proceedings aside from being a witness for the state.⁴¹ In response to serious instances of criminal violence during this time, a victim's movement developed which actively campaigned for an increase in support for victims and their families, along with a greater role for the victim in the criminal trial. Governments in the UK, the United States and elsewhere acknowledged these calls for reform and the establishment of state compensation schemes was one method intended to appease these voices. Over time, states implemented other initiatives and measures both to better support crime victims and to allow them to play a more active role in the criminal trial.⁴² As alluded to above, Ashworth describes victim policy as 'piecemeal' in response to this movement and the related crimes of violence which were largely isolated from each other and high-profile in nature.⁴³

Despite the fragmented nature of the state's response to instances of victimisation, Miers states that the political benefits of advocating for victims of crime soon became obvious to the political classes. In political debate and media coverage, the conversation emphasised the unfortunate predicament of the victim, on the one hand, who possessed no support and participatory rights, and offenders, on the other hand, who benefited from wide-ranging rights throughout the criminal process. According to Miers, the state's response to the victim's movement resulted in a punitive and retributive criminal justice policy based on punishment.⁴⁴ Today, the residual role of the state in the context of compensation can be '[v]iewed simply as an expression of populist values about crime' where state compensation schemes were merely set up to score political capital for politicians and state officials and not out of a considered and principled reflection on the needs

⁴⁰ M.Cavadino & J.Dignan, 'Reparation, Retribution and Rights' (1997) 4(4) International Review of Victimology 233,245.

⁴¹ Miers (n 3) 10.

⁴² *ibid.*

⁴³ Ashworth (n 1) 86.

⁴⁴ Miers (n 3) 10.

of victims and how these needs can be met by the state in the context of the legal system as a whole.⁴⁵

2.2.5 Flawed Justifications but Noble Aims

In determining whether to establish a state compensation scheme, the 1961 UK Home Office Working Party stated that there was no ‘constitutional or social principle on which State compensation could be justified’.⁴⁶ In this section, several core justifications for the creation of state compensation schemes were discussed and in each instance, it was demonstrated that these justifications are somewhat philosophically flawed. Scholars who set out these flaws primarily discuss the British state compensation scheme. Such arguments, however, can also be applied to other jurisdictions, including Ireland. This is because the model of state compensation established in Britain in 1964 was broadly adopted in other jurisdictions. Many jurisdictions established these schemes and continue to operate them today. Various other reasons have been advanced to justify the continued operation of these schemes including the practical benefits which state compensation grants to victims which allows victims to better manage the consequences of criminal activity. Additionally, state compensation acknowledges the suffering of victims and provides victims with agency to seek self-renewal and a fresh start for themselves.⁴⁷ These justifications for the continued operation of state compensation are returned to in Chapter Four of this thesis. For now, it can be said that states established and in many ways continue to operate these schemes arising out of a sense of sympathy and social solidarity for the predicament of innocent victims of crime and the political capital to be gained from being seen to attend to the needs of victims.⁴⁸ The principle of social solidarity has been criticised in that it is based on moral judgements, generated through conceptions of public opinion about who is a criminal and who is a victim.⁴⁹ Chapter Five will return to this concept in the context of the CICS.

2.3 Victims’ Rights in Ireland: Legal and Policy Context

With the origins and general justifications for state compensation schemes established, this section briefly examines the broader victims’ rights framework in Ireland. Kilcommmins et al, Strauss-Walsh and indeed other scholars have comprehensively examined the re-emergence of

⁴⁵ *ibid* 12.

⁴⁶ Cane (n 9) 289; Miers (n 3) 12-13; Home Office, *Compensation for Victims of Crimes of Violence Cmnd 1406* (HM Stationery Office 1961).

⁴⁷ R.Holder & K.Daly, ‘Recognition, Reconnection, and Renewal: The Meaning of Money to Sexual Assault Survivors’ (2018) 24(1) International Review of Victimology 25; F.Augusteijn et al, ‘The Predictability of Court Adjudicated Compensation for Pain and Suffering Damages within the Criminal Proceedings and the Role of Victim Labels: A Case Study on Victims of Sexual Crime in the Netherlands’ (2024) 0(0) Criminology and Criminal Justice 1.

⁴⁸ Miers (n 3) 12.

⁴⁹ K.Buck, ‘State Compensation to Crime Victims and the Principle of Social Solidarity’ (2005) 13(2) European Journal of Crime 148,151-154.

the victim in the Irish criminal process throughout the course of the last fifty years.⁵⁰ Significant legislative and non-legislative progress has been made in relation to information provision, participatory rights in the criminal trial and victim support.⁵¹ Much progress has been made since the coming into force of the Victims' Rights Directive and its transposition in Ireland via the Criminal Justice (Victims of Crime) Act 2017. This legislation, however, has been criticised for lacking an enforcement framework. Should the rights of an individual victim under the legislation not be respected, there is no independent domestic forum in which a victim can issue a complaint and receive remedies for breach of their rights.⁵² Overall, reflecting the position in comparative jurisdictions, progress has been slow and 'piecemeal'.⁵³ Indeed, the continued maintenance of the adversarial system of criminal justice is an indication that the position of the victim has not changed in any significant manner in recent times.⁵⁴ Whilst criminal justice stakeholders have become much more aware of the importance of victims' rights, and giving due regard to these rights in the criminal trial,⁵⁵ the constitutional position still prioritises suspects' rights and the role of the state in the prosecution of offences.⁵⁶

Scholars have argued for fundamental reform of the adversarial system, including greater use of restorative justice mechanisms and the blending of criminal and civil processes, which would include a reframing of the aims of the justice system from punitive to reparatory, which itself would encompass a broad vision of reparation beyond merely financial compensation.⁵⁷ Despite this, the policy consensus for now focuses on how best to assist and support victims in the context of the system as it is currently constituted.⁵⁸ In the Irish policy context in recent years, considerable emphasis has been placed on tackling DSGBV. In line with Ireland's obligations

⁵⁰ S.Kilcommmins et al, *The Victim in the Irish Criminal Process* (MUP 2018); S.Strauss-Walsh, *A History of Victims of Crime How they Reclaimed their Rights* (Routledge 2023).

⁵¹ For legislative progress, see the Criminal Evidence Act 1992, as amended; the Criminal Justice Act 1993, as amended. For non-legislative progress, see Irish Government, *Victims Charter* (2020). For an account of the general position of victims' rights in Ireland to date, see P.Charleton & O.Cross, 'Towards a Presumption of Victimhood: Possibilities for Re-Balancing the Criminal Process' (2021) 5(2) Irish Judicial Studies Journal 1; L.Heffernan, 'The Participation of Victims in the Trial Process' (2017) 68(4) Northern Ireland Legal Quarterly 491; A.Cusack, 'Reforming Ireland's Adversarial Trial for Victims of Crime with Intellectual Disabilities' in O.Lynch (ed), *Giving Voice to Diversity in Criminological Research 'Nothing about Us without Us'* (BUP 2022).

⁵² A.Ryan, 'The Criminal Justice (Victims of Crime) Act 2017' (*Criminal Justice in Ireland* 15 December 2017).

⁵³ Kilcommmins et al (n 50) 5.

⁵⁴ *ibid* 6.

⁵⁵ See *DPP v VE* [2021] IECA 122; *DPP v AM* [2025] IESC 16.

⁵⁶ See *DPP v JC* [2015] 1 IR 417; *DPP v C'OR* [2016] IESC 64; *DPP v Duffy* [2023] IESC 1.

⁵⁷ Doak (n 4) 285-292; J.Doak, 'Mainstreaming Redress in Criminal Justice' in P.Behrens (ed), *Contemporary Challenges to Criminal Justice* (Hart 2023).

⁵⁸ Kilcommmins et al (n 50) 6.

under the Istanbul Convention,⁵⁹ the Irish State adopted its Third National Strategy on DSGBV.⁶⁰ As part of this progress, the Irish Government has established a statutory agency, Cuan, to oversee service provision for victims in this area.⁶¹ One objective Cuan has is to ‘lead the development and delivery of quality and effective services and supports, accessible to all victim-survivors and persons at risk of DSGBV.’ In order to meet this objective, Cuan intends to establish a funding model for service provision in this sector and intends to develop a National Services Development Plan to ensure that the needs of victims in this sector are met.⁶² Whilst the impact of these policy and legal measures remains to be seen, there certainly has been a sea change in the Irish State’s commitment to take meaningful action in relation to victims’ rights, especially in relation to DSGBV.⁶³ Despite this, the scope of victims’ rights are still contested especially in the context of the criminal process. With the current position of victims’ rights in Ireland briefly set out, focus now turns to examining the development of state compensation in Ireland in detail.

2.4 Establishing a Compensation Scheme in Ireland

2.4.1 Collective Responsibility for Criminal Conduct in Ireland

The concept of collective community responsibility for criminal conduct, in the form of compensation or restitution, can be traced back to the Brehon Law era in Ireland. Here, if a criminal could not pay the restitution awarded to the injured party, a secondary and subordinate liability was activated whereby the criminal’s heirs, if they possessed property, were made to pay the relevant restitution.⁶⁴ Collective criminal responsibility was also a feature of the English legal framework imported into Ireland through colonial occupation.⁶⁵ In an Irish context, the establishment of a modern state compensation scheme for victims of violent crime has its origins in the inadequacies of the various malicious injuries frameworks present in Ireland both prior to and after the creation of the Irish Free State in 1922, which have their origins in the English legal framework.⁶⁶ These malicious injuries frameworks predominately provided for compensation in respect of criminally inflicted property damage. They also provided some provision for injuries

⁵⁹ COE, *Convention on Preventing and Combating Violence against Women and Domestic Violence*, European Treaty Series – No 210 (2011).

⁶⁰ DOJ, *Third National Strategy on Domestic, Sexual and Gender-based Violence* (2022).

⁶¹ Domestic, Sexual and Gender-based Violence Agency Act 2023.

⁶² Cuan, *Corporate Plan 2025 – 2027* (2024) 14.

⁶³ Joint Oireachtas Committee on Justice, *Report on Pre-Legislative Scrutiny of the General Scheme of the Domestic, Sexual and Gender-based Violence Agency Bill* (2023); T.O’Malley, *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences* (DOJ 2020); DOJ, *Supporting a Victim’s Journey: A Plan to Help Victims and Vulnerable Witnesses in Sexual Violence Cases* (2021).

⁶⁴ J. Costello, ‘The Leading Principles of the Brehon Laws’ (1913) 2(8) *Studies: An Irish Quarterly Review* 415, 434-435.

⁶⁵ D. Miers, ‘Paying for Malicious Injuries Claims’ (1970) 5(1) *Irish Jurist* 50.

⁶⁶ *ibid.*

to the person, particularly in the context of individuals injured or killed giving information or evidence against persons charged with a criminal offence.⁶⁷ Compensation under these various frameworks was paid by ratepayers in the local authority area where the crime was committed. For this reason, the payment of such compensation was a particular burden on local authorities, especially in the context of the revolutionary period in Ireland from 1916 to 1923, when the frameworks were temporarily suspended and replaced with national taxpayer funded schemes.⁶⁸

2.4.2 Decision to Establish a Compensation Scheme

The burden on ratepayers persisted after this period and eventually led to the Irish Government reviewing the operation of these frameworks through the Interdepartmental Committee on Malicious Injuries, which reported in 1963.⁶⁹ The question of whether the ratepayers or the taxpayers ought to pay for property damage was at the core of this review, as was the question of whether compensation for personal injuries was adequately provided for in the existing framework.⁷⁰ The Committee considered whether a compensation scheme for violent offences to the person should be established by the Irish Government. They recommended against the setting up of such a scheme in this jurisdiction. The Committee's report stated that such a scheme:

[...] could not be recommended primarily because of the cost; it would be difficult to justify the expenditure, from the relatively small resources the State can afford for all the social services, of any money on what would be a very advanced social scheme [...].⁷¹

The Committee also advised against such a scheme on the grounds that it would be difficult to exclude fraudulent claims and claims from undeserving victims such as persons injured in family altercations or in the course of committing a criminal offence themselves.⁷² The Minister for Justice at this time accepted the recommendations from the Committee. The Minister noted the recent establishment of a compensation scheme in New Zealand in 1963 and Britain in 1964 and concluded that such measures were experimental. In this light, and in recognition of the financial implications, the Minister decided that it was better to hold off on establishing a compensation scheme in Ireland until the experiences of other jurisdictions could be evaluated.⁷³ Interestingly, the Minister did bring forward proposals to Government to legislate for compensation for

⁶⁷ Grand Jury (Ireland) Act 1836, section 106, as amended.

⁶⁸ Miers (n 65).

⁶⁹ NAI.TSCH96/6/589.

⁷⁰ *ibid.*

⁷¹ NAI.2012/88/2. The Committee also recommended that ratepayers should continue to fund the existing malicious injuries framework. Eventually, reform of this system, as it relates to property damage came with the Malicious Injuries Act 1981, as amended.

⁷² NAI.2012/88/2.

⁷³ NAI.2004/32/30.

members of the public injured or killed whilst assisting AGS.⁷⁴ This proposal eventually was provided for in the CICS itself when it was established in 1974.

Other jurisdictions went on to establish schemes throughout the subsequent decades. The Irish Government came under pressure to establish a scheme in response to the Dublin paramilitary bombings of 1972 and 1973 where three people were killed and nearly 200 injured.⁷⁵ The CICS was established thereafter in 1974 in direct response to these bombings, which were perpetrated by loyalist paramilitaries in the context of the Northern Ireland conflict.⁷⁶ Interestingly, the finalised CICS applied to all types of violent crime. The Department of Finance initially put forward objections to the broad scope of the CICS and argued that it should only apply to ‘political’ or terrorist related offences.⁷⁷ However, in light of broad support in the Irish Government for a compensation scheme applicable to ‘ordinary’ crime, these objections were dismissed.⁷⁸

2.4.3 The Question of How to Draft a Compensation Scheme

In drafting the text of the finalised CICS, a number of issues were considered. On the Interdepartmental Committee’s prior recommendation against the establishing of such a scheme due to the financial impact on the Exchequer and the difficulties involved in excluding fraudulent and undeserving claims, the Minister for Justice pointed to the near decade long operation of the British scheme and its inclusion of minimum awards which operate to reduce the overall cost of the compensation scheme, and a conduct, character and way of life rule which operates to deny awards to undeserving claimants.⁷⁹ In relation to how to administer the CICS, the Minister favoured a structure similar to that which operated in Britain at the time, which was an independent board made up of legally qualified persons, as opposed to allowing a court of law, sitting with a jury, to adjudicate compensation claims. This would result in excessive awards, according to the Minister.⁸⁰ On the question of the form of compensation to be awarded, the Minister highlighted that the type of compensation payments proposed were to be different from normal social welfare payments. In this regard, and in line with the British and Northern Irish

⁷⁴ *ibid.*

⁷⁵ W.Osborough, ‘The Work of the Criminal Injuries Compensation Tribunal’ (1978) 13(2) *Irish Jurist* 320.

⁷⁶ NAI.2005/85/11. For further information on the Northern Ireland criminal injuries compensation scheme and the impact of conflict related violence, see L.Moffett, ‘Time for a Reparations Programme for those Bereaved during the Troubles?’ (2024) 75(4) *Northern Ireland Legal Quarterly* 659; L.Moffett & K.Hearty, *More than a Number: Reparations for those Bereaved during the Troubles* (Reparations, Responsibility & Victimhood in Transitional Societies Project 2023).

⁷⁷ NAI.2007/121/8.

⁷⁸ NAI.96/6/589.

⁷⁹ NAI.2005/85/11.

⁸⁰ *ibid.*

schemes, lump sum payments were preferred to periodic payments.⁸¹ Additionally, the Minister put forward proposals that compensation would be available on the same basis that it is available in a civil action against the offender of the crime, including out of pocket expenses, loss of earnings and pain and suffering. In relation to loss of earnings, this would be subject to deductions in terms of any social welfare benefits paid.⁸²

On the question of whether the proposed compensation scheme should be placed on a statutory footing or be modelled on a non-statutory basis, the Minister favoured a non-statutory *ex-gratia* (out of a moral obligation and not a legal obligation) scheme for reasons of efficiency in that by the time the Irish Government drafted the CICS, a considerable backlog had already built up in terms of claims arising from the bombings. Furthermore, as the CICS was seen as experimental in nature, a non-statutory scheme was seen as easier to amend than a scheme underpinned by legislation.⁸³ However, the Minister did insist that consideration should be made that the CICS be put on a statutory footing in the near future.⁸⁴ The Minister noted the provisions of the British and Northern Irish schemes which allowed for compensation to be denied or reduced in ‘unmeritorious’ cases, including in relation to inter-gang feuds and cases where a victim is responsible for the infliction of the injuries. The Minister also noted the inclusion of the ‘same roof’ rule which operates to exclude victims who live with the perpetrator at the time the injuries were inflicted. The finalised version of the CICS included these provisions despite the Minister noting the possible objections to such provisions and the fact that proposals to amend the British and Northern Irish schemes in respect of these ‘unmeritorious’ cases had already been put forward. The Minister referenced the justifications put forward for these rules in the British and Northern Irish context in that in these cases it is difficult to establish the facts and it might be possible that an offender would benefit from the award of compensation, particularly in the context of family altercations.⁸⁵ This concern in relation to domestic violence incidents was reflected in paragraph 10 of the 1974 and 1986 iterations of the CICS which provided that ‘[n]o compensation will be payable where the offender and the victim were living together as members of the same household at the time the injuries were inflicted.’⁸⁶ Whilst this provision was removed

⁸¹ *ibid.*

⁸² *ibid.*

⁸³ NAI.2007/121/8.

⁸⁴ *ibid.*

⁸⁵ *ibid.* It is interesting to note also that the historic malicious injuries frameworks mentioned above also take account of ‘unmeritorious’ cases. Section 9 of the Damage to Property (Compensation) Act 1923 prevented access to compensation for anyone who was a ‘member or helper of or active sympathiser with any organisation engaged in armed opposition to the late Provisional Government of Ireland or the Government of Saorstát Eireann’.

⁸⁶ 1974 CICS and 1986 CICS [10].

from the CICS in 2021, it still operates on a retrospective basis.⁸⁷ This, along with the other ‘unmeritorious’ cases are examined in more detail in Chapter Five of this thesis. For now, it should be emphasised that by excluding ‘unmeritorious’ cases along identical lines as established under the British scheme, the principle of social solidarity with innocent victims only, who are deemed in need of state support, was a key principle underlying the CICS in Ireland.

2.4.4 The Text of the CICS

There have been a number of iterations of the CICS since its establishment in 1974. First, there was the 1974 CICS as originally adopted by the Irish Government. There was then the iteration adopted in 1986 which introduced an amendment removing compensation for non-material damages or pain and suffering in non-fatal cases. Furthermore, there was the 2021 CICS which gave effect to several amendments in relation to the operation of the CICT. There was the 2024 iteration of the CICS which included an amendment to the time limit which certain applicants had to abide by when submitting applications. As set out below, this provision lapsed in 2025 resulting in a further iteration. In all, there are 31 provisions of the CICS,⁸⁸ along with a number of annexes and CICT instructions. In this section, several of the principle provisions, annexes and CICT instructions are outlined.

In the latest version of the CICS, paragraph 1 outlines that ‘[t]he [CICT] [...] may pay compensation [...] in respect of personal injury where the injury is directly attributable to a crime of violence’.⁸⁹ Paragraph 3 outlines the categories of victim who can apply for compensation including direct victims of violence and several categories of indirect victims such as dependents of fatally injured victims and members of the public injured whilst assisting a member of AGS.⁹⁰ Paragraph 6 then outlines the type of compensation that is available. In non-fatal cases, compensation is available for special or material damages only. This includes compensation for past and future loss of earnings, medical expenses and other bills incurred as a result of the injuries sustained. In fatal claims, non-material or general damages are available up to a maximum of €35,000. This payment, known as the solatium (meaning solace), represents damages for mental distress as provided under the provisions of the Civil Liability Act 1961, as amended.⁹¹ According to paragraph 8, compensation is paid by way of a lump sum payment and an interim award is

⁸⁷ 50010/13.May.2022; 50752/13.May.2022; 10559/11.July.2022; 53928/4.September.2023. The following judicial review proceedings were also issued and settled, see ‘Woman Raped by Father Challenges Exclusion from State Compensation Scheme’ (*breakingnews.ie* 24 October 2023).

⁸⁸ See Appendix A.

⁸⁹ CICS [1].

⁹⁰ CICS [3].

⁹¹ CICS [6]; Civil Liability Act 1961, as amended.

available in circumstances where a final medical assessment of the injuries is delayed.⁹² Paragraph 9 sets out that an award of compensation cannot be less than €500.⁹³

Paragraph 10 then provides that ‘[n]o compensation will be payable to an applicant who has not, in the opinion of the Tribunal, given the Tribunal all reasonable assistance, in relation to any medical report that it may require, and otherwise.’⁹⁴ Paragraph 12 provides that compensation can be denied or reduced if it is determined that the ‘victim was responsible, either because of provocation or otherwise, for the offence giving rise to his injuries’,⁹⁵ whilst paragraph 13 states that compensation can be denied or reduced by virtue of the conduct, character or way of life of the victim.⁹⁶ According to paragraphs 14 and 15 respectively, compensation can be reduced by the value of a victim’s social welfare entitlements and workplace illness benefits,⁹⁷ along with any compensation received from the offender.⁹⁸ Paragraph 16 provides that the CICS is to be administered by the CICT, who are to be appointed by the Minister for Justice. Up until an amendment implemented in 2021, there were seven CICT members, whereas now there are 14 members. Members must be practicing barristers or solicitors and work on a part-time basis for the CICT. Members are paid on a fee per decision basis.⁹⁹ According to paragraph 17, the CICT is funded by monies provided by the Oireachtas. An annex to the CICS provides that the CICT has a cash-limited budget. This means that only a fixed amount of money is given to the CICT every year, meaning a small number of awards could consume the budget for a given year. This results in other applicants having to wait until the next year for their award to be made.¹⁰⁰ On occasion, however, provision is made for an extra allocation if circumstances require.¹⁰¹

There are several other relevant provisions of the CICS. Paragraph 20 sets out that applications must be made as soon as possible after the criminal incident which caused the injuries, but no later than three months after the incident itself. The CICT has discretion to extend this time limit up to a maximum of two years after the criminal incident if the CICT determines that circumstances exist which justify exceptional treatment.¹⁰² This two year upper limit was added to the CICS in 2021 and operates to completely exclude victims who apply for compensation

⁹² CICS [8].

⁹³ CICS [9].

⁹⁴ CICS [10].

⁹⁵ CICS [12].

⁹⁶ CICS [13].

⁹⁷ CICS [14].

⁹⁸ CICS [15].

⁹⁹ CICS [16]; see also DOJ, ‘Minister McEntee Announces Reforms to the Criminal Injuries Compensation Scheme’ (20 April 2021).

¹⁰⁰ CICS [17]; see also LRC (n 13) [1.14].

¹⁰¹ L.O’Driscoll, ‘Just Another Victim’ (*Law Society Gazette* 6 April 2023).

¹⁰² CICS [20].

more than two years after the criminal incident. Prior to 2021, the CICT had discretion to accept applications submitted many years after the criminal incident. Indeed, historical sexual abuse cases regularly came before the CICT.¹⁰³ As a result of this amendment, it would seem that historical cases are excluded. When the 2021 amendment was announced by the Irish Government, it was claimed that '[t]he two-year timeframe mirrors the statute of limitations in personal injury claims and takes account of the fact that most EU Member States have time limits on their Schemes.'¹⁰⁴ The statute of limitations in personal injury claims is six years in respect of assault and battery actions and two years in respect of negligence, nuisance and breach of duty.¹⁰⁵ Whilst the legislative provision for extending these time periods is quite restrictive in an Irish context,¹⁰⁶ the Irish Government has now closed off any potential claims to the CICS beyond the two year upper limit.

Further detail on the time limit is provided in Chapter Three and Chapter Six. Specifically, in Chapter Three, I set out the High Court judgment in *Bowes v CICT*.¹⁰⁷ As a result of this judgment, paragraph 20A was added to the CICS in January 2024, and subsequently lapsed in January 2025. It provided that 'in the case of claimants criminally injured after 30 June 2005 and before 20 April 2021, no application may be accepted by the Tribunal after 30 January 2025.'¹⁰⁸ This allowed victims who were excluded because of the 2021 amendment, which came into operation on the 20 April that year, to adapt to the new legal circumstances brought about by the amendment and apply to the CICS within a specific transition period, as is required under EU law as set out in *Bowes v CICT*.¹⁰⁹ The amendment was backdated to 30 June 2005 to reflect Article 18 of the Compensation Directive which allows Member States to limit the provisions of the directive to crimes committed after this date.¹¹⁰

Separately, paragraph 22 provides that in order to qualify for compensation, the applicant must demonstrate that the criminal incident was subject to criminal proceedings or that they at least reported the incident without delay to AGS or the Garda Síochána Ombudsman Commission (GSOC), now Fiosrú, the Office of the Police Ombudsman, and co-operated with them in relation to the criminal investigation.¹¹¹ Paragraph 24 provides that a duly authorised officer of the CICT,

¹⁰³ 53871/1.May.2022; 50125/2.March.2022; 50120/2.March.2022; 10570/16.August.2022; 10558/8.November.2019; 10544/23.April.2018; 10528/16.February.2011; 10520/15.February.2012.

¹⁰⁴ DOJ (n 99).

¹⁰⁵ S.Ring et al, *Child Sexual Abuse Reported by Adult Survivors: Legal Responses in England and Wales, Ireland, and Australia* (Routledge 2022) 184.

¹⁰⁶ J.Gallen, 'Historical Abuse and the Statute of Limitations' (2018) 39(2) Statute Law Review 103.

¹⁰⁷ *Bowes v CICT* [2022] IEHC 703.

¹⁰⁸ CICS [20A].

¹⁰⁹ *Bowes* (n 107).

¹¹⁰ Directive 2004/80/EC OJNoL261.6.8.2004.p15.

¹¹¹ CICS [22].

usually a civil servant working as a CICT staff member, can make decisions where the amount of the claim does not exceed €3,000. Additionally, a single CICT member can decide claims up to a maximum of €75,000, which reflects the monetary limits in Circuit Court actions. In any claim where the amount exceeds €75,000, three CICT members must decide the claim. This stipulation in relation to three members was introduced in 2021 and the Irish Government at the time stated that the measure was ‘brought forward with a view to ensuring improved governance in complex cases where large amounts of public funds are being awarded.’¹¹² The first instance procedure is entirely paper based and decisions are made on the basis of any documentation submitted to the CICT by applicants or other parties. Where an applicant is not satisfied with a decision at first instance, an appeal hearing is held involving three CICT members who are different from the member or members who made the first instance decision.¹¹³ These oral hearings are held in private,¹¹⁴ and the standard of proof in all claims before the CICT is the balance of probabilities.¹¹⁵ An applicant can employ a legal adviser to assist in their claim but the CICT will not pay the costs of such legal representation.¹¹⁶

2.4.5 Decision to Terminate the CICS

In 1981, despite the continued threat from paramilitary activity and the development of harmonisation measures at the Council of Europe (COE) level, the Irish Government, in fact, decided to terminate the CICS and directed the DOJ to do so on a phased basis. The primary reason cited in favour of termination was that the cost of the CICS to the Exchequer had increased year-on-year and there was a need to now terminate the CICS to make significant cost savings for the DOJ in light of the economic circumstances of the Irish State in the early 1980s.¹¹⁷ The Irish Government decided to terminate the CICS only on a perspective basis from March 1981. This was to allow victims of the Stardust fire in February 1981 to apply for compensation.¹¹⁸

¹¹² DOJ (n 99).

¹¹³ CICS [24].

¹¹⁴ CICS [28].

¹¹⁵ CICS [30].

¹¹⁶ CICS [26].

¹¹⁷ NAI.2015/88/612.

¹¹⁸ *ibid.* The stardust fire occurred in a nightclub in Artane, Dublin and caused the deaths of 48 young people and injured over 200. Due to a now quashed Tribunal of Inquiry finding of probable arson as the cause of the fire, no criminal prosecutions were brought at the time and no claims were made to the CICT. Subsequently, a separate compensation scheme was established but this was widely reported to be highly adversarial with inadequate amounts of compensation. In April 2023, fresh inquests into the deaths began after a long and arduous battle by victims and families. Verdicts of unlawful killing were returned and the Irish Government is currently in the process of establishing a new redress scheme, see S.Murray et al, *The Last Disco: The Story of the Stardust Tragedy* (Bonnier Books 2024).

2.4.6 Decision to Retain the CICS

In due course, the Irish Government decided to retain the CICS in a curtailed manner by removing the payment of compensation in respect of pain and suffering from the CICT's remit. Again, the reason of cost was cited in favour of this curtailment which allowed for the CICS to be retained whilst significantly reducing the cost of the CICS to the Irish State.¹¹⁹ The decision not to go ahead with the termination of the CICS was due to a number of reasons. First, there was a recognition within the Irish Government that most Western European jurisdictions had a compensation scheme in place.¹²⁰ Furthermore, with the adoption of the European Convention on the Compensation of Victims of Violent Crimes (Compensation Convention) at COE level, the rescinding of access to compensation in Ireland would not be permissible should Ireland wish to comply with its international human rights obligations and ratify the Compensation Convention.¹²¹ Additionally, with the year-on-year increase in violent crime, the termination of the CICS would raise significant outcry in society in light of the social need which the CICS seeks to meet.¹²² Further to these reasons, there was also a recognition that violence related to the conflict in Northern Ireland could again spill over the border into Ireland and there would, therefore, still be a need for the CICS.¹²³ In fact, in 1990, the CICT's responsibility expanded to include the administration of the Prison Officers Compensation Scheme.¹²⁴

2.5 Problems Present and Early Legal Challenges

In the context of victims' entitlements under the CICS, there have been several legal challenges to CICT decisions since its establishment in 1974. These legal challenges arose in the context of significant problems concerning the CICT's operation. Throughout the 1970s and 1980s, it is apparent that the total number of CICT claims submitted, and the overall cost of this compensation, far exceeded what the Irish State were willing to spend to properly resource the CICS, hence the decision to first terminate the CICS in 1981 and then to retain the CICS in a limited format.¹²⁵ As far back as 1978, Osborough noted a general lack of awareness about the CICS and recommended that efforts should be made to better publicise the CICS's existence.¹²⁶ This issue of publicity is examined further in Chapter Six of this thesis. Osborough also commented on the time limit and apparent disconnect between the provisions of the CICS itself

¹¹⁹ NAI.2015/88/612.

¹²⁰ *ibid.*

¹²¹ *ibid.* See COE, *European Convention on the Compensation of Victims of Violent Crimes* European Treaty Series - No 116 (1983). To date, the Irish State has neither signed nor ratified the Compensation Convention.

¹²² NAI.2015/88/612.

¹²³ *ibid.*

¹²⁴ CICT, *Annual Report* (2023) 6.

¹²⁵ Osborough (n 75).

¹²⁶ *ibid.*

and the more flexible approach taken in individual applications.¹²⁷ Indeed, in the CICT's 1975 Annual Report, the CICT itself called for the CICS to be amended to provide for a longer time limit than three months.¹²⁸ Osborough also noted that the annual reports of the CICT have 'shed little light on entitlement to compensation in practice' and stated that there was a 'reticence' on the part of the CICT to explain its reasoning in relation to the application of particular CICS paragraphs, especially paragraph 13 in relation to conduct, character and way of life.¹²⁹

The Irish Superior Courts have been called upon to interpret victims' rights under the Constitution in the context of the CICS. The Superior Courts have been consistently clear that applicants to the CICS have a constitutional right to fair procedures and natural justice throughout their dealings with the CICT.¹³⁰ On occasion, legal challenges have succeeded, whilst on other occasions, legal challenges have failed. Despite this, the Superior Courts did not entertain substantive legal challenges to the operation of the CICS, for example, on the question of a victim's constitutional right to state compensation. In *AD v Ireland*, Carroll J accepted that the plaintiff's constitutional right to bodily integrity was breached as a result of the rape, buggery and assault inflicted upon her.¹³¹ The plaintiff accepted that the state had defended her right to bodily integrity by investigating and successfully prosecuting the perpetrator of the crimes. However, the plaintiff argued that the state had not vindicated her right 'as far as practicable' in that she could not obtain state compensation for pain and suffering inflicted on her as a result of the crimes. At the time of these proceedings, compensation for pain and suffering had been removed from the CICS. In support of her argument, the plaintiff relied on *State (Healy) v Donoghue*,¹³² in respect of free legal aid, to contend that it is permissible to impose a financial burden on the State in respect of the enforcement of constitutional rights. Furthermore, the plaintiff relied on the existence of the COE's Compensation Convention and the availability of state compensation in respect of pain and suffering in comparative jurisdictions in support of her argument.¹³³ On the part of the state, counsel argued that the plaintiff's right to bodily integrity had been vindicated as far as practicable. Counsel stated that the perpetrator was successfully prosecuted and the plaintiff had civil remedies available to her to sue the perpetrator to secure compensation. Furthermore, counsel argued that it would be impracticable to make the state an insurer in respect of all criminal injuries by imposing a constitutional right to state-funded compensation.¹³⁴ Carroll

¹²⁷ *ibid.*

¹²⁸ *ibid. CICT, Annual Report* (1975).

¹²⁹ Osborough (n 75).

¹³⁰ *Hayes v CICT* [1982] ILRM 210; *Creedon v CICT* [1988] IR 51; *Hill v CICT* [1990] ILRM 36; *Gavin v CICT* [1997] 1 IR 132; *Tomlinson v CICT* [2006] 4 IR 321; *Byrne v CICT* [2017] IEHC 28.

¹³¹ *AD v Ireland* [1994] IR 369.

¹³² *State (Healy) v Donoghue* [1976] IR 325.

¹³³ *AD* (n 131).

¹³⁴ *ibid.*

J agreed with counsel for the state and held that the scope of state funded compensation ‘is a matter of policy for the Government and the Oireachtas’ and not the courts.¹³⁵ Whilst in *Byrne v CICT*, White J held that a 13 year delay in an award of compensation being made breached the applicant’s right to constitutional justice,¹³⁶ White J agreed with the judgment of Carroll J in *AD* and held that the absence of compensation in respect of pain and suffering did not breach the applicant’s constitutional rights.¹³⁷

Overall, whilst the Superior Courts will concern themselves with the decision-making procedures in relation to the CICT and the constitutional justice afforded to CICT applicants, the Superior Courts have refused to entertain regulating the substantive issues in relation to the CICS with reference to the Constitution. Instead, issues in relation to the scope of the CICS have been left over to the Irish Government. The problems which plagued the operation of the CICS were neatly summarised by Senator Brendan Ryan, addressing Seanad Éireann in 1991. In this summary, which is reflected in the title of this thesis, he stated that since its inception, the CICT has ‘trundled along, almost unheard of, almost inaccessible, in an almost secretive silence, behind a door which did not open’.¹³⁸

2.6 EU Law, Offender Compensation and a Shift in Approach

This approach changed fundamentally when the CJEU judgment in *BV* was issued in 2020.¹³⁹ In these proceedings, the CJEU were tasked with interpreting Article 12(2) of the Compensation Directive, which stipulates that all Member States of the EU must operate a state compensation scheme which provides victims with ‘fair and appropriate compensation’.¹⁴⁰ These proceedings arose in the context of a victim of sexual violence seeking state compensation in Italy. Prior to *BV*, the CJEU held that Article 12(2) applied only to victims of violent crime in a cross-border situation. In *BV*, the CJEU altered their interpretation and as a result, Article 12(2) now applies to all victims of violent crime. A core aspect of this thesis, and in particular the next chapter, Chapter Three, examines the extent of this EU law right to compensation and the manner in which the CICS must now be reformed to take account of the judgment of the CJEU in *BV*. Chapter Three also considers proposals to reform the EU compensation framework by obligating Member States to pay to victims any offender compensation awarded in the criminal process upfront and

¹³⁵ *ibid.*

¹³⁶ *Byrne* (n 130) [31].

¹³⁷ *ibid* [21].

¹³⁸ Seanad Debates Vol129No5.29.05.1991; S.Kilcommins & L.Moffett, ‘The Inclusion and Juridification of Victims on the Island of Ireland’ in D.Healy, *The Routledge Handbook of Irish Criminology* (Routledge 2015) 386.

¹³⁹ C-129/19 *BV* ECLI:EU:C220:566.

¹⁴⁰ Directive 2004/80/EC OJ NoL261.6.8.2004.p15.

then recoup the amount afterwards from the offender.¹⁴¹ If such a proposal were implemented, it would have the potential to significantly alter the criminal trial process in individual Member States, especially in Ireland. The operation of offender compensation in the criminal courts, whether this be via section 3 of the Probation of Offenders Act 1907, compensation orders under section 6 of the Criminal Justice Act 1993 or through the informal payment of voluntary compensation by offenders to victims, has been criticised by the LRC who highlight the lack of underlying principles as to the purpose of this compensation, its apparent lack of use in practice and the uncertain role it plays in the sentencing process.¹⁴² Several Irish Superior Court judgments have sought to provide clarity on these issues in recent years.¹⁴³ In *DPP v Duffy*, the Supreme Court held that voluntary compensation can be a relevant mitigatory factor in the sentencing process,¹⁴⁴ whilst compensation under section 6 cannot, of itself, constitute a mitigatory factor, unless it causes particular hardship for the offender.¹⁴⁵

Despite these attempts to clarify the scope of offender compensation in the criminal courts, there remains an uncertainty as to the extent of the practice, and its influence on sentencing in an Irish context.¹⁴⁶ Recent research, conducted by Maguire, where judges were interviewed on sentencing practices in the District Court, including on the role of compensation, demonstrates that judges view compensation as an opportunity for offenders to show remorse and make amends to the injured party, especially in minor assault and theft cases.¹⁴⁷ Additionally, Maguire's research indicates that demonstrating such remorse via the payment of compensation is a factor which can lead to the imposition of a non-custodial sentence.¹⁴⁸ Maguire recommends that guidance be issued on the proper use of compensation in the criminal process.¹⁴⁹ Indeed, non-binding guidance has now been issued by the Judicial Council in domestic violence cases which largely reflects the views expressed by the Supreme Court in *Duffy*.¹⁵⁰ In reality, whilst judges in Maguire's research insist that the payment of compensation is centred on an offender's remorse, and considering that

¹⁴¹ European Commission, *Proposal for a Directive Amending Directive 2012/29/EU* COM(2023)424final29.

¹⁴² LRC (n 13) [7.1]-[7.35]; Probation of Offenders Act 1907, section 3; Criminal Justice Act 1993, section 6. See also M.Rogan, 'The Role of Victims in Sentencing - The Case of Compensation Orders' (2006) 13 Irish Law Times 202.

¹⁴³ *DPP v McCabe* [2005] IECCA 90; *DPP v Lyons* [2014] IECCA 27; *DPP v Doherty* [2022] IECA 201.

¹⁴⁴ *DPP v Duffy* [2023] IESC 1 [80].

¹⁴⁵ *ibid* [84].

¹⁴⁶ LRC (n 13) [7.26].

¹⁴⁷ N.Maguire, *A Study of District Court Judges Views on Sentencing and the Sentencing of Relationship Violence* (SETU 2024) 78-79.

¹⁴⁸ *ibid*.

¹⁴⁹ *ibid*.

¹⁵⁰ Judicial Council, *Report of the Sentencing Guidelines and Information Committee on the Application of Section 40 of The Domestic Violence Act 2018* (2025) 18-19. This is non-binding pending legislative action from the Oireachtas on foot of a successful legal challenge to the Judicial Council's functions, see *Delaney v Personal Injuries Board* [2024] IESC 10.

judges also discussed keeping compensation amounts low where an offender's income is limited,¹⁵¹ which is itself reflected in the non-binding sentencing guidelines from the Judicial Council, in that judges cannot pressure an offender to offer more compensation and compensation orders can only be imposed if the offender has means,¹⁵² there is a question mark over whether a practice exists which sees the payment of compensation from the offender as a condition in securing a non-custodial sentence. In Maguire's research, one judge stated that they would tell an offender to pay compensation and if they don't, they can bring their toothbrush to court at the next hearing date.¹⁵³ This is as if to say, if an offender does not pay compensation, they will be going to prison. Ultimately, this is one judge in one research interview. Further research is needed to explore the practice further, especially in relation to the amounts usually paid or awarded. In light of the European Commission's 2023 Proposal, this is all the more important.

2.7 Conclusion

This chapter has examined the origins and development of state compensation schemes for victims of violent crime, particularly in Ireland. This chapter has also situated this development in the broader legal and policy framework concerning victims' rights. It has concluded that the early development of the CICS, along with state compensation schemes more broadly, was characterised by a desire, on the part of the Irish State, to provide for the needs of victims of crime on the basis of the principle of social solidarity but to do so in a manner that limited the state's financial exposure and also limited the scope of compensation to only 'deserving' victims of crime. The Irish Superior Courts were reluctant to intervene and expand compensation provision for victims. Instead, significant latitude was given to the Irish Government to determine the scope of the CICS. The current and proposed EU framework is now examined in the next chapter of this thesis. Furthermore, the impact of this framework on compensation provision in Ireland for victims is considered.

¹⁵¹ Maguire (n 147).

¹⁵² Judicial Council (n 150).

¹⁵³ *ibid.*

3 CHAPTER THREE: STATE COMPENSATION IN THE EU AND THE IMPACT ON IRELAND

3.1 Introduction

This chapter analyses the background, development and impact of the judgment of the CJEU in *Presidenza del Consiglio dei Ministri v BV*,¹ and the manner in which this judgment has impacted the provision of state compensation in the EU. *BV* concerned the correct interpretation of Article 12(2) of the Compensation Directive, which obligates Member States to put in place a state compensation scheme ‘which guarantees fair and appropriate compensation to victims.’² In *BV*, the CJEU held that the right to compensation under Article 12(2) applies to all victims of violent crime in the EU and not just those exercising their freedom of movement rights, as previously indicated by the CJEU.³ Additionally, it was held that compensation must not be ‘purely symbolic or manifestly insufficient having regard to the gravity of the consequences’ on the victim, and must ‘compensate to an appropriate extent the suffering to which [victims] have been exposed.’⁴ *BV* has been heralded as a seminal decision which establishes a right to state compensation for all victims of violent intentional crime in the EU.⁵ Whilst state compensation schemes for victims have been in existence across most Member States even prior to the adoption of the Compensation Directive in 2004, there exists significant disparities across the Member States.⁶ Furthermore, national schemes have been criticised for excluding victims unfairly, primarily due to the limited scope of available compensation and the strict application of the various criteria to individual victims.⁷ The *BV* judgment, therefore, presents an opportunity to improve national schemes for all victims in a fair and just manner.

This chapter examines the legislative history of the Compensation Directive, the *BV* judgment itself, along with the developments arising from *BV* at both the EU level and in Ireland. It is imperative to comprehensively understand these developments in light of the European Commission’s 2023 Proposal to amend the Victims’ Rights Directive.⁸ Instead of recommending reform of the Compensation Directive through the putting in place of minimum standards for

¹ C-129/19 *BV* ECLI:EU:C:2020:566.

² Directive 2004/80/EC OJ No L261.6.8.2004.p15.

³ *BV* (n 1) [55].

⁴ *ibid* [63].

⁵ LRC, *Compensating Victims of Crime* (CP672022) [3.6].

⁶ J.Milquet, *Strengthening Victims’ Rights: from Compensation to Reparation* (European Commission 2019); H.Soleto Muñoz et al, ‘Ineffectiveness of the Right to Compensation for Victims of Sexual Violence: A Comparison Between Five EU Member States’ (2024) 4 International Criminology 93; J.Burchett & A.Weyembergh, *Stronger Victims’ Rights in EU Law? Assessment and Prospects* (Hart 2025).

⁷ Milquet (n 6).

⁸ Directive 2012/29/EU OJ No L315.14.11.2012.p57.

state compensation at the EU level, the European Commission's 2023 Proposal seeks to amend the Victims' Rights Directive to obligate Member States to pay any compensation awarded in the criminal trial (from the offender) directly to the victim, and then recoup the amount from the offender after the conclusion of the criminal process. At present, the Council of the EU are opposing the amendment in the current trialogue negotiations with the European Parliament.⁹ The proposal, if adopted, however, will not impact the operation of the Compensation Directive and national compensation schemes.¹⁰ Section 3.2 of this chapter briefly discusses the early provision for state compensation at the national level and how divergent levels of compensation provision contributed to COE and United Nations (UN) efforts to put in place minimum standards in relation to state compensation. Section 3.3 then outlines the inadequacies in these COE and UN measures. Section 3.4 then outlines the development of EU competencies in the field of victims' rights and also examines the legislative history and text of the Compensation Directive itself, followed by section 3.5 which outlines the relevant caselaw of the CJEU concerning the Compensation Directive. The impact of these decisions in the Member States is then examined in section 3.6, with a particular focus on Ireland. Initial attempts to reform the Compensation Directive are examined in section 3.7, whilst more recent reform efforts are considered in section 3.8. Recent reform measures and proposals in an Irish context, developed in light of *BV* and EU reform attempts, are then considered in section 3.9.

Overall, I conclude that the *BV* judgment has the potential to positively impact the provision of state compensation in the Member States. Despite this, I also conclude that it is disappointing that the European Commission have not proposed any reform of the Compensation Directive to date. I also conclude this chapter by commenting that whilst the development of a rights-based approach is to be welcomed, problems within state compensation schemes are likely to remain. I briefly set out these problems at the end of this chapter as a means to introduce the empirical dimensions of this research which are discussed in Chapters Four to Seven.

3.2 Criminal Injuries Compensation Schemes at the National Level

As discussed in Chapter Two, the concept that the state should make available public monies in order to compensate victims of violent crime for personal injuries criminally inflicted on them has its origins in the creation of the welfare state in Europe and elsewhere in the aftermath of the second world war. There were various justifications for the establishment of national schemes, many of which were premised on the concept of collective insurance whereby the state should compensate victims of crime out of a fear that everyone could potentially become a victim at

⁹ Council, *Proposal for a Directive Amending Directive 2012/29/EU: General Approach 2023/0250(COD)*.

¹⁰ European Commission, *Proposal for a Directive Amending Directive 2012/29/EU COM(2023)424final29*.

some point in their lifetime.¹¹ One of the first national compensation schemes for victims of crime was established in New Zealand in 1963 with Britain launching their own scheme the following year. In the context of current EU Member States, Finland established their scheme in 1973, Ireland followed in 1974, Germany, Denmark and the Netherlands first developed their schemes in 1976 and France's scheme came into operation in 1977.¹² Schemes were also established in other Member States throughout the 1970s and 1980s with differing eligibility criteria and forms of compensatory relief.¹³ Despite the differing levels of compensation across the various schemes, access to the schemes was typically not characterised as a right of crime victims but rather a recognition of the community's social solidarity only with victims of crime who the state considered truly innocent and blameless in relation to their victimisations.¹⁴ To this end, national compensation schemes have prevented certain categories of crime victims from accessing compensation commonly as a result of their way of life and character, such as if the victim possesses criminal convictions, is a member of a criminal organisation or is responsible for the crime in some way.¹⁵

3.3 International and European Human Rights Instruments

In response to the divergent level and type of compensatory provision throughout continental Europe and the common law world, attempts were made at the UN and the COE to harmonise the provision of state compensation for criminal injuries.¹⁶ The COE Compensation Convention opened for signature by States Parties in 1983,¹⁷ and the UN Declaration was adopted by the General Assembly in 1985.¹⁸ Overall, the Compensation Convention and the UN Declaration largely mirror the approach of national compensation schemes. For example, the Compensation Convention permits restrictions based on nationality and residency in the respective jurisdictions of the States Parties,¹⁹ and also permits restrictions limiting compensation to innocent and blameless victims.²⁰ Doak states that the UN Declaration lacks detail on the specific scope of

¹¹ R.Mawby & S.Walklate, *Critical Victimology* (Sage 1994) 72.

¹² J.Goodey, *Compensating Victims of Violent Crime in the European Union With a Special Focus on Victims of Terrorism* (2003) 5.

¹³ European Commission, *Green Paper on Compensation to Crime Victims* COM(2001)536.

¹⁴ L.O'Driscoll, 'The Criminal Injuries Compensation Tribunal and the "Same Roof" Rule in Ireland: Exclusion, Inclusion and Reform' (2022) 6(2) Irish Judicial Studies Journal 60; K.Buck, 'State Compensation to Crime Victims and the Principle of Social Solidarity' (2005) 13(2) European Journal of Crime 148.

¹⁵ Goodey (n 12) 3 & 12.

¹⁶ Mawby & Walklate (n 11) 148-149.

¹⁷ COE, *European Convention on the Compensation of Victims of Violent Crimes* European Treaty Series-No116 (1983).

¹⁸ UN, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (A/RES/40/34).

¹⁹ Compensation Convention (n 17) Article 3.

²⁰ *ibid* Article 8.

material and non-material reparation obligated.²¹ On the Compensation Convention, Doak states that its impact is ‘highly questionable’ because of its focus on monetary compensation to the exclusion of broader forms of reparations, along with the inclusion of provisions which permit States Parties to exclude compensation payments to victims who might be responsible in some way for the occurrence of the criminal act.²² Furthermore, Doak argues that other COE soft law instruments, including recommendations from the Committee of Ministers, have limited impact as they reflect the existing provisions of national law.²³ Whilst the latest recommendation from the Committee of Ministers includes updated obligations not in fact reflected in national legal systems,²⁴ the weak enforcement mechanisms underpinning these instruments do in fact result in their impact being limited.²⁵ Despite this, the enforcement and monitoring functions under the Istanbul Convention,²⁶ demonstrate that these soft law instruments can highlight common problems and difficulties across states on particular issues relevant to victims of violence.²⁷ For example, Article 30 of the Istanbul Convention obligates States Parties to provide avenues to access compensation from offenders and the state.²⁸ The monitoring function of the Istanbul Convention periodically reviews how States Parties are implementing this and other obligations. Through such monitoring, data on the availability and scope of compensation becomes available and in this manner, national governments can be influenced to improve the relevant legal framework.²⁹

Doak comments that the European Convention on Human Rights (ECHR) and other regional human rights systems are difficult to access for victims due to the domestic remedies requirement.³⁰ Doak also points out that the ECHR is generally only applicable where a state’s positive obligations are engaged and not in relation to ‘ordinary’ crimes.³¹ In the specific context of state compensation, the finding in *Gustafson v Sweden* that state compensation schemes do

²¹ J.Doak, *Victims’ Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties* (Hart 2008) 212-216. It is important to acknowledge that the UN has developed other frameworks setting down guidelines for states in relation to reparations including UN, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (A/RES/60/147).

²² Doak (21) 224.

²³ *ibid.*

²⁴ COE, *Recommendation of the Committee of Ministers to Member States on Rights, Services and Support for Victims of Crime* (CM/Rec(2023)2).

²⁵ Doak (n 21) 224.

²⁶ COE, *Convention on Preventing and Combating Violence against Women and Domestic Violence*, European Treaty Series-No210(2011).

²⁷ O’Driscoll (n 14) 67-68.

²⁸ Istanbul Convention (n 26) Article 30.

²⁹ Group of Experts on Action Against Violence and Domestic Violence, *Baseline Evaluation Report on Ireland* (GREVIO/Inf(2023)22).

³⁰ Doak (n 21) 219; COE, *Convention for the Protection of Human Rights and Fundamental Freedoms* European Treaty Series-No 5 (1950).

³¹ *ibid* 223.

create a ‘civil right’ for the purposes of Article 6(1) of the ECHR appears significant.³² However, this finding has not been developed in subsequent caselaw at the ECtHR or national levels. In an Irish context, it was unsuccessfully raised in *Doyle v CICT* on the issue of whether legal aid ought to be granted to applicants under the CICS.³³ This is expanded on further in section 3.6.1 below. In the UK, prominent judicial reviews to state compensation decisions which raise ECHR arguments focus on Article 14 of the ECHR in relation to discrimination and not Article 6(1) concerning the scope of this ‘civil right’ to state compensation.³⁴ Whilst this caselaw has had some success in expanding compensation provision, especially in the context of domestic violence victims and the retrospective operation of the ‘same roof’ rule, the ECHR has led to little substantive change in how national compensation schemes operate.³⁵ Overall, it can be said that the international and European human rights framework, as it applies to victims of violent crime, offers limited practical provision in relation to access to state compensation. For this reason, this thesis focuses on the influence of EU law.

3.4 The Adoption of a Compensation Directive

3.4.1 Developing EU Competencies

Both the Compensation Convention and the UN Declaration were adopted in the 1980s when the EU possessed no specific competencies in the EU Treaties in relation to victims of crime or criminal justice matters generally. This changed in the 1990s with the adoption of the Amsterdam Treaty and the creation of the Area of Freedom, Security and Justice (AFSJ), where the EU was granted additional competencies to enact legislation concerning criminal justice matters including that of victims’ rights. Since 1981, there were consistent calls from the European Parliament for the development of a state compensation directive.³⁶ As a result of the CJEU judgment in *Cowan* in 1989, it was clear that COE measures, particularly the Compensation Convention, were not bringing about the required levels of harmonisation across Europe. In *Cowan*, on the basis of the right to freedom of movement and the prohibition of discrimination, the CJEU held that Member States cannot set down conditions in their national compensation schemes for victims of crime which restrict eligibility based on nationality, residency and the existence of reciprocal

³² *Gustafson v Sweden* (ECtHR 23196/94) [35]-[42]; W.Murphy, ‘The Right under EU law to Compensation for Injuries Criminally Inflicted: the Implications of BV for Irish Law’ (2021) 23(1) Irish Journal of European Law 219,224-231. Here, no violation of Article 6(1) was found, see Chapter Five for further discussion.

³³ *Doyle v CICT* [2021] IECA 131 [16].

³⁴ *Meehan v DOJ* [2018] NICA 42; *JT v CICA* [2018] EWCA Civ 1735; *MA v CICB* [2017] CJIH 46 P243/15.

³⁵ *A & B v CICA* [2021] UKSC 27.

³⁶ European Parliament, *Resolution on Compensation for Victims of Acts of Violence* OJC77.13.03.1981.p77; European Parliament, *Resolution on Victims of Violence* OJC256.09.10.1989.p32.

agreements.³⁷ As the Compensation Convention permits eligibility restrictions on the grounds of nationality and residency,³⁸ *Cowan* offered better protection for victims than the Compensation Convention itself. Additionally, due to the fact that only two States Parties of the COE ratified the Compensation Convention at the time in which the *Cowan* judgment was handed down, it is clear that the Compensation Convention was not effective in relation to improving victims' access to state compensation.³⁹

The European Commission expressed concerns, however, about duplicating the work of the COE in relation to the Compensation Convention.⁴⁰ Despite this, and even after *Cowan*, the European Commission consistently expressed concerns that no legal bases existed in the EU Treaties to provide for a directive on compensation for crime victims.⁴¹ According to Lupária and Della Torre, the 1990s represented a 'breakthrough' for the EU with victims of crime becoming 'a political priority' with the establishment of the AFSJ under the Amsterdam Treaty in 1997.⁴² Here, the criminal justice competencies under the Maastricht Treaty moved from being intergovernmental issues, where limited legislative action could be taken, to a situation where criminal justice matters became a fundamental component of the EU's law-making authority. Specifically, the Amsterdam Treaty introduced a new EU objective 'to maintain and develop the [...] [EU] [...] as an [...] [AFJS] [...] in which the free movement of persons is assured in conjunction with appropriate measures with respect to ... the prevention and combating of crime'.⁴³ This objective was to be achieved by the EU taking 'common action among the Member States in the fields of police and judicial cooperation in criminal matters'.⁴⁴ As a result, the European Commission and the Council were now of the view that the EU possessed the required competencies to take legislative action concerning state compensation for victims of violent crime. Under their 1998 Action Plan to implement the relevant provisions of the Amsterdam Treaty, it was agreed that there was a need to 'address the question of victim support by making a comparative survey of victim compensation schemes and assess the feasibility of taking action within the [EU]'.⁴⁵ Furthermore, in the European Council's Tampere Decision in 1999, it was

³⁷ C-186/87 *Cowan* EU:C:1989:47 [20].

³⁸ Compensation Convention (n 17) Article 3(b).

³⁹ N.Katsoris, 'The European Convention on the Compensation of Victims of Violent Crimes: A Decade of Frustration' (1990) 14(1) Fordham International Law Journal 186.

⁴⁰ European Parliament, *Report of Proceedings from 10 to 13 March 1981* OJC1-268.12.03.1981.

⁴¹ European Parliament, *Report of Proceedings from 11 to 15 March 1989* OJC2-380.12.09.1989; European Parliament, *Written Questions with Answer* OJC185.07.07.1993.

⁴² L.Lupária & J.Della Torre, 'Victims of Crime in the Area of Freedom, Security and Justice' in S.Iglesias Sánchez & M.González Pascual (eds), *Fundamental Rights in the EU Area of Freedom, Security and Justice* (CUP 2021) 312.

⁴³ Amsterdam Treaty OJC340.10.11.1997.p8.

⁴⁴ *ibid* p16.

⁴⁵ European Commission & European Council, *Action Plan of the Council and the Commission* 1999/C 19/01 OJC19.23.1.1999.p15.

agreed that ‘minimum standards should be drawn up on the protection of … victims of crime, in particular on crime victims’ access to justice and on their rights to compensation for damages including legal costs.’⁴⁶

In addition to agreeing these priorities for action in relation to compensation for victims, it was recognised that action in relation to victims’ rights more generally was needed including in the context of criminal proceedings.⁴⁷ The first legislative measure was taken relatively quickly after the coming into force of the Amsterdam Treaty,⁴⁸ with the adoption of the 2001 Framework Decision.⁴⁹ The 2001 Framework Decision provided for a number of rights for victims of crime before, during and after the criminal trial including rights concerning information, participation and support. The legal bases used were Articles 82 and 83 of the Treaty on the Functioning of the European Union (TFEU) (ex-Article 31) and ex-Article 34(2)(b) (now repealed) of the Treaty on the European Union (TEU). Despite the seemingly promising nature of the rights set out in the 2001 Framework Decision, Lupária and Della Torre state that Member States did not correctly transpose the 2001 Framework Decision. Furthermore, they assert that the legal bases on which the legislation had been passed did not allow the European Commission to bring infringement proceedings against Member States in the CJEU for incorrect transposition. In this light, Lupária and Della Torre point to the adoption of the Lisbon Treaty in 2009 as a significant juncture in that focus shifted from the Framework Decision model to a Directive model which ‘greatly increased the power … [of the EU] … to penetrate domestic legal systems.’⁵⁰ This is because Framework Decisions do not have direct effect in Member States whilst Directives do.⁵¹ The importance of the Lisbon Treaty will be discussed in more detail below. For now, the relevant legislative proposals in relation to state compensation are examined.

3.4.2 The 2002 European Commission Proposal

Recognising the ‘need to seize this opportunity to make further progress’ in relation to state compensation,⁵² the European Commission soon published its agreed legislative proposals based on the consultation launched as a result of a previously published Green Paper.⁵³ In examining the draft text for a Directive included in the European Commission’s 2002 Proposal, it is important to note that this text is significantly different from the final text of the adopted Compensation Directive. The draft Directive, if it had been adopted without amendment, would

⁴⁶ European Council, *Conclusions of the Tampere European Council of 15 & 16 October 1999* [B(V)(32)].

⁴⁷ European Commission, *Communication from the Commission of 14 July 1999* COM(1999)349.

⁴⁸ Lupária & Della Torre (n 42) 312-313.

⁴⁹ Council Framework Decision 2001/220/JHA OJ No L82/22.3.2001.p.1.

⁵⁰ Lupária & Della Torre (n 42) 313-314.

⁵¹ *ibid* 313; European Commission, *Report from the European Commission* COM(2004)54 [1.2.1].

⁵² Report from the European Commission (n 51).

⁵³ European Commission, *Proposal for a Council Directive* COM(2002)562; Green Paper (n 13).

have set more comprehensive obligations on Member States to provide increased access to state compensation for victims in their respective jurisdictions. The text of the draft Directive contained two sections. Section 1 would have set down minimum standards for national schemes, whilst section 2 provided for rules in relation to the facilitation of claims from cross-border crime victims. This chapter will focus on the minimum standards only.

Article 2 provided for a general and broad definition of what constitutes a victimising event and the type of injuries, both physical and non-physical, which warrant state compensation. Article 2 stated that the injuries must have been inflicted by an act or omission that violated the criminal law of the individual Member State.⁵⁴ Article 4(2)(a) stated that compensation cannot ‘deviate significantly’ from what the victim would be entitled to recover from the offender. Article 4(3) stated that upward limits on awards cannot be set at a level below €60,000. Article 7 stated that compensation could be ‘reduced or refused’ by virtue of the applicant’s behaviour but only if this behaviour is in ‘direct relation to the event that caused the injury or death.’⁵⁵ Whilst Article 11 would have allowed Member States to require victims to report the crime to the appropriate authorities as a condition for receiving compensation, Article 12 would have provided that the payment of compensation could not be made dependent on the successful apprehension and prosecution of the offender. Further to this, Article 13(1) stated that time limits for submitting applications could not be ‘less than two years from the end of the police investigation or the end of the criminal proceedings instituted as a result of the crime, whichever comes latest.’ If investigations or proceedings had not started, then the two year period ‘shall run from the date of commission of the crime.’ Article 13(2) then stated that exceptions to the time limit, where victims ‘could not have been reasonably expected to submit the application within the prescribed period’, should be provided for.⁵⁶ Section 2 of the draft Directive then set down the requirements in relation to the facilitation of cross-border victims of crime.

As stated above, the text of the European Commission’s draft Directive differed significantly from the final text of the Compensation Directive. This is despite the fact that both the European Parliament and the European Economic and Social Committee (EESC) endorsed the draft text, albeit with some minor amendments.⁵⁷ Objections to the European Commission’s draft text emanated from the Council which required unanimity of Member States in order to adopt the text under the legal basis proposed by the European Commission. At the Council, certain Member

⁵⁴ European Commission’s 2002 Proposal (n 53) p84.

⁵⁵ *ibid* p85.

⁵⁶ *ibid* p86.

⁵⁷ European Parliament, *Report on the European Commission Proposal* Com(2002)562; EESC, *Opinion on the European Commission Proposal* Com(2002)562.

States called for a reconsideration of the draft directive due to the ‘budgetary consequences’ on Member States involved if adopted in its draft form.⁵⁸ There was a particular concern in relation to the impact of the minimum standards set out in section 1 of the draft Directive.⁵⁹ As a result of these concerns, in acknowledgement of the need to adopt a Directive on this issue,⁶⁰ and in recognition of the requirement of unanimity, the Presidency of the Council proposed a compromise in order to seek agreement. This compromise retained section 2 only of the draft Directive in relation to cross-border situations and section 1 on minimum standards was retained. However, a provision was included which required Member States to at least establish a compensation scheme so that ‘access to compensation in cross-border cases [could] operate effectively’.⁶¹ The compromise made no mention of minimum standards in relation to national schemes.⁶² The compromise included a provision requiring that the adopted Directive be reviewed after three years so that the need, or otherwise, for the inclusion of minimum standards in the future could be determined.⁶³ As well as budgetary concerns, there were also concerns in respect of the chosen legal basis for the legislation, which was Article 352 TFEU (ex-Article 308 TEU). Some Member States expressed concerns that this provision of the EU Treaties, known as the flexibility clause, did not permit the EU to put in place minimum standards in respect of national compensation schemes.⁶⁴ As the flexibility clause requires unanimity at the Council, the comprehensive minimum standards had to be removed.⁶⁵ In their place, the ‘fair and appropriate compensation’ requirement was added to ensure that at least some minimum standard in respect of national compensation schemes was provided for in the legislation.⁶⁶

3.4.3 The Provisions of the Compensation Directive

The Compensation Directive contains three Chapters. Chapter I relates to the obligations on Member States to put in place co-operation mechanisms to facilitate access to national compensation schemes for victims of crime in a cross-border situation such as tourists or business travellers who are subject to a violent crime in a Member State different to the one they normally reside in (co-operation mechanisms). Chapter II sets out obligations in relation to the operation of national schemes on compensation and Chapter III provides for implementing measures in respect of Chapter I and Chapter II. Whilst the Chapter I obligations in relation to the co-operation

⁵⁸ Council, *Note from the Presidency of the Council 7752/04JUSTCIV49* [4].

⁵⁹ *ibid* [5].

⁶⁰ *ibid* [6].

⁶¹ *ibid* [15]-[16].

⁶² Advocate General C-129/19 *BVECLI:EU:C:2020:375*[73]-[84].

⁶³ Presidency of the Council (n 58) [17].

⁶⁴ *ibid* [11]-[12].

⁶⁵ *ibid* [15]-[16].

⁶⁶ Advocate General *BV* (n 62) [83].

mechanisms for cross-border victims are important, *BV* concerned the interpretation of Article 12(2), which provides that:

All Member States shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims.⁶⁷

Whilst the compromise itself removed the broad and comprehensive minimum standards proposed, the unanimous agreement of the Council to include the term ‘fair and appropriate compensation’ is vital in the context of examining the impact of EU law to date and the impact it might have in the future in relation to the level of compensation afforded to victims under national compensation schemes. This is because the inclusion of the term by the Council must have practical meaning for victims of crime in their pursuit of state compensation.⁶⁸

3.5 The CJEU and the Right to State Compensation

Despite the fact that Member States had over 18 months to transpose the Compensation Directive into their national legal systems, a number of Member States failed to take any action at all. The European Commission brought infringements proceedings against both Italy,⁶⁹ and Greece,⁷⁰ and both were convicted in the CJEU of breaching their requirements under the Compensation Directive by not even taking steps to establish a national scheme.⁷¹ In addition to these infringement proceedings, the CJEU has also provided guidance on the scope of the Compensation Directive, particularly Article 12(2) in relation to the ‘fair and appropriate compensation’ requirement. The CJEU initially interpreted Article 12(2) in a narrow sense, restricting its scope to victims in cross-border situations. Subsequently, the CJEU’s interpretation developed to include all victims of violent crime in *BV*. Additionally, the CJEU in *BV* set down guidelines for Member States as to the minimum amount of compensation that should be available to victims of violent crime and the manner in which this compensation should be calculated.⁷²

3.5.1 Initial Interpretation of Article 12(2): Cross-border Victims Only

Prior to *BV*, the requirement that national compensation schemes provide ‘fair and appropriate compensation’ was understood only to apply to cross-border victims. This understanding was in keeping with the fact that the other provisions of the Compensation Directive, the provisions

⁶⁷ Directive 2004/80/EC OJ No L261.6.8.2004.p15, Article 12(2).

⁶⁸ Advocate General *BV* (n 62) [83].

⁶⁹ C-112/07 *Commission v Italy* EU:C:2007:742.

⁷⁰ C-26/07 *Commission v Greece* EU:C:2007:461.

⁷¹ Lupářová & Della Torre (n 42) 317.

⁷² *BV* (n 1) [63].

governing access to compensation in Chapter 1, clearly applied only to victims in a cross-border situation. Indeed, the CJEU made a number of statements confirming this position. First, the CJEU judgment in *Dell'Orto* arose as a result of a preliminary reference issued from the Italian courts, the facts of which involved criminal proceedings concerning embezzlement and the unlawful financing of political parties. The question referred concerned the correct interpretation of the term 'victim' under Article 1 of the 2001 Framework Decision. The judgment, therefore, primarily did not involve the correct interpretation of Article 12(2) of the Compensation Directive. Despite this, the Advocate General, without referring specifically to Article 12(2), commented that '[t]he Directive governs compensation where the crime has been committed in another Member State.'⁷³ In line with the Advocate General, the CJEU, again not referring specifically to Article 12(2), held that the Compensation Directive 'provides for compensation only where a violent intentional crime has been committed in a Member State other than that in which the victim is habitually resident'.⁷⁴ The CJEU largely repeated itself in *Giovanardi*, another Italian reference concerning the interpretation of the 2001 Framework Decision. Here, the Advocate General stated that the application of the Compensation Directive was limited to cross-border situations.⁷⁵ The CJEU relied on Article 1 of the Compensation Directive, which states that victims have a right to apply for compensation in their Member State of residence in situations where they are victimised in another Member State, to state that the Compensation Directive itself applies merely to cross-border scenarios.⁷⁶

The same approach was taken by the CJEU in the *Paola C* proceedings, which arose as a result of a reference from the Italian courts in the context of a sexual assault inflicted on the victim in Italy.⁷⁷ Here, the applicability of the Compensation Directive was a crucial issue as the victim was in a purely internal situation. In other words, she was victimised in her Member State of residence and was not exercising her freedom of movement rights in a Member State different to her Member State of residence. For this reason, the CJEU held that it did not have jurisdiction to answer the question posed, as to whether Member States can limit the eligibility for national compensation schemes to certain categories of offences, as purely internal situations do not fall within the scope of the Compensation Directive.⁷⁸ Whilst in *Paola C*, the CJEU stated that it did not have jurisdiction to answer the question posed, the CJEU in *Commission v Italy* attempted to clarify the situation.⁷⁹ This ruling arose from infringement proceedings initiated by the European

⁷³ Advocate General C-467/05 *Dell'Orto* ECLI:EU:C:2007:395 [61].

⁷⁴ C-467/05 *Dell'Orto* ECLI:EU:C:2007:395 [59].

⁷⁵ Advocate General C-79/11 *Giovanardi* ECLI:EU:C:2012:448 [31].

⁷⁶ C-79/11 *Giovanardi* ECLI:EU:C:2012:448 [37].

⁷⁷ C-122/13 *Paola C* ECLI:EU:C:2014:59 [7].

⁷⁸ *ibid* [13]-[14].

⁷⁹ C-601/14 *Commission v Italy* ECLI:EU:C:2016:759.

Commission against Italy due to its failure to properly transpose the Compensation Directive. Specifically, the proceedings related to the fact that Italian law to date had only provided for state compensation for victims of terrorism and organised crime, to the exclusion of other victims of violent crimes, including victims of sexual violence.⁸⁰ In ruling that Italy was in breach of its obligations under the Compensation Directive,⁸¹ the CJEU held that Member States cannot limit the scope of Article 12(2) to victims of certain violent intentional crimes.⁸² Additionally, the CJEU clarified its prior jurisprudence in relation to the distinction between cross-border victims and victims in purely internal situations and stated that its prior judgments merely held that the co-operation mechanisms obligated under the Compensation Directive apply only to cross-border victims. The CJEU further held that its prior rulings which refer to the Compensation Directive do not permit Member States to adopt national compensation schemes which exclude victims of certain violent intentional crime.⁸³ The CJEU's decision is consistent with the Advocate General's Opinion, where it is stated that '[t]he EU legislature [...] considered that it was necessary for all the Member States to have such a compensation scheme in order to facilitate access to such schemes in cross-border situations.'⁸⁴

It is interesting to note that the Advocate General in *BV* stated that the CJEU in *Commission v Italy* had in fact left the question open as to whether Article 12(2) applies to internal situations.⁸⁵ The Advocate General stated that *Commission v Italy* provided no clarification as to whether Article 12(2) requires Member States to introduce a national compensation scheme that covers all victims of violent intentional crimes committed in their respective territories, including victims in a purely domestic situation. Whilst it is correct to state that the nature of the infringement proceedings in *Commission v Italy* did not require clarification of this point, and indeed that the point was not posed in the proceedings themselves,⁸⁶ I disagree with the Advocate General in *BV* that the decision in *Commission v Italy* was 'ambiguous' on the point.⁸⁷ I maintain that the CJEU was clear, albeit not as part of the core reasoning of the decision, that Article 12(2) does not apply to purely internal situations.

3.5.2 The *BV* Judgment

How, then, did the CJEU shift its position in *BV*? The crucial factor is discussed in the Advocate General's Opinion where it is stated that Article 1, in relation to the right to human dignity and

⁸⁰ *ibid* [20].

⁸¹ *ibid* [54].

⁸² *ibid* [46].

⁸³ *ibid* [49].

⁸⁴ Advocate General C-601/14 *Commission v Italy* ECLI:EU:C:2016:759 [77].

⁸⁵ Advocate General *BV* (n 62) [98].

⁸⁶ Advocate General *Commission v Italy* (n 84) [99].

⁸⁷ Advocate General *BV* (n 62) [98].

Article 6, in relation to the right to liberty and security, of the Charter of Fundamental Rights of the European Union (CFR),⁸⁸ can be used as ‘an interpretative tiebreaker’ in relation to two equally plausible interpretations of Article 12(2).⁸⁹ According to the Advocate General, one interpretation, based on the text itself and select recitals of the Compensation Directive, suggests that Article 12(2) does apply to purely internal situations.⁹⁰ A second interpretation, based on the legislative history of the Compensation Directive and other recitals,⁹¹ suggests that purely internal situations are not covered by the provision.⁹² Using the CFR as a ‘tiebreaker’ and holding that favouring an interpretation to the ‘detriment of the individuals concerned’ would be ‘problematic’,⁹³ the Advocate General stated that Article 12(2) must apply to purely internal situations.⁹⁴

Overall, the CJEU agreed with the Opinion of the Advocate General and held that Article 12(2) does apply to such situations. In effect, the CJEU held that Article 12(2) grants all victims of violent crime in the EU a right to ‘fair and appropriate’ state compensation.⁹⁵ Whilst this is a welcome result for victims and the Advocate General’s use of the right to human dignity in the CFR is of note, it is concerning that the CJEU did not itself engage with CFR based arguments in respect of Article 12(2). Of further concern is that, in relying on the CFR in this manner, the Advocate General stated that he did ‘not think that it is even necessary to discuss in any great depth the individual [CFR] rights that would militate against opting for the narrowest scope of Article 12(2) possible.’⁹⁶ In other words, even the Advocate General did not engage in much detail on the correct scope of the CFR. Whilst it is standard practice for the CJEU not to mirror the level of analysis contained in the opinions of Advocates General,⁹⁷ at the very least the Advocate General should be conducting such a detailed analysis.⁹⁸ Despite this, the CJEU went on to make a number of findings in relation to the scope of the ‘fair and appropriate’ state compensation requirement. It was held that fixed rates of compensation are allowed but must account for the seriousness of the consequences for the victim of the particular injuries

⁸⁸ CFR 2007/C303/01.14.12.2007.

⁸⁹ Advocate General *BV* (n 62) [105]-[107].

⁹⁰ *ibid* [101].

⁹¹ L.O’Driscoll, ‘Towards a Rights-based Approach: Victims of Violent Crime, State-funded Compensation and the European Union’ (2023) 14(3) *New Journal of European Criminal Law* 303,317.

⁹² Advocate General *BV* (n 62) [101].

⁹³ *ibid* [123].

⁹⁴ *ibid* [124].

⁹⁵ *BV* (n 1) [55].

⁹⁶ Advocate General *BV* (n 62) [107].

⁹⁷ D.Petrić, “‘Different Faces of Dignity’: A Functionalist Account of the Institutional Use of Concept of Dignity in the European Union’ (2019) 26(6) *Maastricht Journal of European and Comparative Law* 792,797.

⁹⁸ *ibid* 799.

sustained.⁹⁹ The CJEU stated that any compensation awarded must represent ‘a contribution to the reparation of material and non-material losses suffered’ by the victim. Additionally, Member States must ‘compensate to an appropriate extent the suffering to which [victims] have been exposed.’¹⁰⁰ On the specific facts of the case at hand, it held that ‘[a] fixed rate of €4,800 for the compensation of a victim of sexual violence does not appear, at first sight, to correspond to “fair and appropriate compensation”’.¹⁰¹ Importantly, also, the CJEU held that state compensation does not have to equal full compensation available from offenders in civil or criminal proceedings.¹⁰²

The precise meaning of these statements from the CJEU remain somewhat unclear and are giving rise to new requests for preliminary rulings, particularly in relation to the extent to which Member States must grant non-material damages to victims.¹⁰³ On the CJEU’s use of the CFR as an interpretative tool, the key question is whether the use of the CFR, particularly the right to human dignity, ‘was a necessary premise or a cosmetic addition’ to the proceedings.¹⁰⁴ In evaluating the CJEU’s use of the right to human dignity generally, Petrić maintains that whilst there are ‘hardly any situations in which [the right to human dignity] appear[s] to have a vital importance for the outcome of individual cases’,¹⁰⁵ it is often an ‘indispensable building block’ for the CJEU in these types of proceedings.¹⁰⁶ In the context of *BV*, I argue that the CFR, and the right to human dignity especially, was of vital importance. Further detail from the CJEU on its use of the CFR would, therefore, have been welcome. Regardless, it is clear that as a result of its use of the CFR in *BV*, the right to human dignity particularly is a ‘powerful extension of the CJEU’s institutional authority and judicial powers’.¹⁰⁷ In the context of *BV* and the development of the right to fair and appropriate compensation for all victims of violent crime, the influence and impact of the CJEU’s authority and power is clear.

Indeed, since *BV*, the CJEU has issued its judgment in *Burdene* where it held that, in fatal cases, national compensation schemes cannot automatically exclude certain categories of family members, in this case the parents and siblings of the deceased, from receiving compensation due to the presence of other family members, in this case the surviving spouse and children of the deceased, unless the individual circumstances of each fatal case are examined.¹⁰⁸ In *Burdene*, the

⁹⁹ *BV* (n 1) [63].

¹⁰⁰ *ibid* [64].

¹⁰¹ *ibid* [68].

¹⁰² *ibid* [60].

¹⁰³ *Blanco v CICT* [2024] IEHC 171.

¹⁰⁴ Petrić (n 97) 808.

¹⁰⁵ *ibid* 800.

¹⁰⁶ *ibid* 808.

¹⁰⁷ *ibid* 801.

¹⁰⁸ C-126/23 *Burdene* ECLI:EU:C:2024:937 [68]. J.Burchett, ‘Compensation for Victims of Violent Crimes’ (*VerfBlog* 28 November 2024).

CJEU held that this is not permissible as it does not take account of ‘the suffering and seriousness of the consequences of the offence’ on the victims,¹⁰⁹ which includes certain close family members as indirect victims of violent crime.¹¹⁰ Furthermore, the CJEU held that such automatic exclusion does not ‘contribute to the reparation of the material and non-material damage suffered’ by these close family members.¹¹¹ The CJEU in *Burdene* has applied the same language and approach as that used in *BV*, indicating that an expansive approach concerning national compensation schemes, favouring the position of victims, is preferred by the CJEU going forward.

3.6 The Impact of *BV* in Ireland

Ireland was one of the first Member States to establish a state compensation fund for victims of violent crime. As outlined in Chapter Two, there have been several legal challenges in the Irish courts against the manner in which the CICT operates. These legal challenges primarily focus on the procedural rules at the CICT and the process by which the CICT makes decisions in individual applications. Whilst there were several occasions where the Irish courts found in favour of applicants in these legal challenges, rarely did substantive change result in the procedure and practice of the CICT. The Irish courts were clear that such procedure and practice was a policy matter, entirely within the remit of the Irish Government. With the CJEU judgment in *BV* and its interpretation of Article 12(2) of the Compensation Directive as applying to all victims of violent crime in the EU, I argue that the position taken by the Irish courts has shifted and indeed will continue to evolve. Up until *BV*, legal challenges against the CICT focused on domestic law arguments. However, with *BV*, EU law could now be invoked against the CICT by victims of crime in a purely internal situation. Indeed, this has successfully occurred on two occasions so far, with further litigation pending in the Irish courts.

3.6.1 Transparent Decision-making: *Doyle v CICT*

The first, at least partly, successful challenge occurred as a result of the judgment of the Court of Appeal in *Doyle v CICT*.¹¹² These judicial review proceedings arose following separate applications submitted by the applicants to the CICT for compensation in respect of injuries sustained in the course of two separate and unrelated violent criminal assaults in Ireland.¹¹³ At the time the judicial review proceedings were taken, the CICT had not made decisions in relation to the applications,¹¹⁴ however, there were a number of grounds of complaint raised by the applicants

¹⁰⁹ *Burdene* (n 108) [65].

¹¹⁰ *ibid* [55].

¹¹¹ *ibid* [65].

¹¹² *Doyle v CICT* [2020] IECA 342.

¹¹³ *ibid* [5]-[19].

¹¹⁴ *ibid* [27].

concerning the manner in which the CICT was processing their applications. First, it was argued that the CICS was in breach of Ireland's obligations under EU law to put in place fair and appropriate compensation under the Compensation Directive, by not providing for compensation in respect of non-material losses. Second, it was argued that the court should declare that the CICT should assume responsibility for the legal costs of the applicants' claims for compensation under CICS in accordance with the access to justice provisions of the CFR. Third, it was argued that the provision of the CICS which allows the CICT to deny or reduce an award of compensation based on the conduct, character and way of life of victims is contrary to the fair and appropriate compensation requirement under the Compensation Directive. Finally, it was submitted that the CICT should be compelled to make available to the applicants prior CICT decisions in relation to the application of the conduct, character and way of life provision and that there should be a preliminary mechanism in place at the CICT to determine such issues in advance of the applications proceeding to a full determination.¹¹⁵

In the High Court determination of the action, Murphy J dismissed the proceedings and found against the applicants on the basis that there was no right to state compensation under both Irish constitutional law and EU law, specifically under the Compensation Directive.¹¹⁶ It should be said that between the High Court determination of the action and the matter concluding before the Court of Appeal, the CJEU judgment in *BV* was handed down. As a result of the *BV* judgment, the Court of Appeal in *Doyle* held that '[t]here is no longer any doubt that the Directive does indeed confer an EU law right to compensation from the State upon the victim of a violent intentional crime in a wholly domestic situation.'¹¹⁷ The use of *BV* in *Doyle* is significant in terms of the particular rulings made by the Court of Appeal. Ní Raifeartaigh J held that the CICS 'must now be seen as the means by which the State gives effect to its obligations under the Directive both as regards cross-border and purely domestic scenarios.'¹¹⁸

In relation to the applicants' arguments that their legal costs should be paid by the CICT or provided to them under the provisions of the legal aid scheme, the Court of Appeal relied on various CJEU and ECtHR decisions to dismiss this ground on the basis that CICT procedures are straightforward and the CICT assists applicants in the claims process.¹¹⁹ As is demonstrated in Chapter Six, the Court of Appeal was incorrect, in my opinion, on this point. A similar conclusion

¹¹⁵ *ibid* [15] & [25].

¹¹⁶ *ibid* [33]. *Doyle v CICT* [2019] IEHC 265.

¹¹⁷ *Doyle* (n 112) [69].

¹¹⁸ *ibid* [81].

¹¹⁹ *ibid* [113]-[115]. The Court of Appeal, in particular, placed reliance on the CJEU judgment in C-279/09 *DEB ECLI:EU:C:2010:811* and the judgments of the ECtHR in *Airey v Ireland* [1979] 2 EHRR 305 and *P, C & S v UK* (2002) 35 EHRR 31.

was reached by the Court of Appeal in respect of the applicants' arguments concerning the exclusion of compensation for non-material losses. The Court of Appeal stated that this question might well require a reference to the CJEU in order to be definitively determined.¹²⁰ However, the Court of Appeal refused to do so in this instance as the CICT had yet to make a decision in relation to the applicants' applications for compensation.¹²¹ In addition to this holding, the Court of Appeal refused to make any declaration in relation to the conduct, character and way of life provisions of the CICS, again as no actual CICT decision was in issue. In relation to victims' right of access to prior decisions of the CICT, the Court of Appeal held that:

The complete absence of any information which might assist both decision-maker and claimant in ensuring that the claimant gets the benefit of a consistent approach, and has notice as to what that approach is, seems to me to be fundamentally unfair. I consider it to be both a breach of constitutional fair procedures and a failure to protect, effectively, the exercise of an EU right.¹²²

In coming to this conclusion, and ordering the CICT to publish a select number of decisions in relation to the conduct, character and way of life provision,¹²³ the Court of Appeal held that the CICT 'should strive for a measure of consistency in the application of [the conduct, character and way of life provision of the CICS], even if it currently does not', as decisions of the type made by the CICT should be 'fair rather than arbitrary' to applicants.¹²⁴ As a result of this ruling, the Court of Appeal ordered a select number of CICT decisions to be published.¹²⁵ In addition to complying with this order, the CICT has now published a wider range of decisions on different aspects of the CICS.

With the High Court initially dismissing the proceedings, there can be doubt as to the influential role played by the *BV* judgment in the proceedings. Whilst the applicants did not succeed on most points raised, perhaps most significantly in relation to the non-payment of non-material losses, the influential role of EU law is clear from the Court of Appeal judgment. Murphy states that, whilst the absence of non-material losses in the CICS received a 'temporary stay of execution' in *Doyle*, future litigation, relying on *BV*, will hopefully lead to the introduction of both

¹²⁰ *Doyle* (n 112) [129].

¹²¹ *ibid* [131].

¹²² *ibid* [162].

¹²³ *Doyle* (n 33).

¹²⁴ *Doyle* (n 112) [158].

¹²⁵ *Doyle* (n 33) [20].

compensation for non-material losses and the placing of the CICS on a statutory footing,¹²⁶ which would be a significant development from its current administrative and non-statutory basis.

3.6.2 Reasonable Time Limits: *Bowes v CICT*

The influence of *BV* is further demonstrated when the judgment of the High Court in *Bowes v CICT* is considered.¹²⁷ These proceedings arose as a result of two separate incidents in Ireland whereby Mr Bowes and Mr Brophy were assaulted and seriously injured by persons unknown to them. Both men submitted applications to the CICT and were rejected by virtue of the claims being submitted outside the applicable time limit under the CICS.¹²⁸ The time limit is set out in paragraph 20 of the CICS and provides that applications must be submitted within three months of the incident. From the establishment of the CICS in 1974, the CICT had discretion to extend this three month time limit if circumstances existed which justified exceptional treatment of a particular application. There was no upper limit on this discretion, meaning applications could be submitted and accepted, if exceptional treatment was justified, many years after the original incident. This was particularly beneficial for victims of non-recent or historical crimes of violence. Despite this, in April 2021, the Irish Government amended this section of the CICS and placed a two year upper limit on the CICT's discretion to extend the time limit. As a result, applications relating to crimes of violence which occurred more than two years prior to the date of application could not now be admitted by the CICT. Victims, therefore, had their entitlements restricted under the amended CICS.¹²⁹ With the assaults inflicted on Mr Bowes and Mr Brophy occurring more than two years prior to April 2021, December 2018 and April 2019 respectively, they were essentially cut off from accessing the CICS, hence why their applications were rejected by the CICT.¹³⁰ As a result, Mr Bowes and Mr Brophy, along with other victims impacted by the 2021 amendment, issued judicial review proceedings in the High Court challenging the operation of the two year element of the time limit. A number of grounds were argued before Holland J, based both on Irish administrative law principles and EU law. The principle domestic legal argument maintained that the 2021 amendment breached the common law presumption against the retrospective application of law.¹³¹ The EU law arguments maintained that the 2021

¹²⁶ Murphy (n 32) 238-248. Indeed, at the time of writing CJEU proceedings are now pending in relation to non-material losses following a reference from the High Court, see *Blanco* (n 103). High Court proceedings are also pending in relation to whether the CICT should be placed on a statutory footing and whether the three month time limit is lawful, see *Davey v CICT* 2023 157 JR and *D'Arcy v CICT* 2023 486 JR.

¹²⁷ *Bowes v CICT* [2022] IEHC 703; L.O'Driscoll, 'Victims of Crime and the Right to State Compensation under EU Law in light of the High Court Judgment in *Bowes & Brophy v Criminal Injuries Compensation Tribunal*' (2023) 25(1) Irish Journal of European Law 63.

¹²⁸ *Bowes* (n 127) [6].

¹²⁹ DOJ, 'Minister McEntee Announces Reforms to the Criminal Injuries Compensation Scheme' (20 April 2021).

¹³⁰ *Bowes* (n 127) [99].

¹³¹ *ibid* [80].

amendment breached the EU law principles of effectiveness and equivalence, with reference to Mr Bowes' and Mr Brophy's right to compensation under Article 12(2) of the Compensation Directive, as interpreted by the CJEU in *BV*. On the EU principle of effectiveness, Mr Bowes and Mr Brophy submitted that the 2021 amendment did not afford them an opportunity to comply with the new legal framework through transitional measures, thereby depriving them of the effective enjoyment of their EU law right to compensation.¹³² Additionally, it was argued that the two year element of the time limit itself breached the equivalence principle as it is a significantly lower time limit than that provided for in relation to equivalent domestic legal proceedings, in this instance assault and battery actions through the civil process, where the time limit to bring a claim is six years.¹³³

For the purposes of this chapter, the interesting point is that the victims in these proceedings, Mr Bowes and Mr Brophy, failed in their domestic law arguments, but succeeded in relation to the arguments on the effectiveness principle under EU law. In relation to their arguments that the 2021 amendment breached the common law presumption against the retrospective application of law, Holland J held that existing rights and obligations were impaired by the 2021 amendment, in that Mr Bowes and Mr Brophy lost their right to apply to the CICS.¹³⁴ However, he further held that a literal interpretation of the relevant provision in the CICS suggests that such an impairment was deliberate on the part of the Irish Government so that such applications would be excluded.¹³⁵ Therefore, the presumption in relation to retrospectivity was displaced and the domestic law argument failed. On equivalence, Holland J ruled that assault and battery actions are not an appropriate comparator for the purposes of the equivalence principle as, whilst state and civil compensation are similar in some respects, there are also notable differences, as recognised by the CJEU in *BV*,¹³⁶ which result in the equivalence principle not applying.¹³⁷ However, on effectiveness, Holland J held that there was a breach of the effectiveness principle as the 2021 amendment did not afford Mr Bowes and Mr Brophy a genuine opportunity, via transitional arrangements, to adapt to the new legal circumstances brought about as a result of the new two year time limit.¹³⁸

On the rejection of the equivalence arguments, the judgment of Holland J raises the question as to what would be a suitable comparator for the purposes of the equivalence principle. Indeed, in

¹³² *ibid* [131].

¹³³ *ibid*.

¹³⁴ *ibid* [100].

¹³⁵ *ibid* [128]-[129].

¹³⁶ *BV* (n 1) [60].

¹³⁷ *Bowes* (n 127) [216].

¹³⁸ *Bowes* (n 127) paras [163]-[166]. Holland J relied on the CJEU judgments in *C-62/00 Marks & Spencer* EU:C:2002:435 and *C 429/15 Danqua* EU:C:2016:789.

addressing the preliminary issue of standing, Holland J stated that compensation received under the CICS is ‘closely analogous’ to compensation received under the Residential Institutions Redress Board and the Hepatitis C Tribunal as applicants under such schemes are part of ‘a vulnerable, disadvantaged, wronged and identifiable cohort.’¹³⁹ Indeed, it is interesting to note that the proposed state redress scheme in the context of mother and baby homes has a limitation period of five years from the commencement of the scheme,¹⁴⁰ the national school sexual abuse scheme sets out a period of two years from the commencement of the scheme, although applicants had to have already issued legal proceedings prior to the introduction of the scheme,¹⁴¹ the Magdalene scheme set no time limit in respect of applications, although no applications will be accepted after the agreed closure date of the scheme,¹⁴² the Residential Institutions Redress Board set a period of 3 years,¹⁴³ and the Hepatitis C Tribunal also set a period of 3 years.¹⁴⁴ Clearly, these state schemes might suffice as a comparator, especially as such a comparison involves two state claims processes. This in keeping with the CJEU and Irish jurisprudence on the equivalence principle.¹⁴⁵

As a result of this High Court ruling, the Irish Government has amended the CICS to take account of the effectiveness principle.¹⁴⁶ Whilst the two year element of the time limit under paragraph 20 still applies, paragraph 20A was added to the CICS which permitted individuals criminally injured between 30 June 2005 and 20 April 2021 to submit applications up until 20 January 2025.¹⁴⁷ Whilst there was very little publicity of this amendment since its adoption by the Irish Government in January 2024, which was over a year after the High Court judgment in *Bowes* was handed down, the *Bowes* judgment itself does point to the potential for EU law to expand the provision of state compensation for victims of crime. First, this potential is demonstrated in that a whole category of CICT applicants, otherwise excluded by virtue of the two year element of the time limit, were afforded an opportunity apply for compensation. Second, this potential is demonstrated in that *Bowes* has led to a more flexible approach to the three month element of the

¹³⁹ *ibid* [69]. Unfortunately, Holland J did not return to this comparison in his discussion on the equivalence principle.

¹⁴⁰ Mother and Baby Institutions Payment Scheme Act 2023, section 19(2) with reference to section 6(1).

¹⁴¹ *Ex Gratia Scheme - Implementation of the ECtHR Judgement in O’Keeffe v Ireland* (2023) [21].

¹⁴² J.Quirke, *Magdalene Commission Report: Report of Mr Justice John Quirke On the Establishment of an Ex Gratia Scheme and Related Matters for the Benefit of those Women who were Admitted to and Worked in the Magdalene Laundries* (Department of Children 2013) 12.

¹⁴³ Residential Institutions Redress Act 2002, section 8.

¹⁴⁴ Hepatitis C Compensation Tribunal Act 1997, section 4.

¹⁴⁵ C-231/96 *Edis v Ministero delle Finanze* ECLI:EU:C:1998:401; C-118/08 *Transportes Urbanos v Administración del Estado* ECLI:EU:C:2010:39 ; *TD v Minister for Justice* [2014] 4 IR 91.

¹⁴⁶ ‘Criminal Injuries Compensation Scheme to Temporarily Allow Very Late Applications’ (Irish Legal News 1 February 2024).

¹⁴⁷ CICS [20A].

time limit and the exceptional treatment discretion. This more flexible approach is expanded upon in Chapter Six.

3.6.3 Compensation for Pain and Suffering: *Blanco v CICT*

BV's impact in Ireland can be seen further in relation to the payment of compensation for non-material damages or compensation for pain and suffering. Under the provisions of the CICS, this type of compensation is not available in non-fatal applications.¹⁴⁸ In *BV*, the CJEU held that national compensation schemes must take account of the seriousness of the consequences for the victim of the particular injuries sustained,¹⁴⁹ and must 'compensate to an appropriate extent the suffering to which [victims] have been exposed.' According to the CJEU, such compensation must represent 'a contribution to the reparation of material and non-material losses suffered' by victims.¹⁵⁰ A number of legal challenges were issued in Ireland arguing that Article 12(2) of the Compensation Directive, as interpreted by the CJEU in *BV*, obligates Member States to pay compensation for both material and non-material damages. Indeed, one of these legal challenges, *Blanco v CICT*, has been the subject of a preliminary reference to the CJEU in 2024. These proceedings arose following an assault perpetrated against Mr Blanco in 2015 which resulted in him suffering a permanent eye injury and other serious injuries. Mr Blanco submitted an application to the CICT and was awarded a mere €645.65 under the CICS, representing various out-of-pocket expenses incurred. As compensation for pain and suffering is not allowed under the CICS, this was not awarded.¹⁵¹ Here, the High Court is seeking clarification as to whether *BV* does indeed require Member States to pay both material and non-material damages. If the answer to this question is yes, the High Court seeks further clarification as to the scope of non-material damages and whether a victim's 'pain and suffering' comes within this scope. Additionally, the High Court asks what relationship state compensation under the Compensation Directive has to offender compensation awarded under tort law in light of the financial viability of national compensation schemes. Finally, the High Court asks whether €645.65 amounts to fair and appropriate compensation for the purposes of Article 12(2) of the Compensation Directive.¹⁵²

Whilst the proceedings are pending before the CJEU, Egan J in the High Court made a number of interesting remarks in her Order for a Reference. First, Egan J expressed the view that various elements of the CJEU's judgment in *BV* 'strongly suggest' that compensation for non-material damages 'cannot be entirely excluded'. One element relates to the CJEU expressly using the terms

¹⁴⁸ CICS [6].

¹⁴⁹ *BV* (n 1) [63].

¹⁵⁰ *ibid* [64].

¹⁵¹ *Blanco* (n 103) [7]-[12].

¹⁵² *ibid* [57].

‘material’ and ‘non-material’ losses. Egan J states that non-material damages are indistinguishable from compensation for pain and suffering or general damages under tort law. Furthermore, Egan J referenced the CJEU statement in *BV* that compensation must ‘compensate to an appropriate extent the suffering to which [victims] have been exposed.’ Egan J opines that the term ‘suffering’ implies that compensation for pain and suffering must be compensated at least to some degree. Finally, Egan J refers to the term ‘seriousness of the consequences’ for the victim and argues that compensation for pain and suffering cannot be ‘entirely excluded’ under the requirements set down in *BV*.¹⁵³

This preliminary reference, along with *Doyle* and *Bowes*, demonstrates that the development of an EU right to compensation, as provided for by the CJEU in its interpretation of Article 12(2), has the potential to significantly improve access to state compensation for victims of violent crime. In *Doyle*, the Court of Appeal used the Article 12(2) right to compensation, in conjunction with the effectiveness principle, to hold that applicants to the CICT have a right to access the CICT’s prior decisions in the context of the conduct, character and way of life provisions of the CICS. Since the judgment, the CICT has now published a wide range of decisions on various aspects of the CICS which contributes to a more effective understanding of decision-making at the CICT.¹⁵⁴ In *Bowes*, the High Court judgment resulted in the CICT’s strict time limit being set aside on the basis of EU law. In *Blanco*, there is potential for compensation for pain and suffering or non-material damages to be re-introduced in the CICS. As discussed in Chapter Two, the Irish courts were generally deferential to the Irish Government in relation to the CICT’s procedures. As a result of *Doyle*, *Bowes* and potentially *Blanco*, this has now changed and applicants to the CICT now have a substantive legal basis on which to challenge CICT decisions. This is as a direct result of an EU minimum standard, as interpreted by the CJEU. With the European Commission opting not to expand these minimum standards in its proposed revision of the Victims’ Rights Directive, the development of the *BV* jurisprudence at the CJEU and national court level is more important than ever. Its importance, and indeed the need for increased minimum standards at the EU level, is further highlighted when the shortcomings in the European Commission’s 2023 Proposal are highlighted. Section 3.8 below will examine this issue. First, the next section considers initial reform efforts in relation to the Compensation Directive and the wider EU victims’ rights framework.

3.7 Initial Attempts at Reforming the Compensation Directive

¹⁵³ *ibid* [59].

¹⁵⁴ *Earls v CICT* [2022] IEHC 679 [78]-[81].

3.7.1 The Lisbon Treaty and the Strengthening of Victims' Rights

The coming into force of the Lisbon Treaty in 2009 is a significant moment for the protection of victims' right in the EU. The problems associated with the legal bases used to underpin the 2001 Framework Decision and the Compensation Directive were referenced above. It will be recalled that Framework Decisions do not have direct effect in Member States and Member States cannot be subject to infringement proceedings at the CJEU for incorrect transposition. In relation to the Compensation Directive, it will be recalled that the adoption of the Directive at the Council required unanimity and this led to a significant reduction in the scope of the finalised Directive. Unanimity was also required in relation to Framework Decisions. According to Piris, the unanimity requirement resulted in a 'difficult and lengthy' law-making process at the Council and 'diminished the level of ambition' present amongst Member States to make meaningful progress in relation to AFSJ issues.¹⁵⁵

A further problem in relation to the Compensation Directive was the use of Article 352 TFEU (ex-Article 308 TEU) as the legal basis. This provision of the EU Treaties is known as the 'flexibility clause' and has been a part of the EU Treaties since the adoption of the Rome Treaty in 1957 which established the EU, then the European Economic Community. The flexibility clause operates to permit the EU to take legislative action to achieve the objectives set out in the EU Treaties but where a power to act has not been specifically granted.¹⁵⁶ The use of this legal basis also requires unanimity and its use was continuously called into question in the course of infringement proceedings taken by the European Commission against Member States in relation to the Compensation Directive. Member States argued that the Compensation Directive should be invalidated if the CJEU held that the Directive applied to purely internal situations.¹⁵⁷ Whilst the CJEU continuously dismissed such arguments,¹⁵⁸ and in fact held that the Compensation Directive does not apply to these situations, the fact that the legal basis for such an important and long-awaited Directive could be called into question in this way highlighted the need for specific legislative powers for the Council and the European Parliament to adopt legislation in relation to victims' rights.

It was clear that there was a need for increased competencies and more flexible voting arrangements in the actual law-making process. To this end, the 2009 Lisbon Treaty revised the

¹⁵⁵ JC.Piris, *The Lisbon Treaty: A Legal and Political Analysis* (CUP 2012) 175.

¹⁵⁶ A.Engel, 'Legal Bases in the European Union: An Analysis of Pre- and Post-Lisbon Conflicts Across the Pillars' (PhD, Durham University 2013).

¹⁵⁷ *Commission v Italy* (n 79) [26].

¹⁵⁸ *ibid* [35].

applicable provisions and a new specific victims' rights competency was set out in Article 82(2)(c) TFEU. This provides that:

To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules [...] [which] [...] shall concern [...] the rights of victims of crime.

Importantly, legislative action could now be taken by the EU under the new ordinary legislative procedure where both the Council and the European Parliament were involved in the law-making process. Crucially, qualified majority voting was to be used at the Council meaning the requirement for unanimity was abolished in relation to legislative action in the field of judicial co-operation in criminal matters.¹⁵⁹

3.7.2 Victims' Rights Directive and the Exclusion of State Compensation

With the adoption of the Lisbon Treaty, the issue of strengthening the rights of crime victims both in relation to criminal proceedings and state compensation became a firm political priority for the EU as a whole. Under the 2009 Stockholm Programme, which set out priorities for action in the context of AFSJ issues, the European Council called on the European Commission and the Member States to 'examine the opportunity of making one comprehensive legal instrument on the protection of victims, by joining together the Directive on compensation to victims and the [2001] Framework Decision on victims.'¹⁶⁰ Despite the European Council's request to join the two legal frameworks together into one comprehensive piece of legislation, the European Commission only acknowledged the problems associated with the 2001 Framework Decision. In relation to the problems associated with the Compensation Directive, the European Commission concluded that 'further research [was] required to establish to what extent implementation by Member States [of the Compensation Directive] has been effective.'¹⁶¹ The European Commission relied on its 2009 Evaluation Report of the Compensation Directive to support its conclusions. This is discussed further below in section 3.7.3.¹⁶² It then progressed reform of the 2001 Framework Decision and the Victims' Rights Directive was enacted.¹⁶³ This legislation set out a wide range of rights for victims including in relation to information, support and

¹⁵⁹ Piris (n 155) 177.

¹⁶⁰ Council, *The Stockholm Programme 2010/C115/01* [2.3.4].

¹⁶¹ European Commission, *Commission Staff Working Paper: Impact Assessment SEC(2011)580*.p6-7.

¹⁶² European Commission, *Evaluation Report on the Application of Council Directive 2004/80/EC COM(2009)170*.

¹⁶³ Victims' Rights Directive (n 8).

participatory rights in the context of the criminal trial. Article 4(1)(e) and Article 9(1)(a) specifically grant victims a right to receive information in relation to how to access national compensation schemes. As these are the only provisions in the Victims' Rights Directive which directly concern state compensation, focus will now shift to examining the reasons as to why reform of the Compensation Directive was not considered in the context of post-Lisbon Treaty reform. The 2009 Evaluation Report, required under the provisions of the Compensation Directive itself, is now examined.

3.7.3 The 2009 European Commission Evaluation Report

In relation to the implementation of Article 12(2), the European Commission noted in the 2009 Evaluation Report that 'it appears that Member States provide fair and appropriate compensation for victims of violent intentional crimes [...] [and] [...] there seems to be a substantial degree of compliance across Member States' in relation to this requirement.¹⁶⁴ The European Commission's conclusions are based on statements as to the current type and level of compensation available throughout the Member States. For example, the Evaluation Report states that '[t]here is [...] a consensus that [...] mental injury should be included within schemes.'¹⁶⁵ Unfortunately, there is no definition provided of what such a consensus is. A further example of such a statement is where it is stated that '[a]ll but two [Member States] reported that they impose a time limit for the completion and submission of a claim for compensation.'¹⁶⁶ Relying on such a statement ignores the fact that some Member States have an extremely restrictive time limit, whilst others have a very long time limit. A final example of such a statement is that '[t]he vast majority of schemes provide compensation for financial loss arising from the injury'.¹⁶⁷ Such a statement ignores the fact that there are different forms of financial loss and a Member State's exclusion of a particular form can have significant consequences for the level of compensation provided to victims.

Overall, the Evaluation Report did 'not propose amendments to the [Compensation Directive] but consider[ed] that the implementation [could] be improved on the basis of the current provisions.'¹⁶⁸ According to the European Commission, this was due to the 'short period and consequent limited practical experience on the application of the [Compensation Directive]' in Member States.¹⁶⁹ In this light, the European Commission's 2011 Proposal sought to replace and

¹⁶⁴ Evaluation Report (n 162) 10.

¹⁶⁵ *ibid* 9.

¹⁶⁶ *ibid* 8.

¹⁶⁷ *ibid* 9.

¹⁶⁸ *ibid* 11.

¹⁶⁹ *ibid*.

strengthen the 2001 Framework Decision only,¹⁷⁰ and the Victims' Rights Directive was subsequently adopted. It is interesting to note again the only mention of state compensation in the Victims' Rights Directive are references to victims' rights to information about national schemes. This is because the 2009 Evaluation Report concluded that communication in relation to how to access and apply to national schemes was one of the biggest barriers facing victims of crime.¹⁷¹ In their Opinion on the European Commissions' 2011 Proposal, the EESC welcomed the contents of the draft directive on victims' rights. However, the EESC 'urge[d] the [European Commission] to go ahead with [a further] review of the directive on compensation for victims and make wide-ranging and necessary improvements in this area [...].'¹⁷² The European Commission did not conclude this further review of the Compensation Directive until 2019 with the adoption of the Milquet Report,¹⁷³ and the publication of a related series of reports on victims' rights from the European Union Agency for Fundamental Rights (FRA).¹⁷⁴

3.8 Recent Reform Attempts to Amend the Compensation Directive

With the adoption of the Lisbon Treaty in 2009,¹⁷⁵ legislative protection in respect of victims' rights in the EU was strengthened. In this regard, the 2001 Framework Decision was replaced with the Victims' Rights Directive in 2012 which provides victims with a comprehensive set of rights and supports throughout the criminal process. The right of victims to state compensation and the development of comprehensive minimum standards for national schemes was thought not to be necessary in the immediate post-Lisbon context.¹⁷⁶

3.8.1 The Milquet Report

In due course, the Milquet Report was published and provides a practical evaluation of victims' rights in the context of the AFSJ in that the problems victims face in accessing state and offender compensation are comprehensively examined and priorities for future EU and Member State action in relation to the issue are set out.¹⁷⁷ The Milquet Report is overtly premised on a rights-based conception of victimisation which ensures the operation of an assumption that victims of crime have a right to justice and the overall justice system should work to 'right' the wrongs inflicted on victims. According to the FRA, the language of rights 'changes profoundly the

¹⁷⁰ European Commission, *Proposal for a Directive* COM(2011)275.

¹⁷¹ Evaluation Report (n 162) 10.

¹⁷² EESC, *Opinion of the EESC* COM(2011)275 [4.6.9].

¹⁷³ The Milquet Report (n 6).

¹⁷⁴ FRA, *Victims' Rights as Standards of Criminal Justice: Justice for Victims of Violent Crime Part I* (2019); FRA, *Proceedings that do Justice: Justice for Victims of Violent Crime Part II* (2019); FRA *Sanctions that do Justice: Justice for Victims of Violent Crime Part III* (2019).

¹⁷⁵ Lisbon Treaty OJC306.17.12.2007.p1.

¹⁷⁶ 2011 Impact Assessment (n 161) 6-7.

¹⁷⁷ Milquet Report (n 6).

relationship between the victim and the state.' Instead of crime victims exercising their right of access to national schemes and 'pleading for help' on the basis of their 'vulnerability, pressing needs and deservingness', a rights-based approach sees the state as the 'duty-bearer' who is responsible for safeguarding victims of crime as 'rights holders' in their own right.¹⁷⁸ According to the Milquet Report, national compensation schemes must go beyond a 'solidarity-based vision' of state compensation where compensation is offered to victims merely out of a moral duty and as a means of society demonstrating sympathy and empathy to innocent victims of crime.¹⁷⁹ The Milquet Report recommends that the language should shift from 'compensation' to 'reparation' where the '[p]rovision to the victim of a full reparation is not only about compensating for the unjust harm suffered, it is also a mechanism of giving the victims the opportunities to return to the circumstances that are the closest [...] to that of the victim before the crime.'¹⁸⁰ Additionally, the Milquet Report argues that reparation should include 'multidisciplinary [and] free victims support services [...] in the short and long term.'¹⁸¹

According to the Milquet Report, the traditional approach has resulted in significant problems for crime victims in their pursuit of state compensation. These problems include low amounts of compensation,¹⁸² restrictive eligibility criteria,¹⁸³ the absence of interim payments,¹⁸⁴ and delays in awards being paid out due to limited budgets.¹⁸⁵ Additionally, there are several procedural obstacles including the absence of legal aid and restrictive time limits.¹⁸⁶ The Milquet Report states that these problems are amplified in the context of DSGBV where reporting rates are low, 'victims are vulnerable to re-victimisation' and there is 'the prevalence of victim-blaming attitudes in society'.¹⁸⁷ In the context of the Compensation Directive, the Milquet Report states that the Compensation Directive has not resulted in solutions to these problems as Member States have implemented the Compensation Directive in differing ways resulting 'in inequalities in victims' access to compensation' across the EU.¹⁸⁸

In order to tackle these various problems, the Milquet Report makes a number of recommendations for change. First, each Member State should establish a national victims' rights commissioner or co-ordinator in order to monitor the actions or inactions of national governments

¹⁷⁸ *ibid* 1; FRA Report: Part I (n 174) 17.

¹⁷⁹ Milquet Report (n 6) 29.

¹⁸⁰ *ibid* 33.

¹⁸¹ *ibid* 34.

¹⁸² *ibid* 13.

¹⁸³ *ibid* 14.

¹⁸⁴ *ibid*.

¹⁸⁵ *ibid* 15.

¹⁸⁶ *ibid* 16-17.

¹⁸⁷ *ibid* 24-26.

¹⁸⁸ *ibid* 30.

on this issue.¹⁸⁹ Additionally, the Milquet Report sets out a number of steps needed to improve access to compensation in cross-border cases.¹⁹⁰ Furthermore, actions to improve the provision of information to victims were set out,¹⁹¹ and a number of recommendations were made for legislative change at the EU level to improve the provision of state compensation at the national level. It was recommended that officials administering national schemes should be better trained to work with crime victims and prevent re-victimisation.¹⁹² It was recommended that EU legislation ‘should clearly forbid [a] minimum income requirement and other criteria of discriminatory exclusion’. It was stated that the ‘only condition that may be accepted is to legitimately ask the victim to report the crime and to accept to “initiate” a compensation procedure against the offender’.¹⁹³ Furthermore, the Milquet Report recommended that ‘there is a need to adopt common criteria on the assessment of the harm suffered [and] common evidentiary requirements for major types of damages leading to victim compensation’.¹⁹⁴ In addition to other minor recommendations, including in relation to the simplification of the application procedure,¹⁹⁵ along with a right of review of individual decisions,¹⁹⁶ the Milquet Report also recommended that guidelines be agreed at the EU level in relation to the funding of national schemes including that there should be ‘strict rules governing funding allocations’ to ensure that funds are spent appropriately.¹⁹⁷

As a means to conclude discussions on the Milquet Report, whilst the Milquet Report is broadly comprehensive, it does not provide specific guidance on the key restrictions present under national schemes; namely, the proper scope of eligibility criteria. Whilst ‘criteria of discriminatory exclusion’ should not be permitted, the Milquet Report does not specify what this is to include.¹⁹⁸ For example, to what extent should a victim’s prior criminal conduct be taken into account? Interestingly, the European Commission’s 2002 Proposal did include some guidance on this issue in section 1 of the draft Directive, which was removed at the Council stage of the discussions on the Compensation Directive. Here, it was stated that the prior conduct would have to be directly related to the victimising event.¹⁹⁹ It is unfortunate that the Milquet Report did not provide the same level of discussion and detail. The draft Directive is a good starting point

¹⁸⁹ *ibid* 39.

¹⁹⁰ *ibid* 44-45.

¹⁹¹ *ibid* 46-50.

¹⁹² *ibid* 51.

¹⁹³ *ibid* 54-55.

¹⁹⁴ *ibid* 57.

¹⁹⁵ *ibid* 59.

¹⁹⁶ *ibid* 60.

¹⁹⁷ *ibid* 57.

¹⁹⁸ *ibid* 54.

¹⁹⁹ European Commission’s 2002 Proposal (n 53) 85.

for discussion on the appropriate limitations of national schemes.²⁰⁰ This issue is examined in more detail in Chapter Five.

Despite this, the European Commission's Victims' Rights Strategy for 2020-2025 develops the Milquet Report's discussion further and commits the European Commission to '[m]onitor and assess EU legislation on compensation [...] and if necessary propose measures to complement this framework [...]'²⁰¹ The strategy also encourages Member States to 'eliminate existing procedural hurdles', 'ensure that fair and appropriate state compensation [...] is reflected in the national budgets', take steps to prevent secondary victimisation when a victim applies for compensation and improve the provision of information to victims about their rights. On foot of the key priorities for action set out in the strategy, the European Commission launched a further review of the Victims' Rights Directive in 2020 along with a related public consultation process.²⁰² As a result of this process, the European Commission's 2023 Proposal was published, which is now examined in the next section in detail.

3.8.2 European Commission's 2023 Proposal

In the European Commission's 2023 Proposal, the European Commission again rejects reform of the Compensation Directive and the imposition of comprehensive minimum standards. This was because such action cannot be achieved under the EU Treaty provisions in respect of judicial cooperation in civil and criminal matters and would again require the exercise of the flexibility clause.²⁰³ As minimum standards in respect of state compensation cannot be achieved using the ordinary legislative procedure provided for by the Lisbon Treaty under Article 82(2) TFEU in respect of judicial cooperation in criminal matters, and unanimity would have to be achieved under Article 352 TFEU,²⁰⁴ the European Commission concluded that the imposition of minimum standards through amendments to the Compensation Directive would not be worthwhile.²⁰⁵ The European Commission stated that the EU 'currently lacks a clear legal basis to revise the Compensation Directive' and the necessary amendments needed to put in place comprehensive minimum standards would be 'particularly costly' for Member States.²⁰⁶ Instead, the European Commission opted for amendments to the Victims' Rights Directive obligating Member States to

²⁰⁰ *ibid.*

²⁰¹ European Commission, *EU Strategy on Victims' Rights* COM(2020)258.

²⁰² European Commission, *Supporting Crime Victims – Evaluation of the Victims' Rights Directive* Ares(2020)7284551.

²⁰³ European Commission, *Commission Staff Working Document: Impact Assessment* SWD(2023)246final,p48-49.

²⁰⁴ *ibid* 49.

²⁰⁵ *ibid* 50.

²⁰⁶ *ibid.*

pay directly to the victim any compensation awarded in the criminal trial from the offender and then recoup the amount from the offender after the conclusion of the criminal process.²⁰⁷

I argue that it is not that Article 352 TFEU does not provide a clear legal basis, rather the problem lies in the unanimity requirement. As the legal basis for the European Commission's 2023 Proposal falls under the ordinary legislative procedure under Article 82(2) TFEU, due to it being dependent on an award of compensation being made in the context of criminal proceedings, the absence of a unanimity requirement perhaps explains the European Commission's reasoning here as to its preferred proposal. Whilst the European Commission's reasoning is understandable from a political viewpoint, I am not convinced that the provisions in relation to judicial cooperation in civil and criminal matters exclude completely legislative action in relation to minimum standards for national compensation schemes. In relation to civil matters under Article 81 TFEU, why this provision is limited 'to rights or obligations between individuals', as argued by the European Commission's 2002 Proposal is not clear.²⁰⁸ On criminal matters under Article 82 TFEU, whilst national compensation schemes differ from offender compensation in the context of criminal proceedings, these two issues are not completely unrelated and overlap quite significantly in many respects. This is particularly the case should the European Commission's 2023 Proposal be adopted in that compensation awarded in criminal proceedings will become payable to victims by Member States, albeit with the condition that Member States can recoup such amounts from the offender. If the EU can obligate Member States to 'do' state compensation by grounding such an obligation in the criminal trial, why can't the EU obligate Member States to provide improved state compensation, through comprehensive minimum standards, via a mechanism which already exists in the Member States, i.e., national compensation funds? The European Commission's exclusion of Articles 81 and 82 TFEU as legal bases is, therefore, not completely convincing. Ultimately, this question warrants further consideration in future research.

In justifying its proposal in relation to the role of Member States paying and recouping compensation, the European Commission stated that the measure, if implemented, would reduce the uncertainty, costs and time associated with victims themselves executing compensation judgments against offenders, thereby reducing secondary victimisation.²⁰⁹ Additionally, the European Commission maintains that the measure is consistent both with other amendments proposed in the 2023 Proposal and also with the Directive on Violence Against Women.²¹⁰ In relation to the other amendments, the European Commission's 2023 Proposal also imposes

²⁰⁷ European Commission's 2023 Proposal (n 10).

²⁰⁸ European Commission's 2002 Proposal (n 53) [5.1].

²⁰⁹ 2023 Impact Assessment (n 203) 47.

²¹⁰ Directive 2024/1385 OJ No L1385.24.5.2024.p2/36.

obligations on Member States to ensure that victims of crime have a right to receive compensation from the offender in the course of criminal proceedings, thereby removing the exception contained in the Victims' Rights Directive which allowed Member States not to do so if compensation could be obtained in other proceedings.²¹¹ Furthermore, in relation to the Violence Against Women Directive, Article 24 obligates Member States to do likewise in relation to this category of victim.²¹² Finally, in its 2023 Proposal, the European Commission maintains that obligating Member States to pay offender compensation upfront will improve trust in the justice system.²¹³ On the financial costs to Member States of the measure,²¹⁴ the European Commission argues that as compensation can be recouped from the offender, which typically does not occur in relation to national compensation schemes, significant costs will not be incurred.²¹⁵

In this regard, the European Commission point to the Netherlands as a jurisdiction where such a measure, the Advance Payment Scheme (APS), operates. The European Commission highlight that of the 3,531 payments made to victims by the Dutch Government since 2017 under the APS in respect of violent and sexual offences, 2,888 (82 per cent) payments were collected in full (2,795) or in part (93) from offenders.²¹⁶ Whilst this demonstrates success in many respects, it is important to clarify that the remaining 18 per cent of non-recouped payments amounts to a not insignificant financial burden on the Dutch State. For example, approximately €7.5 million was advanced to victims of violent and sexual offences in 2017 with approximately only €3 million collected from offenders.²¹⁷ Between 2016 and 2024, €168 million was advanced to victims, with €49 million recouped.²¹⁸ Of the €168 million advanced between 2016 and 2024, particular sets of proceedings account for a large sum of the outlay. For example, in 2023, approximately €16 million was advanced to the victims of the MH17 air disaster in 2014.²¹⁹ Here, 298 people lost their lives when Malaysia Airlines Flight 17, travelling from Amsterdam to Kuala Lumpur, was shot down by Russian backed separatist forces in eastern Ukraine. In 2022, those responsible were convicted in absentia in a Dutch court and ordered to pay the relevant compensation.²²⁰

²¹¹ 2023 Impact Assessment (n 203) 49.

²¹² *ibid.*

²¹³ 2023 Impact Assessment (n 203) 50.

²¹⁴ D.Kent, 'Government Raises Concerns with EU over "Problematic" Crime Directive' (*Irish Examiner* 16 August 2023).

²¹⁵ 2023 Impact Assessment (n 203) 47.

²¹⁶ *ibid.*

²¹⁷ M.Hebly, *Compensatie en Verhaal van Schade door Strafbare Feiten Verkenning van Bronnen, Volumes en Publieke Kosten: Summary* (2020) 4.

²¹⁸ Central Judicial Collection Agency, 'CJIB Collects Almost 27 Million in Compensation' (*CJIB News* 10 April 2025).

²¹⁹ *ibid.*

²²⁰ J.Rankin, 'Three Men Found Guilty of Murdering 298 People in Shooting Down of MH17' (*The Guardian* 17 November 2022). It should be noted that many jurisdictions, including the UK, have distinct state compensation schemes for victims of domestic and overseas terrorist offences, see M.Hall, *Victims of Crime: Construction, Governance and Policy* (Palgrave 2017) 214-215. These schemes have been

Whilst it is important to acknowledge that recouped amounts will increase year-on-year as offenders continue to pay off their debts, thereby reducing the financial burden on the Dutch State, new awards will be made each year, further increasing the amount that has to be recouped. Principally for reasons of cost, the Member States are opposing the proposal in relation to compensation as part of Council negotiations with the European Parliament in the current set of trialogues.²²¹ With these figures outlined, the next subsection will examine the APS and the specific legal procedure in the Netherlands in more detail.

3.8.3 Advance Payment Scheme in the Netherlands

Under the relevant Dutch legal framework, victims can receive compensation from the offender through the criminal courts by way of a compensation order. Victims can also receive compensation from the offender through civil proceedings. In relation to the compensation order, whilst compensation is awarded as part of the criminal proceedings, whereby the victim is joined to the proceedings as a party for the purposes of the compensation claim, the criminal court utilises the relevant rules used in the context of civil proceedings to determine whether to award compensation and the amount of compensation if awarded.²²² Importantly, if the criminal court determines that the compensation claim is too complicated to be assessed as part of the criminal proceedings, then it will be deemed inadmissible and the victim must then file civil proceedings in order to pursue their compensation claim.²²³ If compensation is awarded by the criminal court and the amount is not paid to the victim by the offender within an eight-month period, then the APS steps in and pays the relevant compensation.²²⁴ The APS was established in 2011 and at first it applied only to violent and sexual offences. From 2016, the APS applied to all victims of crime but with a cap of €5,000 for non-violent and non-sexual offences.²²⁵ Once the APS has paid out the relevant compensation, the Central Judicial Collections Agency (CJIB) seeks repayment of

criticised for giving substantially more compensation to fatal victims of terrorism in comparison to fatal victims of other crimes under the regular compensation schemes, see J.Kleeman, ‘They were killed in the London Bridge terror attack, seconds apart. So why did their families get wildly different payouts?’ (*The Guardian* 9 March 2024).

²²¹ Council’s General Approach (n 9); Kent (n 214); National Parliament Reasoned Opinion Procedure, *Contribution from Czech Senate Proposal for a Directive Amending Directive 2012/29/EU* (2023).

²²² I.Giesen et al, ‘The Dutch Crush on Compensating Crime Victims’ in M.Dyson (ed), *Comparing Tort and Crime* (CUP 2015) 346. It is interesting to note sections 7A-7D of Britain’s Criminal Injuries Compensation Act 1995, as inserted by section 57 of the Domestic Violence, Crime and Victims Act 2004, which gives the Secretary of State authority to bring in rules providing for the recouping of state compensation awards which are paid to victims from offenders. It appears that these powers have never been used, see D.Miers, *Criminal Injuries Compensation: State and Offender Compensation for Violent Crime* (OUP 2018) [5.141]. Other jurisdictions also operate recouping frameworks, but the focus of this chapter is on the Netherlands due to the advanced nature of the APS, along with ease of access in terms of research material, see 2023 Impact Assessment (n 203) 175-186.

²²³ Giesen et al (n 222) 341.

²²⁴ J.Donner, *Coming to Terms: Towards a Balanced, Consistent and Affordable System for the Compensation of Victims of Criminal Offences in the Netherlands* (2021) [5.6.3].

²²⁵ ibid.

the amount from the offender.²²⁶ The CJIB operated in the Netherlands prior to the introduction of the APS and collects a wide range of court and administrative fines on behalf of the Dutch Government, including traffic fines. The CJIB can take several measures to enforce payment including agreeing with the offender to repay the amount in instalments. In the case of non-cooperation from the offender, the offender can have their assets seized. Furthermore, proceedings can be commenced to imprison the offender as a measure of last resort if they refuse to pay the awarded compensation.²²⁷ Importantly, the APS and the CJIB framework is not available in the context of compensation awarded during the civil process.²²⁸

Whilst the Dutch Government is generally successful at recouping compensation from the offender, there has been controversy in recent years as to whether the APS is an appropriate use of public funds. As a result, the Dutch Government committed itself to reviewing the operation of the APS. This review process, named the Donner Committee, reported in 2021 and recommended that the APS should be reformed. Specifically, it was recommended that victims of violent and sexual offences should be treated in the same manner as all other victims of crime in that amounts of compensation for all offences should be limited to what the CJIB expects to collect from the offender. The uncapped amount for violent and sexual offences would, therefore, be replaced with a capped amount calculated by the CJIB.²²⁹ The maximum amount proposed for all offences would be approximately €15,000.²³⁰ In addition to this proposal, the review also recommended that the eight-month time limit should be abolished, and the advance payment be paid straight away after the judgment.²³¹ Whilst these recommendations were broadly welcomed by the Dutch Government, the Ministry of Justice and Security decided to reject the proposals in relation to capped amounts as this would result in a significant reduction in the amount of compensation available to victims of violent and sexual offences. According to the Ministry of Justice and Security, retaining uncapped amounts for these victims is consistent with government policy in respect of safeguarding these victims and recognising the unique harm caused to victims' integrity as a result of violent and sexual crimes. Despite rejecting this proposal, the Ministry committed to expanding the APS to violent offences which were previously excluded, including arson resulting in serious bodily injury or death.²³²

²²⁶ *ibid.*

²²⁷ *ibid* para [2.3.3.5]. A similar provision is provided for in Ireland in respect of the non-payment of compensation orders, see Criminal Justice Act 1993, section 7 with reference to the Family Law (Maintenance of Spouses and Children) Act 1976, as amended, section 9A.

²²⁸ Donner (n 224) [5.6.2].

²²⁹ *ibid* [6.4.3.3].

²³⁰ Ministry of Justice and Security, *Letter to the Speaker of the House of Representatives of the States General in Response to Report of Committee to Investigate the System for Compensating Victims of Criminal Offences* (2023).

²³¹ Donner (n 224) [3.3.5.3].

²³² Ministry of Justice and Security (n 230).

3.8.4 The Need for Minimum Standards for State Compensation Schemes

Despite the relative success of the APS in the Netherlands and the European Commission's preference for Member States to adopt a similar framework in their respective jurisdictions, I maintain that there is still a need for comprehensive minimum standards at the EU level in respect of state compensation schemes.²³³ Such minimum standards might detail the type of victims who qualify for state compensation, the applicable violent offences included, along with the appropriate minimum time limit which victims must abide by when applying. Furthermore, these standards might include details on the minimum amount of compensation available, the types of losses covered and various other eligibility rules including police reporting requirements and the manner in which compensation can be denied or reduced should the victim be responsible in some way for the offence. As mentioned earlier, issues such as these were addressed in the European Commission's 2002 Proposal.²³⁴

Despite problems in relation to the legal bases for such minimum standards, I argue for such standards due to the inherent limitations of advance payment frameworks operating in the context of criminal trials, including the APS. One such limitation includes that the criminal court will often dismiss the compensation claim if such a determination is too complicated for the criminal court to assess. Victims are then left to issue civil proceedings where they must prosecute the case, secure evidence and enforce any judgments made themselves, without the possibility of an advance payment.²³⁵ In the Netherlands, according to the Ministry of Justice and Security, two-thirds of compensation claims made by natural persons in the criminal courts are deemed partly inadmissible or inadmissible. This amounts to 20,000 claims per year, 8,000 of which are claims involving violent and sexual offences.²³⁶ A further limitation relates to the fact that there is no guarantee that a criminal trial will take place, for example, if the offender cannot be identified or if the prosecution decides not to proceed with charging an individual for the offence due to an absence of evidence. If such a trial does take place, there is no guarantee that there will be a conviction. Victims might not ever be granted a compensation order and no advance payment can, therefore, be made. As in criminal cases where the matter is dismissed, victims are forced to issue civil proceedings. With the civil process posing significant challenges for victims, as referred to above, the national compensation scheme is often the only realistic option for victims who do not wish to pursue a civil claim against the offender.²³⁷ These challenges have also been

²³³ E.Sellier & A.Weyembergh, *Criminal Procedural Laws across the European Union* (European Parliament 2018) 156.

²³⁴ European Commission's 2002 Proposal (n 53) [5.1].

²³⁵ Donner (n 224) [3.3.2]. In the Netherlands, a criminal conviction is compelling evidence for the purposes of tort proceedings, see Giesen et al (n 222) 318.

²³⁶ Ministry of Justice and Security (n 230).

²³⁷ Donner (n 224) [2.4.5].

highlighted in the Irish context by O’Malley J in the Supreme Court in *DPP v Duffy*, who acknowledged that compensation orders under section 6 of the Criminal Justice Act 1993 are ‘problematic’ in that they seek to blend criminal and civil jurisdiction.²³⁸ In issuing such orders, trial judges in the criminal courts do not benefit from the tools available to a civil court including particulars, discovery, oral evidence, and cross-examination.²³⁹ Furthermore, O’Malley J argued that the determination of the correct amount of compensation has the potential to delay the conclusion of criminal proceedings, which would be ‘highly undesirable’.²⁴⁰

For this reason, the European Commission’s 2023 Proposal in relation to the advance payment framework has limitations. Whilst the European Commission stated that this proposal will bring ‘considerable improvement to victims’ standards on compensation from the offender’,²⁴¹ and acknowledged that some Member States will need to considerably adapt their justice systems to effectively operate such a framework,²⁴² the European Commission did not consider in detail the various difficulties raised above. In fact, the European Commission based the proposal on an assumption that ‘if the prosecution wins the criminal case [...] then the victim will be entitled to compensation’.²⁴³ As demonstrated with the APS in the Netherlands, this is not necessarily the case. In fact, compensation claims are often dismissed due to their complexity, even where offenders have been convicted.²⁴⁴ Furthermore, the fact that a criminal trial or conviction might often not occur in Member States was not considered by the European Commission. In fact, the European Commission’s 2023 Proposal seeks to force Member States to provide a compensation procedure in the criminal courts only, removing the current exception in the Victims’ Rights Directive which allows Member States not to do so if another procedure exists elsewhere, such as civil proceedings. In putting forward this proposal, it is not clear whether the European Commission considered the fact that no criminal procedure or conviction occurs in many instances. Finally, there is then the issue of the impact of enforcing compensation orders on the

²³⁸ *DPP v Duffy* [2023] IESC 1 [86]; Criminal Justice Act 1993, section 6.

²³⁹ *ibid* [87]. At this juncture, it is interesting to note that civil proceedings in respect of personal injuries have undergone substantial change in many jurisdictions. For example, there is the non-fault based compensation scheme in New Zealand, see K. Watts, ‘A Comparative Law Analysis of No-fault Comprehensive Compensation Funds: International Best Practice and Contemporary Applications’ (PhD, University of Antwerp 2021).

²⁴⁰ *Duffy* (n 238). According to the non-binding guidelines issued by the Judicial Council in May 2025, referred to in Chapter Two, a compensation order under section 6 of the Criminal Justice Act 1993 should only be imposed if ‘the damage done is relatively easy to quantify, or in more serious cases where it is clear that the victim would be entitled to damages in civil proceedings, that the offender has means and that the order can be made without unduly prolonging the sentence process.’ See Judicial Council, *Report of the Sentencing Guidelines and Information Committee on the Application of Section 40 of The Domestic Violence Act 2018* (2025) 19.

²⁴¹ 2023 Impact Assessment (n 203) 50.

²⁴² *ibid* 47.

²⁴³ *ibid* 107.

²⁴⁴ Giesen et al (n 222) 343.

rights of offenders. The enforcement of such orders, especially where an advance payment has been made to the victim and the Member State in question is taking measures to recoup the amount from the offender, could potentially be understood as a further punishment on offenders which might impact their rehabilitation.²⁴⁵ This issue is amplified by the fact that such measures might be imposed on offenders many years after the final judgment of the criminal court.²⁴⁶ Ultimately, the impact, if any, of such an approach warrants further study in advance of becoming a core part of the EU victims' rights landscape. Considering the limitations with advance payment frameworks in the criminal trial and with minimum standards in respect of national compensation schemes being rejected by the European Commission, despite the significant disparities present across the national schemes of Member States,²⁴⁷ clarifying the scope and meaning of 'fair and appropriate compensation' under the Compensation Directive is more important than ever.

3.9 Law Reform Process in Ireland and the Influence of *BV*

In light of EU legislative and judicial action in relation to state compensation, the Irish Government has recognised the need to reform the CICS. Along with multiple stakeholders calling for CICS reform, including the DOJ, the LRC in 2019 included the CICS in its Fifth Programme of Law Reform.²⁴⁸ According to the DOJ Working Group (Working Group) established to examine reform for the CICS in parallel with the LRC process, a review of the CICS is 'undoubtedly timely', especially in light of the fact that prior to 2021 the CICS had only been amended once.²⁴⁹ This was in 1986 and removed compensation for pain and suffering in non-fatal applications. The recommendations of this Working Group resulted in a number of significant reforms to the CICT's operation in 2021. These reforms included the doubling of the CICT membership from seven to 14, the express provision for the solatium payment in fatal applications, the insertion of the two year upper time limit discussed in Chapter Two and in section 3.6.2 above, the updating of the various monetary limits applicable under the CICS, recognition of the role of Fiosrú, the Office of the Police Ombudsman, in the criminal investigation of certain types of violent crime, the abolition of the 'same roof' rule, the removal of the term *ex gratia* from the CICS in recognition of the newly established right to compensation for all victims of violent crime in the EU by the CJEU in *BV* and the provision that all applications

²⁴⁵ R.Koenraadt et al, 'Tackling Debt Problems in the Criminal Justice System: A Study into the Trajectories and Bottlenecks of Imposed Financial Requirements in the Netherlands' (2024) 0(0) *Criminology and Criminal Justice* 1; M.Rogan, 'The Role of Victims in Sentencing - The Case of Compensation Orders' (2006) 13 *Irish Law Times* 202.

²⁴⁶ Donner (n 224) [3.3.4.4].

²⁴⁷ Soleto Muñoz et al (n 6); Burchett & Weyembergh (n 6).

²⁴⁸ LRC, *Fifth Programme* (2019).

²⁴⁹ DOJ, *Report of the Working Group to Examine Matters Relating to the Criminal Injuries Compensation Scheme* (2020) 3.

with potential awards of €75,000 or more are to be decided by three CICT members and not just one as had been the case to date.²⁵⁰

The Working Group also recommended the introduction of capped awards for material damages. The Minister for Justice, Helen McEntee TD, decided not to implement this proposal pending the outcome of the LRC reform process, as discussed below. The proposal included putting a cap of €60,000 for personal care costs, €20,000 for vouched medical/dentistry costs, €20,000 for home adaptations/specialist equipment, €60,000 for past loss of earnings based on 100% of income levels, €60,000 for future loss of earnings based on 50% of income levels and €10,000 for funeral costs. The Working Group justified its proposals by pointing to Ireland's comprehensive health care and welfare systems, which would make up any shortfalls that arise from the introduction of caps on material damages.²⁵¹ The DOJ also indicated that caps might be introduced should non-material damages be re-introduced. In justifying the presence of caps generally, the DOJ referenced the *BV* judgment and the requirement set down by the CJEU that national schemes should be financially viable.²⁵² Holland J in *Bowes* corrected this position and stated that the holding of the CJEU in relation to the financial viability of schemes meant that Member States must properly fund the schemes to ensure that 'fair and appropriate compensation' for victims of violent crime is available, not that restrictions curtailing the provision of compensation can be introduced.²⁵³

In publishing their Consultation Paper in 2022 on compensation for victims of crime, the LRC state that there exists a 'compelling argument' that the CICS should be subject of a 'full redesign'.²⁵⁴ The LRC highlight the significance of the *BV* judgment and the fact that the Compensation Directive establishes a right to state compensation for all victims of violent crime in the EU.²⁵⁵ The LRC noted that a comprehensive review of the CICS is both 'timely' and 'necessary' in light of various developments in EU victims' rights law and policy, including the *BV* judgment itself, along with the Milquet Report, the EU Strategy on Victims' Rights and the European Commission's efforts to amend the Victims' Rights Directive.²⁵⁶ The LRC argue that legislation is required to underpin Ireland's criminal injuries compensation process. The LRC put forward four key principles which should underpin such legislation including reparation, compensation as a right, acknowledgement and solidarity and the minimisation of secondary

²⁵⁰ DOJ (n 129).

²⁵¹ Working Group (n 249) 19-26.

²⁵² DOJ (n 129).

²⁵³ *Bowes* (n 127) [6].

²⁵⁴ M.Carolan, 'Law Reform Body Queries State Scheme for Victims of Violent Crime' (*Irish Times* 9 February 2022).

²⁵⁵ LRC (n 5) [4.20].

²⁵⁶ *ibid* [2.40].

victimisation.²⁵⁷ Additionally, they suggest, on a preliminary basis, that there might be a necessity for the creation of a permanent and independent statutory body to oversee the CICS and to replace the CICT. According to the LRC, such a body could function as a national victim's office to consolidate the provision of victim support services, including compensation, as a trauma-informed 'one stop shop' for victims.²⁵⁸ The LRC submits that consideration ought to be given to an overhaul of the various eligibility rules underpinning the CICS. The LRC are critical of the 'restrictive' three month time limit under paragraph 20,²⁵⁹ and warn that there is a risk that both the part-responsibility rule under paragraph 12 and the conduct, character and way of life rule under paragraph 13 are applied in an unclear and inconsistent manner.²⁶⁰ The LRC points out that applicants experience a number of difficulties applying for compensation including difficulties filling in the CICT application forms,²⁶¹ delays,²⁶² lack of support,²⁶³ challenges in the appeal process,²⁶⁴ and poor communication processes between applicants and CICT staff and members.²⁶⁵ Finally, the LRC highlight that the provision for offender compensation, especially in the criminal courts, and its relationship with the CICS, ought to be clarified.²⁶⁶

At the time of writing, the LRC are yet to publicise their finalised recommendations. The LRC is examining how an optimum model of state compensation can be designed in light of Ireland's EU law obligations. Regardless of the outcome of the LRC process, which is expected to conclude imminently, it is clear that EU law, and specifically the scope of Article 12(2) of the Compensation Directive, will have a significant impact on the future provision of state compensation in Ireland. Further clarity on the scope of Ireland's EU obligations will be ascertained when the CJEU judgment in *Blanco v CICT* is handed down. The recently published Programme for Government has also committed to reform and the placing of the CICT on a statutory footing.²⁶⁷ This is in keeping with the year-on-year commitments from the DOJ that comprehensive reform measures will be taken once the LRC process concludes.²⁶⁸

²⁵⁷ *ibid* [3.18]-[3.39].

²⁵⁸ *ibid* [3.71]-[3.98]

²⁵⁹ *ibid* [6.29].

²⁶⁰ *ibid* [5.46]-[5.61].

²⁶¹ *ibid* [6.16]-[6.21].

²⁶² *ibid* [6.52]-[6.59].

²⁶³ *ibid* [6.30]-[6.34].

²⁶⁴ *ibid* [6.43]-[6.51].

²⁶⁵ *ibid* [3.76].

²⁶⁶ *ibid* [7.1]-[7.35].

²⁶⁷ Irish Government, *Programme for Government: Securing Ireland's Future* (2025) 120.

²⁶⁸ DOJ, *Justice Action Plan* (2024) 15; DOJ, *Justice Action Plan* (2023) 35.

3.10 Conclusion

This chapter has outlined in detail the origins, development and impact of the EU framework for state compensation. The EU was first reluctant to take harmonisation measures because of an absence of law-making authority at the EU level and due to the parallel development of the Compensation Convention at the COE. When it became evident that COE measures were ineffective in reforming state compensation provision at the national level, and with the eventual acquiring of criminal justice and victims' rights competencies at the EU level, the Compensation Directive was adopted. In due course, the CJEU developed its jurisprudence in relation to the Compensation Directive and established, in *BV*, a right to state compensation for all victims of violent crime in the EU. Prior to *BV*, little substantive and practical progress had been made on the implementation of victims' rights in the Member States.²⁶⁹ *BV* was reinforced in *Burdene* and to date has had a significant impact on the operation of national compensation schemes, especially in Ireland. This is evidenced by a series of Superior Court judgments in Ireland, along with various law reform initiatives. Alongside this development, victims' rights law and policy in the EU has undergone further significant changes throughout the course of the last 20 years with the adoption of the Lisbon Treaty in 2009, the Victims' Rights Directive in 2012, along with various other sectorial legislation for specific categories of crime victim.²⁷⁰ In recent years, the EU has continued to evaluate its victims' rights legislative architecture and has strengthened provision for victims' rights.²⁷¹ One example of these recent efforts is the European Commission's 2023 Proposal which seeks to shift focus from reforming the Compensation Directive to improving the provision of offender compensation in the criminal trial.

This chapter of this thesis, along with Chapter Two, has set out a desk-based analysis of the legislative framework for state compensation in Ireland and the EU. In recognition of this proposed shift emanating from the European Commission in their 2023 Proposal, a core argument of this thesis is that there is still a necessity for reform of the Compensation Directive and the development of more comprehensive minimum standards in respect of national compensation schemes. I submit that these minimum standards are needed, despite concerns as to the applicable legal bases, as it is clear that significant disparities exist across the national compensation funds of Member States. I argue that there is still a need for the development of more comprehensive minimum rules as the European Commission's 2023 Proposal is limited and will not reach every violent crime victim, especially as the criminal trial is often not the appropriate place for compensation claims to be determined and a criminal trial or conviction often does not take place.

²⁶⁹ Lupářová & Della Torre (n 42) 330.

²⁷⁰ Directive 2011/36/EU OJNoL101.15.4.2011.p1; Directive 2011/93/EU OJNoL335.17.12.2011.p1; Directive 2017/541/EU OJNoL88.31.3.2017.p6.

²⁷¹ Directive 2024/1712 OJNoL1712.24.6.2024.p1/13.

I also submit that it is imperative that the European Commission reconsider its proposals in light of concerns as to the impact on the rights of offenders. Overall, with the minimum standard of ‘fair and appropriate compensation’ having a positive impact on compensation provision for victims in Ireland, I argue that minimum standards, expressed through appropriate EU legal instruments, is the optimum method to improve victims’ access to compensation at EU level.

Regardless of the European Commission’s direction in relation to compensation, which as stated above the Council are opposing in the current triologue negotiations with the European Parliament,²⁷² the Compensation Directive itself is still relevant and is likely to be subject to further scrutiny at the CJEU, which will continue to impact the development of state compensation schemes, especially in Ireland. With the argument advanced in this chapter that state compensation schemes should be further developed and expanded at EU level, it is necessary to determine a number of thematic issues relevant to such schemes. I developed these themes through an analysis of the qualitative interviews conducted as part of this PhD research. These themes reflect several underlying challenges at the CICT and include clarifying the aims of state compensation, determining whether the Irish state compensation framework takes account of both victimhood as a social construct and the consequences of criminal victimisation and, finally, there is the issue of procedural justice and how best to design a state compensation framework which treats victims fairly and with respect. A key finding of this thesis is that, whilst the right to state compensation, and a broader shift to a rights-based approach to victimisation, is to be welcomed in that it is likely to improve access to state compensation, a rights-based approach is likely to experience the same underlying problems as the needs-based social solidarity approach which has formed the basis of state compensation schemes since their initial establishment.²⁷³ Each of these thematic issues is now examined in turn throughout the remaining chapters of this thesis.

²⁷² Council’s General Approach (n 9).

²⁷³ Buck (n 14).

4 CHAPTER FOUR: THE AIMS OF STATE COMPENSATION

4.1 Introduction

In this chapter, I examine the first overarching theme constructed from my analysis of 21 qualitative interviews. By way of reminder, participants are referred to by their respective Participant Group, followed by a number to denote order. A = CICT applicant, S = solicitor, B = barrister, VSW = victim support worker or volunteer and FTM = former CICT member. This chapter presents a varied understanding of the aims of monetary compensation itself, whilst also setting out perspectives that see state involvement in the provision of compensation as limited in nature and scope. As outlined in Chapter Two, whilst some early critics held that there was no sound underlying philosophy for state compensation funds,¹ other scholars recognise the distinct harm caused by criminal victimisation and the injustice that can flow from victims not being able to access compensation from the offender.² Perspectives and understandings of the aims of compensation, especially state compensation, gathered as part of this thesis, often mirror lessons derived from the existing literature. This literature, in particular research conducted by Holder and Daly on access to state compensation for victims of sexual violence in Queensland, Australia, highlights the benefits of compensation for victims, including practical benefits, acknowledgment and agency, but also the difficulties involved in linking criminal victimisation with the payment of money to victims, such as the arbitrariness of money payments, along with the moral taboo of receiving money after a violent crime.³

As part of their research, Holder and Daly interviewed victims of sexual violence and their findings highlight the important value of money payments to these victims.⁴ Whilst this chapter puts weight on this widely cited research,⁵ primarily due to the parallels between it and the

¹ P.Cane, *Atiyah's Accidents, Compensation and the Law* (CUP 2018) [12.4.1].

² A.Ashworth, 'Punishment and Compensation: Victims, Offenders and the State' (1986) 6(1) Oxford Journal of Legal Studies 86,107.

³ R.Holder & K.Daly, 'Recognition, Reconnection, and Renewal: The Meaning of Money to Sexual Assault Survivors' (2018) 24(1) International Review of Victimology 25.

⁴ *ibid* 26.

⁵ H.Soleto Muñoz et al, 'Ineffectiveness of the Right to Compensation for Victims of Sexual Violence: A Comparison Between Five EU Member States' (2024) 4 International Criminology 93; F.Augusteijn et al, 'The Predictability of Court Adjudicated Compensation for Pain and Suffering Damages within the Criminal Proceedings and the Role of Victim Labels: A Case Study on Victims of Sexual Crime in the Netherlands' (2024) 0(0) Criminology and Criminal Justice 1; N.Godden-Rasul & C.Wiper, 'Trauma-Informed Lawyering in the Context of Civil Claims for Sexual Violence' (2024) 51(2) Journal of Law and Society 189; O.Smith & J.Galey, 'Supporting Rape Survivors Through the Criminal Injuries Compensation Scheme: An Exploration of English and Welsh Independent Sexual Violence Advisors' Experiences' (2018) 24(9) Violence Against Women 1091; O.Smith et al, 'State Compensation as Rape Justice: Are Public Attitudes a Legitimate Foundation for Reform of the UK's Criminal Injuries Compensation Scheme?' (2022) 6(1) Journal of Gender-Based Violence 79; K.Daly & J.Davis, 'Money Justice' (2021) 54(1) Journal of Criminology 60.

qualitative interviews conducted as part of this thesis, this chapter also demonstrates that the aims of state compensation are different in an Irish context because non-fatal applicants cannot receive compensation for non-material damages. As non-material damages are available in Queensland, Australia, Holder and Daly's findings on the aims of state compensation reflect the distinct roles played by material and non-material damages. As these findings do not translate seamlessly to an Irish context, cognisance is afforded to any differences throughout this chapter.

This chapter commences in section 4.2 with an explanation of why it is important to clarify the aims of compensation and how these aims are limited in an Irish context. Section 4.3 then explores the practical benefits of compensation as understood by interviewees. Section 4.4 examines the varied perspectives of interviewees in relation to how compensation acknowledges victims. Section 4.5 sets out how one interviewee saw state compensation as aiming to put the victim back into the position they held prior to the criminal incident. This section then puts forward more nuanced perspectives from other interviewees which recognise that, whilst compensation can never return the victim to their former position, it can provide them with a level of solace which will assist them in managing the consequences of criminal victimisation. Section 4.6 contrasts the role of compensation as providing victims with agency with the absence of proper long term supports for victims of crime in Ireland. Finally, section 4.7 examines the negative connotations of compensation and highlights the important role played by victim support in managing these negative connotations and encouraging victims to apply to the CICS.

Overall, state compensation is ultimately a positive dimension to a state's victims' rights framework and has a number of aims. Some of these aims are explicitly set out by the CICT itself, especially the practical benefits and acknowledgement, whilst others are perceived by victims and practitioners as implicit aims of state compensation and the CICS itself. The principle learning to be derived from this chapter is that whilst compensation itself has various aims including practical benefits, acknowledgement, solace and agency, the nature of compensation available under the CICS is limited. These limitations are not being adequately explained to victims, other stakeholders and the general public. As a result, satisfaction with the CICS may be impacted.⁶

4.2 Why Clarify the Aims of Compensation?

At the outset, it is important to explain why the question of clarifying the aims of compensation is important. The LRC has criticised the CICS for 'not expressly articulat[ing] its underlying

⁶ M.Kunst et al, 'Performance Evaluations and Victim Satisfaction With State Compensation for Violent Crime: A Prospective Study' (2017) 32(19) Journal of Interpersonal Violence 3027,3037.

philosophy.⁷ Furthermore, the LRC states that because compensation from the state differs from compensation from the offender, its rationale ought to be clarified.⁸ The CICT's recently revamped website does contain a statement of aims which clarifies that compensation cannot provide for all the person's needs in the aftermath of a crime, but can provide practical benefits in relation to specific losses to assist them in their recovery.⁹ Kunst et al state that information provision, from workers in the compensation fund to victims, about the levels of compensation they can expect to receive contributes to overall satisfaction levels on the part of victims about the compensation fund.¹⁰ Whilst communicating the aim of the compensation fund was not an element of Kunst et al's study, I argue that explaining the aim of the compensation fund inherently contributes to an understanding of the levels of compensation available, and therefore, satisfaction levels. The potential for secondary victimisation is, thereby, reduced.¹¹ In an Irish context, whilst the solatium payment for mental distress is available in fatal claims, clarifying that the aim is to only provide compensation in respect of material damages, and not non-material damages, can go a long way to clarifying victims' expectations about the type of compensation available. The issue of information provision to victims and the limited aim or function of the CICS being explained to victims was neatly summarised by S5:

You have to explain 'No the compensation we can try and get for you is quite limited under the rules of this. All we can get for you is out of pocket expenses and [...] future loss of earnings or potential loss of earnings, but that is the limit. We can't get you the compensation you would get through a personal injury claim for pain and suffering.' A lot of our clients would have a difficulty trying to understand that and distinguish that. [...] They then have a huge difficulty with that. [...] They feel it's unjust. They say, 'Look something has been done to me and now you're saying [...] I really can't claim anything because you're saying to me there's nothing I can claim because I'm on social welfare and I'm not working'. [...] That is the reality unfortunately for them. (S5).

S5 highlights that CICT applicants struggle to distinguish between material and non-material losses and that they feel quite aggrieved when this is set out to them. This frustration is amplified in that many victims do not have quantifiable losses in the form of medical expenses and loss of earnings. This is because they might not be in employment at the time of their victimisation or they might have a medical card. Such a card allows qualifying individuals in Ireland to access

⁷ LRC, *Compensating Victims of Crime* (CP672022) [3.41].

⁸ *ibid* [3.43].

⁹ CICT Website <<https://www.gov.ie/en/publication/684e8-what-the-criminal-injuries-compensation-tribunal-does/>> accessed 27 May 2025.

¹⁰ Kunst et al (n 6).

¹¹ LRC (n 7) [3.43].

free medical care in the public health system. Despite this, there are considerable delays and waiting lists for many treatments in the public health system in Ireland. This results in individuals turning to private health care providers to receive treatment.¹² Several interviewees highlight how victims of sexual violence, victims of human trafficking and victims with purely psychological injuries will have no recourse under the CICS. S1 states that 'people who could go to the CICS are put off going because of the delay in getting your 500 quid in medical bills' and in these circumstances 'it's not worth applying' for compensation. S1 also states that 'there are [...] a vast number of people who cannot apply because their only loss is [non-material] damages.' It is not worth going to the effort of gathering the various documents to apply for such a small amount of money, whereas if compensation for non-material losses was available, there would be worthwhile amounts of compensation to apply for. S5 echoes the viewpoint that many victims do not think it is worth applying. B4 highlights that there is a socio-economic dimension to this issue in that a lot of people in socio-economically disadvantaged communities 'won't have a work history so you won't have [material] damages.'

In sections 4.3 to 4.6 below, the practical assistance, acknowledgment, solace and agency which compensation provides is set out. However, because non-material losses are not available in non-fatal claims, these aims are limited to only certain victims who have quantifiable losses which can be proven. In this manner, as full compensation, as would be available from the offender, is not available under the CICS, state compensation represents a symbolic payment, albeit a quantifiable one, to victims to assist them in relation to losses incurred in the aftermath of violent criminal victimisation. Holder and Daly maintain that the symbolic nature of state compensation must be explained to victims and the wider public through specific language to describe its limitations. Importantly, in this regard, the fact that state compensation does not provide the same level of compensation as would be available from the offender in a civil action must be explained clearly to victims from the very start of the CICT process.¹³ Whilst the statement on the CICT's website clarifies that 'compensation alone cannot provide for all of a person's needs following a violent crime',¹⁴ in light of there being several CICT decisions where applicants have claimed purely for non-material damages and had their compensation claim rejected as a result,¹⁵ there is

¹² S.Connolly, 'Improving Access to Healthcare in Ireland: an Implementation Failure' (2024) 19(1) *Health Economics, Policy and Law* 46. Under institutional and other redress schemes in Ireland, certain individuals are entitled to an enhanced medical card, which is not means tested. Access to medical services even under such a card has been criticised as highly limited, see Dáil Debates, Select Committee on Education, Further and Higher Education, Research, Innovation and Science, 19 June 2024.

¹³ Holder & Daly (n 3) 41.

¹⁴ CICT Website (n 9).

¹⁵ 51657/8.September.2022; 54197/13.October.2022; 52910/10.May.2023; 53065/5.August.2023, 54960/27.April.2023; 54654/8.June.2022; 53536/23.July.2023; 53951/23.March.2023.

a question mark over whether applicants are clear on the limits present in the CICS, especially where an applicant has not had the benefit of legal assistance or victim support.

The issue of compensation for non-material damages is closely linked with the issue of limited public resources. This thesis identifies a conflict between the state genuinely wanting to come to the assistance of victims, whilst also seeking to balance the overall budgetary implications of doing so. This issue was evident in the decision to initially establish the CICS in 1974, to terminate the CICS in 1981 and to stop compensation for non-material damages in 1986, as outlined in Chapter Two. It is also clear in that the LRC and the DOJ are considering the introduction of capped awards,¹⁶ especially if the CJEU in *Blanco v CICT* holds that the state must introduce compensation for non-material damages.¹⁷ This conflict between seeking to assist victims and the budgetary implications is also reflected in the perspectives put forward by interviewees. B1 states:

We can probably all agree that somebody who is injured criminally, by definition, deserves on some level compensation or deserves to be looked after [...]. But that has an economic consequence for the state. And the real question in many ways is [...] are we in a position to spend hard earned taxpayers money on this as opposed to on something else or is this something that we just have to suck up and accept? [...]. Just because the [offender] is not in a position to compensate you or for whatever reason you can't get compensation from that person, it doesn't follow that you're not deserving of compensation and that seems to me to be obvious. (B1).

B1 highlights that state compensation schemes were established partly because victims find it difficult to receive compensation from the offender. According to B1, if the state wishes to continue to provide state compensation to victims, the state must accept the related cost of doing so. S3 also comments on the budgetary implications of state compensation in the context of ongoing reform of the CICS, particularly in the context of non-material damages:

I'm aware that the LRC has been and may still be looking at the totality of these structures to see whether [the state] are under an obligation [...] to do more [...]. Will it create a burden upon the state? Absolutely. There are so many more assault and injury related circumstances now than there ever were [...]. We are replete with injury claims and assaults. We are living in a very violent society I must say. If you look at the papers every

¹⁶ LRC (n 7) [4.73]-[4.88]; DOJ, *Report of the Working Group to Examine Matters Relating to the Criminal Injuries Compensation Scheme* (2020).

¹⁷ *Blanco v CICT* [2024] IEHC 171.

day you see what's going on. [...] You could be creating a very large outlet for the Exchequer [...]. There's no question that it would be a drain upon the resources of society no doubt. But that is a societal question. (S3).

S3 points out that there are far more incidents of violent crime today in comparison to 1986 when compensation for non-material damages was removed from the CICS. S3 states that, whilst the re-introduction of compensation for non-material damages would hugely increase the overall cost of the CICS to the Irish Government, the CICS 'should be doing more' to assist victims in addition to compensation for material damages. A2 went further and argued that the state's priority is always to limit the financial exposure of the state:

They're not going to change that much to it. Still going to be the same hegemony. It's still going to be the same ethos of save the taxpayer money and screw people over with [injuries] to save the taxpayer money. And discriminate against anyone we can because they're not a prison officer [or] they're not part of the 'group'. (A2).

Whilst some interviewees, including B1 and S3, were aware of the balance to be struck between assisting victims and managing the budgetary implications, this statement from A2 reflects a broader concern raised by interviewees that the financial viability of the CICS is the primary priority for the state. This is reflected in the continued exclusion of compensation for non-material damages. A2 expresses the viewpoint that prison officers, whose compensation scheme is also operated by the CICT, do not face the same barriers as victims. Whilst non-material damages are available under the prison officer compensation scheme,¹⁸ one lawyer interviewed as part of this research states that prison officers do in fact face barriers in accessing compensation, especially in relation to their legal costs having to come out of their award. This lawyer also stated, however, that prison officers and members of AGS, who themselves have a distinct and separate compensation process,¹⁹ 'actually get compensated pretty well.'

Notwithstanding issues concerning the differences, if any, in treatment between victims of crime, prison officers and AGS, the exclusion in relation to non-material damages in the CICS is likely to end as a result of the anticipated CJEU ruling in *Blanco*. Therefore, it is likely that state compensation will continue to provide compensation which is distinct and limited in comparison with offender compensation. Whilst funding for the CICS will have to increase significantly, compensation awards might have to be capped to reflect the significant increase in the value of

¹⁸ Working Group (n 16) 10.

¹⁹ The garda compensation process was recently reformed and is now housed within the Injuries Resolution Board, see Garda Compensation Act 2022.

awards which will result from the re-introduction of non-material damages. This issue of capping compensation awards at the CICS is returned to in section 4.6 in the context of the lack of long term supports for victims of crime. Overall, regardless of the issue of caps, the exclusion of non-material losses represents a constraint in terms of what the CICS attempts to achieve in terms of supporting victims. At present, the distinction between material and non-material losses is not being adequately explained to CICT applicants early enough in the process to ensure that expectations about the levels of compensation to be awarded are managed appropriately. The remaining sections of this chapter now examine the various other aims of the CICS.

4.3 The Practical Benefits of Receiving Compensation

One aim which was consistently raised by interviewees was that compensation aims to grant practical benefits to victims. This is consistent with Holder and Daly's research which demonstrates that giving monetary compensation directly to victims allows them to pay bills and debts and can assist in them accessing medical and other services.²⁰ In this regard, B2 states that 'the whole kind of point of the [CICS] is that it's there to help people', whilst B4 highlights that the purpose of the CICS 'is really noble' in that 'there should be something there to assist victims'. FTM1 and FTM2 provide additional context on the type of practical benefits which compensation under the CICS affords to victims:

I think the purpose of the CICS is quite laudable. It primarily centres around dealing with the out-of-pocket expenses for victims of crime. That can range in some instances from a small amount of medical expenses to little bits of loss of earnings and things like that but then it can also extend to people who have suffered extensively, you know, that kind of big care requirements on the basis of long term acquired brain injuries. The cases go into the need for the provision of care and can be anywhere near a million euro. So, the quantum is incredibly wide. (FTM1).

I think it was trying to compensate people for the direct losses that they would have suffered for the injuries that they or their family member in a fatal case would have suffered. So, for example if you had a fatal case of somebody who died as a result of a criminal act and they were a young person [...] [and had] family obligations [...] the state would pay a sum to represent their earnings over their lifetime and the expenses that the family would have incurred otherwise [...] So, it wasn't designed to be damages but rather what would be called in court 'special damages'. So, the actual out of pocket expenses that people would suffer. (FTM2).

²⁰ Holder & Daly (n 3) 37.

FTM1 and FTM2 set out the comprehensive scope of available losses under the CICS. This scope ranges from minor medical expenses and loss of earnings where there are minor injuries to the costs of long term care and future loss of earnings where there are life altering or fatal injuries. Under paragraph 9 of the CICS, the minimum award is €500.00,²¹ and as FTM1 highlights, there is no maximum award and the quantum in some CICT claims can exceed a million euros. The scope of available losses, therefore, grants successful CICT applicants a wide variety of practical benefits depending on the specific losses incurred in an individual CICT claim. A number of interviewees, either individuals bereaved by homicide or individuals who volunteer in a victim support organisation that assists individuals bereaved by homicide, highlight the practical benefits the CICS provides in the bereavement process. A3 links the practical benefits of receiving compensation with the role of acknowledgement:

I had to go back to the state to actually bury my [loved one]. I had no money to pay for a funeral. Even the simple things like that, like even if they acknowledged that and gave you the money for you to bury your loved one, that makes the difference. (A3).

Whilst the specific role of acknowledgement is examined in section 4.4 below, A3 raises the practical issue of having to organise and pay for a funeral in the aftermath of the violent death of their loved one. VSW1 also highlights this issue and how compensation under the CICS can provide practical benefits for victims in that they do not have to worry about the expense involved in paying for a funeral unexpectedly:

I've seen people who've got the compensation and [...] it released that kind of stress that they could fully pay for a funeral or they could do something in the honour of their child. [...] There's been a kind of calming because [...] they had to stop worrying then about having to pay these bills. (VSW1).

VSW1 states that the practical benefits of receiving compensation for funeral costs helps to reduce the stress and worry experienced by individuals bereaved by homicide. VSW3 echoes this statement in relation to funeral costs. VSW3 also refers to the solatium payment in fatal cases and how this can be of particular practical use where a family member is left raising the children of deceased relatives. VSW3, however, also points out that there has been significant delays in CICT decision-making in recent years which diminishes these practical benefits. This is because CICT applicants have to wait several years before receiving the compensation and benefiting practically from it:

²¹ CICS [9].

We largely find it's very practical. It would be families who are [...] siblings of the person who's been killed, [they] are picking up the pieces, minding children, bringing maybe an extra one or two children into their family's situation. And that's where the compensation can have a very practical application. There are so many different [...] impacts of homicide that families are left to pick up the pieces. [...] There's obviously initially the expense of the funeral and all of that and that can be covered by the CICT but it could be three, four years after the event that the family will get any money and some families are just not able to carry that debt for that length of time. (VSW3).

It is evident from other interviewees that the CICT are processing claims more quickly today in comparison to several years ago. Despite this, VSW3 calls attention to the issue of delay as families have been left in debt, especially to funeral directors and other family members. Interviewees also highlight this issue of delay and debt in the non-fatal context also, which undoubtedly reduces the practical benefits which the CICS aims to provide. Interviewees also spoke about other tangible benefits of receiving compensation under the CICS. A4 and A5 say that compensation allowed them to pay for counselling in respect of themselves and their children in the aftermath of being bereaved by homicide. Several interviewees mentioned the importance of receiving compensation in respect of past and future loss of earnings.

Overall, the interviewees I spoke to as part of this research had a clear understanding of the aim of compensation and the practical benefits it can bring to victims in terms of paying bills and debts and accessing medical services. This is consistent with Holder and Daly's research, which states that 'money may assist a survivor's "recovery" from victimisation with its many practical uses.'²² Holder and Daly's findings demonstrate that victims derive these practical benefits from both the material and non-material damages awarded.²³ Holder and Daly highlight that victims might not always receive material damages because they were not informed that they could do so and also that the additional paperwork to prove these losses is difficult to put together due to them being overwhelmed in the aftermath of criminal victimisation.²⁴ Whilst fatal claimants under the CICS will receive the solatium payment which can be spent on practical items, the practical benefits, in an Irish context, primarily derive from material damages. In Chapter Six, the difficulties victims experience in putting together the documentation to prove these losses is examined.

²² Holder & Daly (n 3) 28.

²³ ibid 34-36

²⁴ ibid 36.

4.4 The Importance of Acknowledging Victims

The role of compensation in acknowledging the harm inflicted on victims is a further aim of the CICS which was discussed by interviewees in this research. Mulder's research in the Dutch context highlights that 83% of participating victims (n = 217) saw state compensation as an acknowledgment of their victimisation.²⁵ Holder and Daly's research points to a number of interrelated but distinct meanings of acknowledgment for victims. First, there is acknowledgment as a confirmation or recognition of the wrongfulness of the criminal incident and the seriousness of the injuries inflicted.²⁶ Second, there is acknowledgment as an affirmation of victim status and being believed.²⁷ Holder and Daly's research also sets out conceptions of acknowledgment as both providing justice,²⁸ and representing an apology to victims.²⁹ On Holder and Daly's conception of acknowledgment as a confirmation or recognition of the wrongfulness of the criminal incident and the seriousness of the injuries inflicted, S1 states that 'the state recognising that a victim of crime has suffered grievously is important'. FTM2 links the concept of state compensation with the inability of offenders to pay compensation to victims themselves and the importance in such instances of the state taking the place of the offender and providing some level of acknowledgment of the seriousness of victims' suffering and injuries through the payment of compensation. S6 also distinguishes state compensation from offender compensation and links the payment of state compensation to the inadequacies of the criminal process:

I just think there should be something in there to allow victims of a serious crime, if someone's completely innocent, that they do get some sort of compensatory figure. Likely not the same as what you get from a tortious action [...], but certainly something. At least the person walks away saying, 'Okay, well, fine, it's not a lot, it's very little money, but it's something.' Because at the moment they walk away after going through a trial, a person being convicted, sometimes a mistrial, they'd have to go back in again. Unless this person pleads guilty, then they have to face that person down in court. Then they have to rehash it all to a psychologist or psychiatrist or vocational therapists or whatever to put reports into [the CICT] [...]. Then they have to pay their legal fees. (S6).

S6 emphasises that state compensation can at least represent 'something' for the victim to give them confirmation or recognition of the wrongfulness of the criminal incident, which they might not feel was achieved in the criminal process. Whilst state compensation provides a measure of

²⁵ J.Mulder, *Compensation: The Victim's Perspective* (Wolf Legal 2013) 62.

²⁶ Holder & Daly (n 3) 35.

²⁷ *ibid.*

²⁸ *ibid.*

²⁹ *ibid.*

justice for victims,³⁰ S6 also draws attention to the challenges applicants face in the CICT process. These challenges, which diminish the value of acknowledgment, include the difficulties securing expert reports and the non-payment of legal costs for victims. These problems, examined in more detail in Chapters Five to Seven, undermine the aims of state compensation.

CICT applicants also recognise the value of compensation in that it acts as an affirmation of victim status and being believed. A3 discusses at length the operation of the ‘same roof’ rule under paragraph 10 of the 1986 CICS, which excluded from the CICS any victim who lived with the offender at the time the injuries were inflicted.³¹ A3 insists that ‘it’s not about the money’ and that the CICT ‘could give you a euro’. In applying the ‘same roof’ rule and refusing to acknowledge that their loved one was a victim deserving of state compensation, A3 felt that the CICT denied victim status to their loved one. According to Daly, validation is a key need for victims in the aftermath of violent crime. Validation means that the offending itself and the harm inflicted are acknowledged and that victims are not blamed in any way for the incident.³² Daly argues that to acknowledge means that family, friends, and officials in the criminal justice system tell the victim that they agree both with the victims’ account of the incident and the specific harm inflicted.³³ With the ‘same roof’ rule still operating on a retrospective basis,³⁴ there is still a potential for it to deny victim status to CICT applicants and dismiss their need for validation.

Separate to the issue of the ‘same roof’ rule, A5 spoke about how state compensation acted as a final recognition of their loved one’s death in circumstances where no-one was prosecuted in relation to the homicide:

My daughter [...] said ‘it’s like a final recognition.’ It means [my loved one] meant something. For us it’s like a chapter has closed. It’s been hanging over us, [...] it’s five years later, so it’s been a long haul and a long, long process. [...] I suppose we’re very grateful and very thankful that we got the full award, but also it’s a relief that it’s finalised and finished, and we can kind of turn the page. (A5).

A5 highlights that state compensation provided ‘recognition’ that their loved one ‘meant something’ and was of value. A5 then states that receiving state compensation closed a chapter and turned a page, thereby implying that compensation represented a type of closure for the family

³⁰ *ibid.*

³¹ 1986 CICS [10].

³² K.Daly, ‘Sexual Violence and Victims’ Justice Interests’ in E.Zinsstag & M.Keenan (eds), *Restorative Responses to Sexual Violence* (Routledge 2017) 116.

³³ *ibid* 117.

³⁴ 50010/13.May.2022; 50752/13.May.2022; 10559/11.July.2022; 53928/4.September.2023.

in receiving recognition for their loved one's death. Holder and Daly argue that 'justice experiences may have positive (or negative) effects on a survivor's well-being.'³⁵ In this manner, the CICS and the recognition it provides has the potential to positively impact the well-being of applicants.

Separately, in any state compensation framework, there is always potential for compensation to be denied if applicants fail to meet eligibility or procedural obstacles. There is a risk, therefore, that applicants will feel deprived of acknowledgement in relation to the criminal incident. In the Dutch context, Kunst et al state that the potential for secondary victimisation can be reduced if the written decision includes a statement which clarifies that a denial based on the strict application of legal rules does not impact an applicant's status as a legitimate victim.³⁶ Of the 685 CICT decisions that I analysed, a small number did include such statements,³⁷ whilst the vast majority did not make any statement acknowledging the wrongfulness and impact of the criminal incident or provide an affirmation of victim status and being believed. Indeed, two CICT decisions include statements which risk causing secondary victimisation to applicants. In F53813, the CICT member says that 'every fatal injury, whether criminally inflicted or not, is extremely traumatic for relatives and friends of the deceased loved one.'³⁸ In 24119, the CICT member equates criminally inflicted injuries with injuries inflicted accidentally.³⁹ Regardless of the particulars of these individual CICT decisions, consideration should be given to Kunst et al's suggestion that a statement be included clarifying that a denial does not impact an applicant's status as a legitimate victim. No statement should be included in the written decision which might result in an applicant feeling that their criminally inflicted injuries equate with injuries sustained in other contexts.

Overall, the perspectives of interviewees presented in this section demonstrate the importance of acknowledgement and highlight differing understandings of what this means. In Holder and Daly's research, where recipients of state compensation were also interviewed (n = 20), the concept of being "acknowledged as a victim" emerged as the top-rated statement.⁴⁰ Whilst only five of the 21 participants on my research spoke about the importance of acknowledgement in any clear sense, and recognising the difficulties involved in drawing comparisons between research conducted in different ways and in different jurisdictions, especially in relation to Holder

³⁵ Holder & Daly (n 3) 30.

³⁶ Kunst et al (n 6) 3037.

³⁷ 52910/10.May.2023; 54794/24.November.2022; 10520/10.March2010; 50385/20.March.2023; F51462/20.July.2022; F53258/27.October.2022.

³⁸ F53813/6.February.2020.

³⁹ 24119/26.October.2022.

⁴⁰ Holder & Daly (n 3) 40.

and Daly's research which specifically interviewed victims of sexual violence, it can be said that acknowledgement does not seem to be as important an aim as the practical benefits of receiving compensation. I expected acknowledgment to be a more prominent discussion point in the interviews in light of it being so in the comparative research.⁴¹ On reflection, taking into consideration the CICS's focus on practical losses which can be quantified, and perhaps also the practical focus of practitioners, who made up a sizable cohort of my research participants, this finding is somewhat understandable.

4.5 Compensation Returning the Victim to their Former Position

Brison, a victim-survivor of sexual violence, writes that 'if recovery means being able to incorporate this awful knowledge into my life and carry on, then yes, I'm recovered.'⁴² Holder and Daly maintain that victims cannot be freed from the impact of crime but can be 'enabled to build a life that incorporates its burden'.⁴³ Whilst Herman argues that a victim's pursuit of compensation risks making their recovery bound to the capacity or willingness of the offender, or the state, to pay compensation,⁴⁴ Augusteijn et al state that monetary compensation is a mechanism which can assist in incorporating this burden.⁴⁵ On the aim of the CICS, B1 states that it 'is to try to put people back into the same position as they were if they hadn't been injured'. FTM3 provides a more nuanced perspective on whether compensation can achieve this. According to FTM3, the aim of the CICS in the first instance is to return the victim financially to the position they had prior to the incident. FTM3 suggests that a further aim might be to return the victim to their former position physically and emotionally 'within reason' by awarding compensation in respect of various material losses incurred. FTM3 refers to home adaptations as a type of expense which provides the 'basic creature comforts' to victims. S6 views the CICS in a similar manner and specifically describes compensation as providing 'solace' to victims:

The aim of the CICT is to make sure they're not out of pocket. Is it ever going to compensate someone to put them back in the scenario where they were prior to the assault? [...] No, it's certainly not going to. [...] Does it give them some solace depending on the result? Yes, I suppose it would. [...] It does give somebody some solace that 'Okay, well, I've lost because of this [but] the state, my country, is stepping up and trying to give me something towards it.' (S6).

⁴¹ Mulder (n 25) 62; Holder & Daly (n 3) 30.

⁴² S.Brison, *Aftermath: Violence and the Remaking of a Self* (PUP 2002) 20; Holder & Daly (n 3) 28.

⁴³ Holder & Daly (n 3) 28.

⁴⁴ J.Herman, *Trauma and Recovery The Aftermath of Violence - From Domestic Abuse to Political Terror* (Basic Books 1992); Holder & Daly (n 3) 28.

⁴⁵ Augusteijn et al (n 5) 6.

S6 echoes FTM3's statement that state compensation aims to ensure that victims are not financially worse off as a result of the criminal incident. Beyond the financial sense, both S6 and FTM3 warn that compensation struggles to fully return the victim to their former position. In stating that compensation can provide both the 'basic creature comforts' and 'solace' to victims, these perspectives mirror the literature which suggests that compensation cannot free victims entirely from the consequences of victimisation but can contribute to them living a life which allows them to manage these consequences.⁴⁶ This understanding of compensation is neatly summed up in the following CICT decision:

It is acknowledged that no monetary sum can compensate the applicant for the horrific trauma which she endured, the effects of which continue to plague her to the present day. However, it is hoped that the award by the Tribunal will go some way towards enabling the applicant to receive the appropriate care and attention she requires to deal with the effects of the abuse perpetrated on her and to provide her with a degree of financial stability, so that she can concentrate on attempting to move forward with her life as best she can. (10508/July.2011).

Overall, whilst B1 expressed the aim of compensation as putting the victim back into the position they occupied prior to the criminal incident, FTM3, S6 and this particular CICT decision reflect a nuanced understanding of compensation's limited role. As a significant portion of participants in this study were legal practitioners, I anticipated that monetary compensation would be predominately expressed as a way for a victim to return to their former position or a way to 'make victims whole again.' According to Holder and Daly, this is an idea imported from tort law and suggests that money can 'heal' victims.⁴⁷ Contrary to my expectations, where participants discussed compensation in this way, they recognised the limits of what money can provide to victims but also emphasised the importance of money in contributing to the management of the consequences of victimisation. This is important as when lawyers are advising clients, clear advice about the scope and limits of the relevant legal mechanism can help to manage expectations, thereby increasing satisfaction and reducing the potential for secondary victimisation.⁴⁸

4.6 Compensation as Agency but an Absence of Long Term Supports

A further aim of compensation, according to Holder and Daly, is the ability of victims who receive payments to spend the money received as they see fit, whether this be on practical matters such

⁴⁶ Holder & Daly (n 3) 41-42; Augusteijn et al (n 5) 6.

⁴⁷ Holder & Daly (n 3) 41-42.

⁴⁸ Kunst et al (n 6) 3037; Godden-Rasul & Wiper (n 5) 203.

as bills, debts or services, or even on items to seek self-fulfilment and self-renewal such as improving one's housing situation or education courses to improve employment prospects, along with the purchases of pets and holidays.⁴⁹ Whilst Holder and Daly's findings relate to non-material damages in the form of the survivor recognition payment under the scheme in operation in Queensland, Australia, compensation under the CICS is different. This is because compensation for non-material damages is not available in non-fatal cases and material damages only cover quantifiable expenses, such as medical costs or small amounts of past loss of earnings. However, where there has been a large payment for future loss of earnings, this element of a CICS award provides CICT applicants with a degree of choice as to how to spend the money. Both A1 and A2 saw that monetary compensation available at the CICS could be used to improve their housing situation. A1 states that:

I needed a new beginning from where I was living. I needed to restart my life all over again. So, I bought my [home] and decided to start afresh. [...] The money did make a big difference. It gave me my home. I'll always be grateful for that because of the state of the housing crisis now. It's given me stability. I do still walk around looking about, I can't believe I own this. (A1).

Holder and Daly highlight that in the aftermath of violent criminal victimisation, a victim's 'self' has 'to be found, as well as constructed and re-constructed in a dynamic way.'⁵⁰ There are parallels, therefore, between A1's perspective on compensation and Holder and Daly's research. In being able to purchase their own home, monetary compensation under the CICS grants a degree of agency to victims which allows them to carry out a particular task which improves their lives. In reflecting on the importance of agency and self-renewal for victims, there is a certain taboo attached to victims spending their compensation awards in this way. Whilst VSW1 states that individuals bereaved by homicide 'didn't go off on mad holidays' after receiving their awards under the CICS, Holder and Daly highlight that family holidays may be one valid way in which victims 'seek to rebuild themselves in their relationships with others.'⁵¹ It is important, therefore, to emphasize the value of victims being able to control how they spend the compensation award.

Despite the important role played by monetary compensation in relation to self-renewal, interviewees also highlight that monetary compensation alone is not sufficient in ensuring that victims can effectively manage the consequences of criminal victimisation. Whilst a victim might receive a large payment in respect of loss of earnings, or future medical or counselling costs,

⁴⁹ Holder & Daly (n 3) 36-38.

⁵⁰ *ibid* 37.

⁵¹ *ibid*.

which itself is difficult to achieve due to the requirement to demonstrate proof of future losses, monetary provision cannot replace access to comprehensive health care services and psychological supports for victims. This is because the compensation process does not always foresee the extent of victims' future needs. A5 states that the CICS should 'help victims of homicide, not just by giving money.' A2 points out that they struggled to access various health and social care services in the years after the incident and with the extensive delays in the CICT process, they found it particularly difficult to access any type of supports prior to the actual CICT decision. A4 highlights that the CICS award did not cover the ongoing costs of counselling for themselves and their children. A1 highlights that:

There's that cold comfort. I fought so hard for what I have now. But yet going forward for the rest of my life I don't have any supports as my [physical injuries] get worse and you know mentally, I just try my best just to look after myself. (A1).

As set out in Chapter Three, the DOJ Working Group on reform of the CICS recommended on a preliminary basis that capped awards be introduced on the scope of material damages available. This recommendation was made in light of the Working Group's view that Ireland's welfare and health care supports are sufficient to meet any shortfall arising from the introduction of capped awards.⁵² In light of the perspectives of victims presented in this section, that services for victims of crime leave much room for improvement, the Working Group's recommendations should not be implemented pending a comprehensive review of service access for victims. In the DSGBV context, Cuan, the DSGBV agency, intend to undertake a review of services in the DSGBV sector with a view to developing a National Services Development Plan.⁵³ Whilst Cuan's work is of utmost importance in reviewing service provision in this sector, services for all victims of crime should be reviewed in advance of introducing caps on compensation available at the CICS. This focus on all victims of crime is in keeping with the EU Strategy on Victims' Rights,⁵⁴ along with the LRC's preliminary remarks that, whilst DSGBV warrants a specialist focus, 'there are many categories of victim who are equally deserving of the kind of cohesive strategic planning that is proposed to be applied to domestic and sexual abuse.'⁵⁵

Whilst the Working Group proposes to scale back provision for state compensation, others recognise the need to comprehensively re-think how state compensation is provided. Holder and Daly recognise the limited scope of state compensation in relation to long term supports. They

⁵² Working Group (n 16) 19-26.

⁵³ Cuan, *Corporate Plan 2025-2027* (2024) 14.

⁵⁴ European Commission, *EU Strategy on Victims' Rights* COM(2020)258.p8.

⁵⁵ LRC (n 7) [3.92].

argue that funds should work more collaboratively with victims to identify a wider and longer term understanding of the type of expenses needed to enable more comprehensive recovery for victims.⁵⁶ Milquet put forward similar recommendations concerning reform of the EU state compensation framework. Specifically, Milquet recommends that state compensation should include both monetary compensation and non-monetary multidisciplinary supports services in the short and long term, including in family care, healthcare, psychological supports, resilience and post-trauma supports and professional reintegration supports.⁵⁷ The LRC has put forward preliminary suggestions for reform of the CICS which recognise the absence of long term and non-monetary forms of restitution and support. The LRC suggest that counselling, medical and other practical services should be part of a victims' compensation award in some manner and the compensation fund itself should have a more active role in providing these types of services to victims.⁵⁸

Overall, it is clear that victims should continue to receive monetary compensation from the state. This section has demonstrated that compensation provides victims with a degree of agency which can lead to self-renewal for victims depending on how they spend the award. Despite this, there is also a need for more comprehensive supports for victims, especially in relation to healthcare services and psychological supports. Consideration should be given to the establishment of an independent victim support agency to co-ordinate the provision of such services.⁵⁹ Such an agency would also provide state compensation directly to victims. Whilst the creation of such an agency is the optimum outcome, further details of which are set out in Chapter Eight, I argue that there should be no doubt of the need, at the very least, to replace the CICT with a permanent and independent statutory body which is properly funded and resourced to provide monetary compensation to victims.

⁵⁶ Holder & Daly (n 3) 42.

⁵⁷ J.Milquet, *Strengthening Victims' Rights: from Compensation to Reparation* (European Commission 2019) 53.

⁵⁸ LRC (n 7) paras [3.99]-[3.104]; see also M.Hall, *Victims of Crime: Construction, Governance and Policy* (Palgrave 2017) 216; see also J.Doak, *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties* (Hart 2008) 226-230. There is precedent in Ireland for a state agency to engage in such service provision. Whilst its operation has been widely and heavily criticised by victim-survivors, Caranua (meaning new friend), a statutory agency set up in 2012 by the Irish Government to administer funds received from religious congregations, provided wide ranging non-monetary compensation in the form of housing supports, healthcare, education and other supports for victim-survivors of religious run institutions. For more information on Caranua, see S.Ring et al, *Child Sexual Abuse Reported by Adult Survivors: Legal Responses in England and Wales, Ireland, and Australia* (Routledge 2022) 275; J.Gallen, *Transitional Justice and the Historical Abuses of Church and State* (CUP 2023) 206; Caranua, *Annual Report* (2023) 5-6; Clifford, 'They feel badly let down': Institutional abuse survivors grow old waiting for the State to act' (*Irish Examiner* 9 March 2023).

⁵⁹ M.Butler, *A Study on Femicide & Domestic and Family Violence Death Reviews* (DOJ 2022) 182.

4.7 ‘Blood Money’: the Negative Associations Concerning Compensation

This chapter has, thus far, set out the many positive aspects of receiving compensation. Interviewees in this research also discussed the negative associations in relation to receiving compensation, including both the difficulties involved in quantifying human suffering and the moral taboo in receiving compensation on foot of criminal victimisation. On the difficulties of quantifying human suffering, there is an inevitable element of arbitrariness involved, especially in the context of non-material damages such as physical and non-physical injuries which impact the day-to-day life of crime victims.⁶⁰ VSW2 highlights this difficulty in the context of victims of domestic violence:

I have a question whether you can put a value on what they’ve gone through. I know it’s supposed to kind of cover for like their medical and their loss and all of that good stuff but like how do you quantify that? [...] I think my colleagues would feel the same. We’ve been in this industry a long time working with women [...] It’s a privilege to hear their stories. We always feel extremely honoured when a woman comes into our service and decides to share with us the most difficult time in her life and we feel for her. We feel for the children. We feel for all of it and then to [have to] kind of quantify it, it’s a difficult one [...]. How do you know who deserves more, who deserves less? You go through this process with the CICT and [...] you think you should be compensated X amount of euros and it comes back that actually the CICT thinks it’s a lot less than that. Is there a bit of disappointment with that? And that’s what we’re trying to kind of stay away from, trying to stay away from the client feeling disappointed. She felt disappointed in her marriage. She’s felt disappointed in her homelife. And could this be another possible disappointment or is this a positive thing? I’m not sure. (VSW2).

VSW2 outlines how difficult it is to calculate financial losses in the context of domestic violence, where violence might be physical and psychological, and where such violence has occurred over the course of many years. VSW2’s fear that a compensation award might lead to disappointment for the victim raises the issue, which is discussed in detail in Chapter Seven, of secondary victimisation and the need to appropriately manage victims’ expectations. The arbitrary nature of compensation was also expressed by S4 in the context of human trafficking victims. S4 highlights that the injuries inflicted on these victims do not easily fit within the parameters of the CICT claims process, or indeed the personal injury claims process. Human trafficking victims might experience multiple rapes, sexual assaults and other types of physical and psychological harm on a daily basis. It is quite difficult, therefore, to calculate an appropriate amount of financial

⁶⁰ Augusteijn et al (n 5) 5.

compensation which reflects the nature of human trafficking as a specific criminal offence. The absence of compensation for non-material damages makes this challenge particularly difficult.

A further negative connotation in relation to receiving compensation is the moral taboo attached to receiving money after being victimised. There is a societal perception that money should not be exchanged for certain actions, tasks, goods, or services. If such an exchange takes place, the parties are negatively judged in the eyes of society.⁶¹ Examples of this are given by Fiske and Tetlock, cited by Augusteijn et al, and include a wide variety of areas where individuals receive money or put a monetary value on a particular relationship or process, such as putting a monetary value on getting married, maintaining friendships, or having children.⁶² There are also the examples of sex work,⁶³ and the buying and selling of body organs.⁶⁴ In addition to societal judgement for engaging in such exchanges, the payment of compensation to crime victims is also seen as inappropriate as equating money with criminal harm is seen as morally questionable.⁶⁵ According to Augusteijn et al, these negative perceptions are then reflected in the attitudes of victims themselves when faced with the question of accessing compensation.⁶⁶ This moral taboo was raised by several interviewees in my research. FTM3 spoke about how victims are sometimes reluctant to seek or receive compensation out of fear of being judged that they only made a criminal complaint in order to receive compensation. Here, FTM3 is referring to both offender and state compensation:

I saw it [...] where a lady had accused someone of sexual assault [...] and I know why she didn't want [the compensation], it was because people would be saying 'Ah sure she only did that for the compensation' you know? And I know absolutely why she didn't want to take that. [...] It's a great line of cross-examination in a criminal case, because sure the jury then are like 'Hmm, really? [...] It's changed slightly now, because people are like 'Yeah, I'm entitled to compensation because of what they did to me' but [...] it's always good for the defence, to be honest, if the victim is suing [...]. It would definitely be brought up if the accused knew that you had applied to the CICT for compensation and they got a hold of your form, they would read out the whole thing and say, 'Sure aren't you just in this for the money?'(FTM3).

⁶¹ *ibid.*

⁶² A.Fiske & P.Tetlock, 'Taboo Trade-Offs: Reactions to Transactions That Transgress the Spheres of Justice' (1997) 18(2) Political Psychology 255,256; Augusteijn et al (n 5) 5.

⁶³ Fiske & Tetlock (n 62) 278.

⁶⁴ *ibid.*

⁶⁵ Augusteijn (n 5) 5.

⁶⁶ *ibid* 5-6.

Whilst FTM3 remarks specifically that victims are increasingly demonstrating a capacity to stand over their legitimate right to pursue compensation, there is a question mark over whether the raising of compensation in cross-examination is appropriate. There is evidence from England and Wales that victims are being wrongly advised not to apply for state compensation until after the criminal trial, often when the time limit has expired, out of fear that a compensation claim might prejudice the criminal trial.⁶⁷ In sexual violence cases, criminal defence lawyers in Northern Ireland have been criticised for raising victims' state compensation applications in the context of their cross-examination at the criminal trial.⁶⁸ According to the Commissioner for Victims of Crime in Northern Ireland, this practice contributes to rape myths that 'genuine' victims of sexual violence do not seek compensation.⁶⁹ Additionally, the Commissioner states that it 'leaves victims of crime in an unenviable position' in that they can either submit their compensation claim on time and have this used against them in the criminal trial or they can delay submitting their application until after the criminal trial only for it to be rejected due to the time limit. The Gillen Review recommended that trial judges should carefully scrutinise at pre-trial hearings whether defence counsel intend to question a victim on the issue of compensation. Such questioning should only be permitted if there is some evidence to support the suggestion that a criminal complaint was only made for financial gain.⁷⁰ Whilst further research is needed in an Irish context as to the extent of this practice, there is a strong argument that the Gillen Review recommendation should also be implemented in this jurisdiction. This is to safeguard against the moral taboo associated with compensation and to ensure that victims are able to access compensation without fear.

This moral taboo is particularly relevant in the context of homicide, where family members feel uncomfortable seeking money after the violent death of their loved one. A5 states that they 'didn't want to partake in it, because money is not going to bring my [loved one] back.' A3 states that they felt 'horrible' filling in the CICT application form as it felt like they were 'putting a price on your own person that died.' VSW3 and VSW1 both provide further details on the perceptions of families in relation to compensation:

⁶⁷ Victims' Commissioner, *Compensation Without Re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation* (2019) 73.

⁶⁸ Commissioner for Victims of Crime, *A 'Second Assault': The Impact of Third Party Disclosure Practice on Victims of Sexual Abuse in Northern Ireland* (2023) 19.

⁶⁹ *ibid.*

⁷⁰ J.Gillen, *Gillen Review: Report into the Law and Procedures in Serious Sexual Offences in Northern Ireland: Part 1* (2019) 110. At present, the Law Commission in England and Wales is also considering such a proposal, see Law Commission, *Evidence in Sexual Offences Prosecutions: A Consultation Paper* (CP2592023) 269-284.

[Families] don't feel good about applying for compensation in a lot of cases. It's a necessity for them. There is a certain amount of guilt maybe around, you know, 'God, you know, am I making money out of my husband's, father's, son's, whatever it is, death?' They don't like to be doing it but out of necessity they have to do it (VSW3).

[Families] feel it was insulting and they often feel that they can't apply for it because it's like, as they sometimes call it, 'Blood money'. Their family member was killed in such circumstances and they feel if they take any compensation that it wouldn't honour the family member. (VSW1).

The perspectives presented here highlight that families have mixed feelings about receiving compensation. They understand the benefits it can bring when expenses and bills arise flowing from the crime, but they are also not comfortable with the idea of seeking compensation in the aftermath of a traumatic bereavement. VSW1 goes on to highlight the crucial role played by victim support in engaging with families in relation to this moral taboo and highlighting how compensation can assist them in paying the various expenses that arise when a loved one is killed as a result of homicide.

Holder and Daly's study also highlights the negative associations of receiving compensation. In their research, one victim spoke about a fear of being perceived that they only made a criminal complaint for the money, another spoke about the guilt they felt in seeking compensation, whilst another stated that applying for compensation felt like they were being paid for being sexually assaulted.⁷¹ Another mentioned that they felt uncomfortable at the idea of taxpayers compensating them for the harm inflicted on them by someone else.⁷² According to Holder and Daly, research consistently finds that victims prefer to receive compensation from the offender, as opposed to the state or other sources.⁷³ In my research, only S5 states that victims prefer offender compensation over state compensation. This was in response to me directly asking whether victims prefer offender or state compensation. On reflection, I perhaps ought to have directly asked all interviewees whether victims prefer offender or state compensation. Instead, I merely asked interviewees whether they had experience or views of offenders paying compensation. It is correct to state, however, that such a direct question might not always arise, depending on the flow of a particular interview. Furthermore, I was reluctant to do so as I considered that the question itself lends itself to a particular answer in that participants may be inclined to view offender compensation as the more 'natural' choice for victims in that it does not place a burden

⁷¹ Holder & Daly (n 3) 33.

⁷² *ibid.*

⁷³ *ibid.* This perspective is not universal, however, see Hall (n 58) 221-222.

on public funds. Additionally, I am unsure of the benefits of receiving perspectives on this question as individual preferences should not negate the obligations of the state in relation to providing state compensation.

Overall, this section has underscored the negative associations involved in granting compensation to victims. In this regard, the quantification of human suffering is difficult and particular forms of violence do not easily fit within the parameters of state compensation funds. Additionally, seeking compensation involves a moral taboo for victims which can manifest in the context of the criminal trial, where victims fear being judged for seeking compensation. Such judgements play out in a particularly critical manner in the context of family members of those killed as a result of homicide. Victim support plays an important role in displacing this moral taboo.

4.8 Conclusion

Based on 21 qualitative interviews with CICT applicants, individuals who assist victims in the CICT process and former CICT members, this chapter examines the first overarching theme of this thesis in relation to the aims of the CICS. As stated in section 4.1 above, some of these aims are espoused by the CICT, whilst others are what victims and practitioners understand state compensation to represent. Ultimately, whilst interviewees recognise the negative connotations associated with compensation, from the perspectives of interviewees, the aims of the CICS are positive. The CICS aims to give practical benefits to victims by helping them pay bills and debts, along with providing them with past and future loss of earnings. In fatal cases, the solatium payment provides further relief for individuals bereaved by homicide. The CICS also provides acknowledgment to victims. Interviewees raised different understandings of acknowledgment including acknowledgment as a confirmation or recognition of the wrongfulness of the criminal incident and the seriousness of the injuries inflicted and acknowledgment as an affirmation of victim status and being believed. Separately, interviewees recognised that monetary compensation cannot ‘heal’ victims but can assist them in managing the consequences of the crime. Finally, whilst interviewees recognised the absence of comprehensive long term supports for victims, interviewees’ perspectives point to the CICS providing a degree of agency to victims in that compensation offers victims an opportunity to seek a fresh start, stability and self-renewal.

Whilst these are important aims of compensation, and are in keeping with comparative literature, particularly Holder and Daly’s findings, the specific operation of the CICS in Ireland diminishes these aims. Specifically, the exclusion of compensation for non-material damages unfairly restricts compensation to victims with quantifiable losses. These restrictions are not being adequately explained to victims, which risks causing secondary victimisation. Despite this important limitation, the core message of this chapter is that direct monetary compensation

provides important benefits for victims and should, despite calls for a focus on non-monetary supports, be continued. The remaining chapters of this thesis examine how specific elements of the CICS currently operate and how these elements can be improved. In this regard, the next chapter explores the manner in which the CICS takes account of victimhood as a social construct through an examination of various eligibility and procedural requirements in operation under the CICS.

5 CHAPTER FIVE: VICTIMHOOD AS A SOCIAL CONSTRUCT

5.1 Introduction

State responses to criminal victimisation ought to understand how an individual who has suffered harm at the hands of others gains, retains and loses victimhood status. This chapter, therefore, examines the second theme constructed from the interview data which is that the CICT struggles to take account of victimhood as a social construct. This theme was constructed in light of my analysis of 21 qualitative interviews, 685 written CICT decisions, caselaw from the Irish Superior Courts and various legal and policy materials. State compensation schemes globally have been criticised for not taking account of the social construction of victimhood in that victims are excluded from accessing state compensation on the basis of criteria which seek to distinguish between Christie's 'ideal' and 'non-ideal' victim.¹ This chapter argues that this criticism can be applied to the CICS in two separate but interrelated ways. First, the CICT denies compensation to victims on the basis of eligibility criteria which examine victims' own actions prior to or during the criminal incident. In examining these actions, victims are blamed for being victimised. This issue is examined in section 5.2. Second, the 'ideal' victim status is encapsulated by the CICS in that the higher the level of victim capital present, the easier it is to access compensation. This issue is examined in section 5.3. The key learning from this chapter is that, whilst the CICS does not take account of victimhood as a social construct, state compensation frameworks can be designed in a way that both minimises victim-blaming and accounts for differing levels of victim capital.

5.2 'Ideal' Victims, Victim-Blaming and the CICS

Victim-precipitation theorists such as von Hentig, Mendelsohn and Wolfgang take the position that both offender and victim behaviour are intertwined. These theorists view victim behaviour as contributing to the criminal incident.² The various lifestyle and routine activities theorists argue that an individual's lifestyle and day-to-day activities result in an increased or decreased likelihood to be victimised. These theorists maintain that the more time an individual spends outside the home the more likely they are to become victimised.³ A crucial element of these theories is that individuals can alter their behaviour in some way to prevent being victimised. If

¹ N.Christie, 'The Ideal Victim' in E.Fattah (ed), *From Crime Policy to Victim Policy* (Palgrave 1986) 18-19.

² H.von Hentig, *The Criminal and His Victim: Studies in the Sociobiology* (YUP 1948); B.Mendelsohn, 'The Origin of the Doctrine of Victimology' (1963) 3 *Excerpta Criminologica* 239; M.Wolfgang, 'Victim Precipitated Criminal Homicide' (1957) 48(1) *Journal of Criminal Law and Criminology* 1.

³ M.Hindelang, *Victims of Personal Crime: An Empirical Foundation for a Theory of Personal Victimization* (Ballinger 1978); L.Cohen & M.Felson, 'Social Change and Crime Rate Trends: A Routine Activity Approach' (1979) 44 *American Sociological Review* 588.

individuals fail to do so and become victimised in some way, they deviate from Christie's criteria for 'ideal' and 'blameless' victims.⁴ Christie stated that the 'ideal' and 'blameless' victim ought to be weak in comparison to the offender, that they ought to be engaging in a reputable project and going about their routine day-to-day life when victimised, ideally in a place where they cannot be blamed for being victimised, such as a public place, and that victim and offender ought to be unknown to each other and have no personal relationship. Finally, victims ought to have sufficient strength to get themselves heard but not so much that they threaten powerful stakeholders in society. If these criteria are not met, victims are not granted the 'complete and legitimate status of being a victim.'⁵ It is important to clarify that Christie was not advocating for victims to be recognised according to these criteria, rather Christie was evaluating how victimhood is socially constructed along these lines.

This section analyses several of the eligibility criteria in the CICS which allow the CICT to examine the actions, characteristics or circumstances of applicants when making decisions on compensation. These criteria include the 'same roof' rule under paragraph 10 of the 1986 iteration of the CICS, the part-responsibility rule under paragraph 12 of the CICS and the conduct, character and way of life rule under paragraph 13 of the CICS. It is through these rules that state compensation incorporates the principle of social solidarity with innocent and blameless victims only.⁶ This section argues that these rules involve blaming victims for their predicament by denying them compensation based on their actions, characteristics or circumstances. Whilst this practice cannot be justified in certain circumstances, for example in relation to the 'same roof' rule, it is clear that the part-responsibility rule and the conduct, character and way of life rule, can be justified, subject to a number of safeguards. This section commences in section 5.2.1 where the 'same roof' rule is considered. Section 5.2.2 then examines the part-responsibility rule and the conduct, character and way of life rule.

5.2.1 'Same Roof' Rule

Under the 1974 and 1986 iterations of the CICS, paragraph 10 provided that '[n]o compensation will be payable where the offender and the victim were living together as members of the same household at the time the injuries were inflicted.'⁷ Whilst the Irish Government abolished the 'same roof' rule in April 2021,⁸ they did so on a prospective basis only, meaning that the rule still

⁴ M. Iliasdis, *Adversarial Justice, and Victims' Rights: Reconceptualising the Role of Sexual Assault Victims* (Routledge 2020) 31.

⁵ Christie (n 1).

⁶ K. Buck, 'State Compensation to Crime Victims and the Principle of Social Solidarity' (2005) 13(2) European Journal of Crime 148, 170.

⁷ 1986 CICS [10].

⁸ There is no clear reason as to why the rule was removed in 2021. At the time, there were judicial reviews against the rule in Ireland, see *Vonkova v CICT* [2019] IEHC 13. Additionally, the successful legal

operates in relation to criminal incidents which took place prior to the amendment.⁹ In establishing the CICS, the Irish Government at the time put forward a number of justifications for the ‘same roof’ rule, including that is difficult to establish the facts in the context of violence which takes place within the home and also that it would be inappropriate should the offender benefit from the CICS award.¹⁰ Undoubtedly, there are parallels between these justifications and early victimological studies. In setting out their lifestyle and routine activities theories, both Hindelang and Cohen and Felson argue that individuals should prioritise time spent within the home and with family. Whilst Cohen and Felson acknowledge that family violence is often not captured in police or victimisation surveys, from which these theories originally developed, they state that ‘available data suggest[s] that time spent in family activities within households incurs less risk of victimisation than many alternative activities in other places.’¹¹ Hindelang uses the examples of parenthood and family structures and states that individuals can adapt their lifestyle in such a way as to prioritise family and spend increased amounts of time at home, thereby, reducing their likelihood of becoming a victim.¹² Berger and Searles comment that the focus on risky lifestyles and mundane daily activities outside the home contains an underlying message to women that they should remain within the confines of the home and seek the protection of their male partners.¹³

In this regard, these theories ignore the reality that criminal victimisation, such as violence against women and child sexual abuse, is often perpetrated in the home itself by offenders who are known to the victim.¹⁴ Spalek notes that at the time these theories were first developed in the 1960s and 1970s, police resources were generally directed towards public sphere crimes, such as street

challenges to the retrospective application of the rule in Northern Ireland and England and Wales occurred in the years prior to 2021, see *Meehan v DOJ* [2018] NICA 42; *JT v CICA* [2018] EWCA Civ 1735; *MA v CICB* [2017] CSIH 46 P243/15. Ireland also had ratified the Istanbul Convention in 2019 and had entered a reservation in relation to the provisions on state compensation. This would have to be justified in the context of the Istanbul Convention’s monitoring mechanisms, see L.O’Driscoll, ‘The Criminal Injuries Compensation Tribunal and the “Same Roof” Rule in Ireland: Exclusion, Inclusion and Reform’ (2022) 6(2) Irish Judicial Studies Journal 60,67-68. All of these factors combined likely led to the impetus for removal.

⁹ DOJ, ‘Minister McEntee Announces Reforms to the Criminal Injuries Compensation Scheme’ (20 April 2021); 50010/13.May.2022; 50752/13.May.2022; 10559/11.July.2022; 53928/4.September.2023. As set out in Chapter Two, the following judicial review proceedings were also issued and settled, see ‘Woman Raped by Father Challenges Exclusion from State Compensation Scheme’ (*breakingnews.ie* 24 October 2023). Importantly, regardless of the status of the ‘same roof’ rule, the two year upper time limit under paragraph 20 is likely to still exclude many victims in these circumstances where reporting is legitimately delayed.

¹⁰ NAI.2007/121/8.

¹¹ Cohen & Felson (n 3) 594,fn5.

¹² Hindelang (n 3) 268.

¹³ R.Berger & P.Searles, ‘Victim-Offender Interaction in Rape: Victimological, Situational and Feminist Perspectives’ (1985) 13(3/4) *Women’s Studies Quarterly* 9, 10.

¹⁴ R.Mawby & S.Walklate, *Critical Victimology* (Sage 1994); B.Spalek, *Crime Victims: Theory, Policy, and Practice* (Palgrave 2017) 62-63.

crime, at the expense of private sphere crime, such as domestic violence.¹⁵ If domestic violence was suspected, the general attitude was that the victim must have done something to deserve it.¹⁶ The issue is further compounded in that victims of domestic violence are at a particular risk of repeat victimisation. These victims elicit less sympathy in the eyes of society due to them failing to take steps to prevent future victimisation.¹⁷ The nature of coercive control, now a specific criminal offence in Ireland,¹⁸ was not widely recognised resulting in pervasive victim-blaming attitudes.

Individuals interviewed as part of this research agree that the traditional attitudes concerning domestic violence at this time are no longer pervasive in Irish society.¹⁹ Yet, these attitudes continued to influence the operation of the CICS until as late as 2021. S1 describes the ‘same roof’ rule as ‘extremely harsh’. FTM3 states that the rule ‘was dreadful because it excluded a whole category of people who had been very badly damaged by [...] sexual abuse’ which took place within the home. A3, whose CICT application was rejected because of the ‘same roof’ rule, highlights how the provision impacted them as a family member bereaved by domestic homicide:

I got very angry, I’m not gonna lie, I got very, very angry about it [...]. I think that whole clause is wrong. Like at the end of the day, we don’t live in a society where everything is black and white. We live in a very kind of a grey area [...]. Most people who are killed are known to that person. Whether it be a family member, a friend [...] a colleague or anyone [...]. The possibility of somebody being a total stranger is [...] pretty rare [...]. It was adding insult to injury already. [...] They were saying that my [loved one] was a lesser person because [they] lived with the person that killed [them]. [...] It brought up all the trauma again [...]. You’re trying to kind of get on with your life every day like and live your life without that person. And then all of a sudden you receive a letter [...] saying that, well by the way, because [they] lived with [the] person [they’re] not really seen as a victim [...]. That’s the way it came across. [...] It’s quite traumatising in its own way [...]. (A3).

¹⁵ Spalek (n 14) 63. For further context on the public / private dichotomy in Ireland, see S. Leahy, ‘Still a Private Matter? Evaluating the Irish State’s Response to Domestic Abuse’ (2023) 37(1) International Journal of Law, Policy and the Family 1.

¹⁶ Mawby & Walklate (n 14) 73.

¹⁷ C. McCullagh, “‘Respectable’ Victims and Safe Solutions: The Hidden Politics of Victimology” (2017) 68(4) Northern Ireland Legal Quarterly 539, 543.

¹⁸ Domestic Violence Act 2018, section 39; see Leahy (n 15) 4-7.

¹⁹ Whilst attitudes in relation to domestic violence have changed, these traditional attitudes have not been eradicated, especially in relation to men’s expectations in romantic relationships, see Women’s Aid & Core Research, *Evolving Manhood: Attitudes, Influence and Well-being Among Irish Men* (2024). Furthermore, reported disclosures of domestic violence and abuse are at record highs, see Women’s Aid, *Annual Impact Report* (2023).

Whilst A3 was the only CICT applicant I interviewed who had direct experience of the ‘same roof’ rule, it is clear that the provision encapsulates attitudes which sees domestic violence victims as deviating from Christie’s criteria for ‘ideal’ and ‘blameless’ victims in that victim and offender know each other and have a personal relationship.²⁰ In living with their offender, they must have done something which caused the offender to be violent and/or ought to have known the risks of continuing to live in such a setting. In this manner, these victims are not eligible to be recognised as legitimate victims with access to state compensation. The ongoing operation of the ‘same roof’ rule on a retrospective basis, therefore, continues to exclude certain victims of domestic violence and abuse victimised prior to 2021.

Separately, in asking interviewees about the ‘same roof’ rule, one former CICT member highlights how in the context of historic or non-recent sexual abuse claims, the CICT would sometimes attempt to clarify whether victims and offenders always lived with each other while the abuse was ongoing. If the ‘same roof’ rule could be set aside, compensation for non-material damages would be available in cases where the abuse took place prior to 1986. This was when compensation for non-material damages was abolished for non-fatal cases:

The CICS was altered sometime in the ‘80s to exclude general damages. We still had some rape and sexual assault and childhood sexual assault cases that came under the old CICS, so we still had some rape cases, we had some sexual assault cases where we gave general damages, significant general damages, but you were totally excluded from that if it was a family member who had abused you. So, I remember doing all kinds of hoops to try and give somebody money [...] I think like a sibling had abused them, but they had been under the same roof but like they got their full history and they had lived away for a while, so they hadn’t lived under the same roof but abuse had continued somewhere else. [...] Like this victim deserved money, so, we had to kind of jump through hoops [...]. (Former CICT member).

Whilst there is one written CICT decision alluding to this practice,²¹ this former CICT member states that this was a practice they themselves undertook when deciding claims and could not speak to this being a wider practice within the CICT. Whilst it is a positive dimension to decision-making at the CICT that these attempts did occur, it is concerning that it is not clear whether all CICT members engage in such enquiries. Indeed, in relation to the ‘same roof’ rule, it is not clear the scope of the provision and whether it applies beyond family contexts. In one CICT decision,

²⁰ Iliasdis (n 4).

²¹ 10559/11.July.2022.

the CICT made clear that the ‘same roof’ rule does not distinguish between families living in the same household and other groups of people living together in the same accommodation.²² Despite this, in another CICT decision, the CICT held that the ‘same roof’ rule does not apply in a claim where victim and offender were both tenants in the same house.²³

Overall, this section has examined the ‘same roof’ rule, a provision which denies victimhood status, inherently blames victims for their own victimisation and risks subjecting them to secondary victimisation. Whilst it is welcome that the provision has been abolished on a prospective basis, the continued application of the rule on a retrospective basis is disappointing. Indeed, in the event of the retrospective application of the rule being successfully challenged in Ireland, as it was in Northern Ireland and Britain, victims who applied and were rejected by virtue of the provision and victims who did not apply in expectation of being rejected because of the provision should now be allowed make a CICT application. This occurred in Northern Ireland and Britain after successful legal challenges to the retrospective application of the rule in these jurisdictions.²⁴ Whilst implementing such an approach will inevitably have a significant financial impact on the finite resources available to the CICT, the discriminatory nature of the retrospective application of the ‘same roof’ rule, contrary to the ECHR,²⁵ warrants an approach similar to the one adopted in Northern Ireland and Britain.

5.2.2 Part-Responsibility Rule and the Conduct, Character and Way of Life Rule

There are two further provisions of the CICS which seek to prevent access to compensation based on eligibility criteria which have victim-blaming elements. First, there is paragraph 12 which I refer to as the part-responsibility rule. This provides that compensation can be denied or reduced where ‘the victim was responsible, either because of provocation or otherwise, for the offence.’²⁶ Second, there is the conduct, character and way of life rule under paragraph 13 of the CICS which provides that compensation can be denied or reduced based on the victim’s conduct, character or way of life.²⁷ This section demonstrates that paragraphs 12 and 13 aim to restrict compensation to only ‘ideal’ and ‘blameless’ victims of crime. As these victims are either partly responsible for the offence in a direct manner under paragraph 12 or are in some way responsible because of their conduct, character and way of life under paragraph 13, they possess characteristics which deviate from Christie’s criteria for ‘ideal’ and ‘blameless’ victims.²⁸

²² 53928/04.September.2023.

²³ 50010/13.May.2022.

²⁴ NIDOJ, ‘Justice Minister Announces Changes to the Criminal Injuries Compensation Scheme’ (9 June 2020); Ministry of Justice, ‘Compensation Rule Abolished Allowing Victims to Reapply’ (13 June 2019).

²⁵ *Meehan* (n 8); *JT* (n 8); *MA* (n 8).

²⁶ CICS [12].

²⁷ CICS [13].

²⁸ *Iliasdis* (n 4).

Paragraphs 12 and 13 were often discussed in an interchangeable manner in the various written CICT decisions and by individuals interviewed as part of this research. This is understandable in light of the two provisions capturing similar behaviour on the part of victims. For example, if a victim is criminally injured or killed whilst enforcing a drugs debt as part of a criminal enterprise, and where the debtor fights back and injures the victim, the victim could be excluded from compensation on the basis of both paragraphs 12 and 13. Under paragraph 12, they are responsible for the criminal offence which caused the injuries in that it would not have happened but for the victim deciding to enforce the drugs debt. Equally, such behaviour might exclude the victim based on paragraph 13 in that enforcing a drugs debt is part of leading a criminal way of life. In dismissing a legal challenge to the operation of paragraph 13, Gearty J in *Cunningham v CICT* suggested that paragraph 12 is ‘directed towards the victim who makes a more direct contribution to the circumstances in which he is injured’.²⁹ It can be implied, therefore, that paragraph 13, in relation to conduct, character and way of life, is directed at victims whose conduct, character or way of life indirectly resulted in the criminal incident which caused the injuries. For example, as set out further below in section 5.2.2.2, if the victim possesses previous criminal convictions or lives a criminal lifestyle. In light of the interchangeable nature of these two CICS provisions, section 5.2.2.1 discusses the aims of the two provisions together. Section 5.2.2.2 then examines the specific issues of previous criminal convictions under paragraph 13. Section 5.2.2.3 analyses whether paragraphs 12 and 13 blame victims for their own predicament or operate merely to ensure that criminality is not encouraged or rewarded. Section 5.2.2.4 then outlines a practical policy solution to this difficult issue.

5.2.2.1 The Aim of Paragraphs 12 and 13

Whilst it is clear that the ‘same roof’ rule unjustifiably blames victims and excludes them from accessing the CICS, paragraphs 12 and 13 involve a more nuanced consideration. Several interviewees in my research highlight that the conduct, character and way of life rule in fatal cases does not take account of the stigma that exists in relation to homicide, nor does it take account of the consequences inflicted on families as a result of the death of their loved one. A5 states that the application of rules such as these in the context of homicide raises particular concerns in relation to victim-blaming:

We all have our natural inbred biases and our judgements, and it's very hard to put everything like that aside and look at the case as it is and go by what's in front of you. [...] From my experience since my [loved one] died, there's huge, huge [...] I can't even get the words to describe it. It's judgement. Judgement around murder. It's like a class

²⁹ *Cunningham v CICT* [2024] IEHC 143 [5.6].

thing. It's like the guilty murdered and the innocent murdered. There's the victim-blaming and then 'Oh well they weren't real. They deserved it. They must have done something, otherwise they wouldn't have been murdered.' (A5).

B2 framed the issue in terms of the family members being judged for the actions of their deceased loved ones and asks, 'Should the sins of [a] son be visited upon [...] the broken hearted mother with the €6,000 funeral bill?' FTM3 asks 'Because your Dad has criminal convictions, are you, as the innocent child, less entitled to compensation than someone who's Dad was brilliant? Your loss is the same.' VSW3 expands on this point:

It almost feels like it's the family of the victim whose character is being judged because, the victim may have been involved in a lifestyle that contributed to his or her death. But generally, the family, who might be bringing up children were not involved in that lifestyle. But they're being judged. They still could be left with two or three children to take on and rear, regardless of the lifestyle of the victim. There just needs to be more consideration I think given the merits of each case. [...] The object of the compensation is certainly not to compensate for the lifestyle a person may have led that led to their death. [...] It should be more considered what impact is on the family who's left picking up the pieces, particularly when there are children involved. (VSW3).

In *Cunningham*, Gearty J upheld the CICT practice of applying the conduct, character and way of life rule to CICT applications from family members of fatally injured victims as 'the rights of the dependents in this case are derived from the rights of the victim'.³⁰ Whilst Gearty J stated that paragraph 13 cannot be interpreted as applying only to the direct victims of violence,³¹ it is not clear whether EU law based arguments, that family members are victims in their own right, was considered. Under Article 1 of the Victims' Rights Directive, the term victim includes 'family members of a person whose death was directly caused by a criminal offence'.³² Additionally, under Article 2, Member States are permitted 'to limit the number of family members who may benefit from the rights set out in [the Victims' Rights Directive] taking into account the individual circumstances of each case'.³³ The CJEU in *Burdene* held that the definition of victim under the Victims' Rights Directive applies also to the Compensation Directive, meaning that national compensation schemes must provide compensation to family members of fatally injured victims.³⁴ As set out in Chapter Three, the CJEU held that national schemes cannot 'automatically

³⁰ *ibid* [6.15].

³¹ *ibid* [4.4].

³² Directive 2012/29/EU OJ No L315.14.11.2012.p57.

³³ *ibid*.

³⁴ C-126/23 *Burdene* ECLI:EU:C:2024:937 [55].

exclude certain family members from entitlement to all compensation solely because of the presence of other family members.³⁵ In this regard, whilst the CICT does examine each case on its merits, it would be useful to receive further CJEU guidance on whether national schemes are allowed to examine, without the legal framework expressly providing for it, fatally injured victim's conduct, character and way of life in deciding whether to grant compensation to family members of these fatally injured victims.

Separate to the concerns of these interviewees about paragraphs 12 and 13, other interviewees broadly understood the rationale for these rules. FTM1 highlights that the aim of these provisions is to ensure that 'people that would be complicit in criminal activity wouldn't then be able to make applications for compensation on foot of their own criminality.' A4 states that if individuals are 'doing drugs and they get killed in doing an illegal activity [...] I can understand why you wouldn't be entitled to compensation.' B3 states that 'you can get plenty of [CICT claims] where the claimants would not be saints' and highlights how in circumstances where gang violence takes place, it would not be appropriate for compensation to be awarded. S5 equates the conduct, character and way of life rule both with the fact that prior criminal convictions are taken into consideration at the sentencing stage of the criminal process and the 'clean hands' principle in the Law of Equity:

I know in relation to the criminal courts, obviously, previous is taken into account. [...] Here I suppose, it's a bit like equity, you know, he who comes to equity does so with clean hands. So, if you're going to be trying to make a claim for compensation here against the state then the state has the duty to ascertain [...] what your character is. Good character, bad character, past character. (S5).

S5 raises the important point that other areas of the legal system examine a person's conduct in determining whether a legal rule should apply or not. In *Cunningham*, Gearty J referred to the principle of self-induced duress in that 'a person who joins a criminal gang cannot later rely upon the defence of duress in seeking to justify his conduct during a criminal enterprise.'³⁶ Gearty J also stated that paragraph 12 was similar to contributory negligence in the Law of Tort.³⁷ Whilst there certainly are similarities between these areas of the legal system and paragraphs 12 and 13, in the British context, Miers states that there are important differences which make it inappropriate to draw comparisons such as this. In relation to contributory negligence, Miers points out that if this rule applies, compensation can only be reduced by the courts, whereas with

³⁵ *ibid* [65].

³⁶ *Cunningham* (n 29) [6.7].

³⁷ *ibid* [6.13].

state compensation, compensation can be denied. Additionally, previous criminal convictions are generally not relevant in tort proceedings, whereas they are in relation to state compensation. Finally, where the victim provoked the offender, Miers highlights that the courts do examine whether an offender's violence was excessive. Such a proportionality assessment is not relevant with state compensation.³⁸ Indeed, there is one published CICT decision where the CICT states that paragraph 12 applies even where the offender's violence is excessive in comparison to the victim's initial violence. If the offender's violence is excessive, then this fact merely prevents the offender arguing self-defence at their criminal trial. It cannot allow the victim to disapply paragraph 12.³⁹

5.2.2.2 Previous Criminal Convictions

The manner in which a victim's previous criminal convictions are taken into consideration by the CICT is worth exploring in detail. FTM3 states that 'fellas can have all kinds of small convictions when they're younger [and] it doesn't correlate to what they grew up as.' S5 highlights that individuals with prior criminal convictions are quite dissatisfied when they learn that something they did in the past might impact their claim for compensation today:

Trying to explain [paragraph 13] to your clients who might have had difficulties in the past, you know, who might be a repeat offender for whatever reason. Maybe not related to what actually happened to the client. [...] It's difficult for them to kind of take that in and fathom it. [...]. They're saying, look, 'Why should what I did, you know, five years ago affect this?' And you're trying to have to explain to them 'Well, you know, it just never really goes away.' (S5).

In emphasising the long term collateral consequences of criminal convictions, S5 highlights the difficulties their clients have with the conduct, character and way of life rule. In the British context, Bradford-Clarke et al state that the 'symbolic recognition' underpinning state compensation is denied to victims deemed 'undeserving' due to the presence of unspent criminal convictions. Bradford-Clarke et al argue that this rule gives rise to secondary victimisation as victims are excluded from a criminal justice system which claims to be victim-centred.⁴⁰ In Ireland, these collateral consequences arguably are increased due to the limitations present in Ireland's spent criminal conviction framework. Under the Criminal Justice (Spent Convictions

³⁸ D.Miers, *State Compensation for Criminal Injuries* (Blackstone 1997) 161-164.

³⁹ 53922/3.September.2023.

⁴⁰ L.Bradford-Clarke et al, 'When "Ideal Victim" Meets "Criminalised Other": Criminal Records and the Denial of Victimisation' (2022) 69 Probation Journal 353,368-369.

and Certain Disclosures) Act 2016, as amended, no more than one conviction per individual,⁴¹ carrying no more than a twelve month prison sentence,⁴² unless such convictions are for certain road traffic and public order offences,⁴³ can become spent. Additionally, convictions can only become spent after seven years.⁴⁴ Whilst if a person is convicted of two or more offences which are committed at the same time, this counts as a single conviction for the purposes of the legislation,⁴⁵ the Irish spent conviction regime is quite restrictive.⁴⁶ Despite this, at the very least the CICS should incorporate the existing framework into how it takes into consideration previous convictions under the conduct, character and way of life provision. At present, it is not clear the extent to which the CICT process accounts for this.

On the issue of how the CICS takes account of previous convictions, interviewees highlight that there should be a clear distinction between minor and serious criminal convictions. S3 highlights the judgmental approach inherent in examining prior criminal convictions:

The CICS should not be the arbiter of a person's conduct [...]. Why should a person who might have let's say a minor or relatively minor previous criminal history be deprived of compensation when they are entirely innocent of an act of wrong that causes injury? [...] It's too arbitrary. It's unfair. (S3).

S3 continues and describes the conduct, character and way of life rule as a procedure which is used to 'beat' victims in an wholly unfair manner. B2 states that whilst a person might have a significant criminal history for minor offences, this should not mean that this offending impacts their CICT claim in the same manner as if they murdered someone or committed serious sexual offences. Gearty J in *Cunningham* also emphasised the distinction between minor and serious offences. She stated that if an individual had a number of road traffic convictions and is shot dead in entirely unrelated circumstances, these convictions probably should not be taken into account.⁴⁷ FTM2 agrees:

Now, obviously convictions, if somebody had a driving conviction, you know, or failing to have motor tax or something like that, that wouldn't be a conviction which would disqualify them from an award if they were assaulted. But if somebody had a lot of

⁴¹ Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, as amended, section 5(3).

⁴² *ibid* section 4.

⁴³ *ibid* section 5(5).

⁴⁴ *ibid* section 5(2)(b).

⁴⁵ *ibid* section 5(4).

⁴⁶ Irish Human Rights and Equality Commission, *Review of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016* (2020) 11.

⁴⁷ *Cunningham* (n 29) [6.3].

convictions for drug offences or for gangland offences or something like that and then they were assaulted and claimed compensation from the state, they probably would be disqualified on the basis of their character and their previous conduct. (FTM2).

Whilst this might well be the case more broadly, there is in fact one published CICT decision where a victim's prior road traffic convictions, including for driving while disqualified and driving without insurance, were used to justify a refusal.⁴⁸ The application was also refused by virtue of the applicant not co-operating with AGS, as is required under paragraph 22 of the CICS.⁴⁹ Despite this, it would seem that the CICT has broad discretion in how it takes account of previous convictions, including for minor offences.

In exercising this discretion, it is important that CICT applicants have access to information as to how their previous criminal convictions might impact their CICT claim. In ordering the CICT to publish a select number of past decisions concerning paragraph 13, the Court of Appeal in *Doyle v CICT* stated that the aim of publishing such decisions is to provide sufficient and relevant information to applicants to the CICS which may show a pattern or trend in how the CICT applies paragraph 13.⁵⁰ Whilst Ní Raifeartaigh J in *Doyle* stated that the CICT 'should strive for a measure of consistency in the application of [the conduct, character and way of life provision of the CICS]',⁵¹ one former CICT member highlights that decisions in relation to applying the conduct, character and way of life rule depend on the individual circumstances of each case and are ultimately decided on the balance of probabilities. This former CICT member states that the burden lies on the applicant to demonstrate why the rule should not apply in their case. If the CICT had a view on whether the rule should apply, this former CICT member highlights that they did not think it was difficult to formulate a view on the matter and that it was generally quite apparent. With the individual circumstances of each claim being different, it is difficult to achieve the 'measure of consistency' stipulated by Ní Raifeartaigh J.

FTM3 highlights that the conduct, character, and way of life rule can lead to injustice, especially in serious cases. Here, it was highlighted that the severity of someone's injuries might result in the CICT applying the rule differently depending on the specific circumstances of the case:

It's hard to say that a kid shouldn't get something if their father dies regardless of the life they lived, you know? So, I think [...] it's not an easy one I don't think, especially in the

⁴⁸ 53352/29.December.2020.

⁴⁹ CICS [22].

⁵⁰ *Doyle v CICT* [2021] IECA 131 [20].

⁵¹ *Doyle v CICT* [2020] IECA 342 [158].

fatal cases. It's easy [...] if you have 27 assault convictions and someone knocks your tooth out and you're looking for €2,000 from the Tribunal, it's easy enough to say 'No'. It's less easy if your mother is minding you and you need kind of 24-hour care and they need a bit of respite [...]. (FTM3).

Whilst applicants in particularly grievous circumstances might naturally elicit more sympathy in the decision-making process in relation to paragraphs 12 and 13, Kunst and Schiltkamp warn against such an approach. In the Dutch context, they highlight that where a decision-makers' sympathy is a factor in the decision-making process, including in relation to a victim's contribution to the criminal incident, there is a risk that inconsistent decisions are taken where similar circumstances exist.⁵² The LRC has criticised the lack of information available to CICT applicants and has commented that inconsistencies in individual CICT decisions 'raise concerns about arbitrary consideration of the personal circumstances of an applicant' in relation to paragraphs 12 and 13.⁵³ FTM3's discussion of the decision-making process amplifies these concerns.

On the issue of the type of criminal convictions which might engage paragraph 13, there is a question as to whether the CICT decisions which have been published since *Doyle* actually meet the aim set out by the Court of Appeal. A significant number of CICT decisions in fact completely redact the convictions.⁵⁴ Whilst there is a need to safeguard the personal data of applicants, little to no useful information can be gathered from these CICT decisions as to how paragraph 13 was applied in the context of the convictions. In the published CICT decisions where the type of criminal convictions are listed, limited patterns or trends are available.⁵⁵ First, the applicants or the deceased individuals in these CICT decisions generally have a significant number of criminal convictions, ranging from two to over 50 convictions. Second, many of the CICT decisions relate to applicants or deceased individuals with a varied degree of criminal convictions from burglary and property damage to public order and assaults to drugs and weapons possession offences. Third, in listing out the various types of criminal convictions of applicants and deceased individuals, the CICT does not always clarify the particular weight attached to particular criminal

⁵² M.Kunst & S.Schiltkamp, 'Sympathy for the Applicant: Investigating its Role in Decisions about State Compensation for Violent Crime Victimization' (2020) 27(1) Psychiatry, Psychology and Law 26,35.

⁵³ LRC, *Compensating Victims of Crime* (CP672022) [5.62].

⁵⁴ 53388/15.June.2023; 54473/06.September.2023; F52730/18.September.2023; F51075/23.January.2023; 52284/31.March.2023; F53258/27.October.2022; 50828/20.February.2020; 52473/21.November.2019; F53161/16.July.2015; 54175/06.March.2023; 51002/08.October.2014; 52405/15.December.2014; F51980/18.November.2014; F52433/10.December.2014; 51954;17.April.2015; 52408/17.November.2015.

⁵⁵ 50594/11.November.2022; 52284/31.March.2023; F53579/28.April.2022; F53220/11.April.2022; 50850/31.May.2022; F52553/13.May.2020; 53593/28.December.2020, 53427/20.December.2020; 53389/28.December.2020; 53352/29.December.2020; 50858/20.March.2020; F53337/1.October.2019; F51030/24.September.2015; 53191/25.October.2019; 53523/21.November.2019; F51999/3.December.2018.

convictions when deciding whether to apply paragraph 13. Additionally, it is not clear from the CICT decisions the extent to which the CICT attempts to understand the circumstances of individual criminal convictions and the manner in which past behaviour is related to the criminal incident subject to the CICT claim. Whilst there are examples of where this does occur, it does not appear to be a consistent practice.

In one decision, the CICT stated that there was ‘no causal or temporal link between these criminal convictions’ and the relevant criminal incident.⁵⁶ In this decision, the criminal incident itself involved the victim being assaulted by the offender in an unprovoked manner on the street. The offender was charged with assault causing harm under section 3 of the Non-Fatal Offences Against the Person Act 1997.⁵⁷ The victim’s previous convictions included breach of a barring order under domestic violence legislation and breach of the peace contrary to section 6 of the Public Order Act 1994,⁵⁸ as amended. In another decision, involving assault causing serious harm, the victim’s previous convictions were redacted, however, the CICT stated that the nature and quantity of the previous convictions does not amount to evidence of a violent character or way of life.⁵⁹ In *Cunningham*, Gearty J examined the number of convictions and their content.⁶⁰ In this case, the deceased had convictions for drug dealing, crimes of violence and burglaries,⁶¹ which Gearty J suggested were ‘more than opportunistic or youthful transgressions.’⁶² Overall, despite this limited guidance, the various written CICT decisions, taken as a whole, do not provide clear and accessible guidance for CICT applicants on how previous criminal convictions, along with the nature of previous offending and the time elapsed wherein no offending has occurred, are taken into consideration by the CICT.

There is a broader concern that including previous criminal convictions in the scope of paragraph 13 does not take account of the underlying causes of crime. Gearty J in *Cunningham* stated that a core principle of the criminal justice system, which seeks to deter and punish individuals for committing criminal offences, is that possessing a criminal record is not a ‘misfortune but a matter of choice.’⁶³ Whilst Gearty J emphasised the principle of choice in the context of the criminal justice system, B4 makes a salient point about individuals who possess criminal convictions and the communities in which they live:

⁵⁶ 54248/26.October.2022.

⁵⁷ Non-Fatal Offences Against the Person Act 1997.

⁵⁸ Public Order Act 1994.

⁵⁹ 52284/31.March.2023.

⁶⁰ *Cunningham* (n 29) [5.5].

⁶¹ *ibid* [5.6].

⁶² *ibid* [5.5].

⁶³ *Ibid* [3.3].

There's a lot of prejudice that occurs in Irish law and people don't really recognise it [...]. If you are living in a certain socio-economic area [...] it's probably unlikely that you don't have some criminal offences in your past. That's reality. As bad as that sounds, [...] you will have some kind of a criminal history. (B4).

B4 continues and highlights that individuals from these communities, who have prior criminal convictions, might present in a certain manner to the CICT. B4 implies that there is a risk that these individuals elicit less sympathy from the viewpoint of individual CICT members when paragraph 13 is engaged and a victim's prior criminal convictions are considered. Whilst Gearty J's emphasis on the principle of choice cannot be set aside, children and young people involved in violence, according to McAra and McVie, face significant social adversity and are more likely to be victimised themselves. These children and young people are more likely to come from disruptive family backgrounds where family breakdown is common and there are high levels of conflict with and between parents and other caregivers. Poverty is also a common feature in these families.⁶⁴ When adverse childhood experiences (ACEs) are studied from the perspective of adults, research demonstrates the link between ACEs and instances of crime in adulthood. In the Welsh Adverse Childhood Experiences Study, over 2000 adults were questioned on their ACEs. 47% reported one ACE, whilst 14% experienced four or more ACEs. When this group was contrasted with those with no ACEs, those who had experienced four or more ACEs were 14 times more likely to have been a victim of violence in the last year, were 15 times more likely to have committed a violent offence against another person in the last year, were 16 times more likely to have used crack cocaine or heroin and 20 times more likely to have been in prison at some point in their lifetime.⁶⁵ Mulcahy highlights the importance of fear, flight, and freeze responses in the context of ACEs and how individuals react in adulthood when faced with situations which they perceive to be threatening.⁶⁶ According to Mulcahy, ACEs and trauma result in fear which impacts impulse control and the ability of individuals to comply with social norms.⁶⁷ These responses can be heightened when alcohol or drug use is involved as fear of consequences is removed.⁶⁸ Additionally, 'dangerous risk-taking behaviours' can act as 'a means of ventilating suppressed emotions', leading to violence.⁶⁹ Mulcahy forcefully argues that as a

⁶⁴ L.McAra & S.McVie, *Delivering Justice for Children and Young People: Key Messages for the Edinburgh Study of Youth Transitions and Crime* (Howard League 2013) 4.

⁶⁵ M. Bellis, *Adverse Childhood Experiences and their Impact on Health-harming Behaviours in the Welsh Adult Population* (Public Health Wales 2015) 4-5; J.Mulcahy, 'Trauma and Police Custody' in Y.Daly (ed), *Police Custody in Ireland* (Routledge 2024) 72.

⁶⁶ Mulcahy (n 65) 68.

⁶⁷ *ibid* 68.

⁶⁸ *ibid* 73-77.

⁶⁹ *ibid* 76; M.Stimmel et al, 'Trauma Exposure, Post-traumatic Stress Disorder Symptomatology, and Aggression in Male Juvenile Offenders' (2014) 6(2) *Psychological Trauma: Theory, Research, Practice, and Policy* 184,189.

result of the presence of multiple ACEs ‘many offenders have all too frequently been hurt and, in turn, hurt others.’⁷⁰ It is important to state that these factors are not intended to excuse offending behaviour, but rather contribute to understanding the context in which much violent behaviour takes place.⁷¹ In this context, it is also important to note the interdependent nature of the offender-victim relationship. McCullagh points out that male victims of crime are particularly impacted by this overlap as past violence might impact their deservingness of being recognised as a victim in the future.⁷² Overall, the inclusion of previous criminal convictions in the scope of paragraph 13, indeed the application of the rule more broadly outside the context of criminal convictions, along with the part-responsibility rule under paragraph 12, are problematic when viewed through this trauma-informed lens. This is because they punish victims for their past conduct and contribution to their injuries.

5.2.2.3 Assigning Blame or Discouraging Criminality

Regardless of the problematic aspects of paragraphs 12 and 13, there is still an argument for the continued operation of these rules. B1 and FTM3 highlight how the provisions safeguard the overall credibility of the CICS from the point of view of the public at large:

I think, well, first of all, I can understand why from the point of view of the state, if somebody is involved in criminality themselves, the ordinary person in the street won’t want that person to be compensated. So, if you have somebody who’s involved in some sort of gang warfare and is shot, you know, is the state to compensate the person for that person being shot or whatever. [...] It doesn’t sit well with most people probably and with me anyway. [...] So, it’s a difficult one. (B1).

[...] There’s how does the CICS look, right? So, if you’re a politician or you’re the Government and [a crime boss] gets shot and his kids get a big pay-out from a state organisation, it doesn’t look great. You do have to, I think, look at the impact on the credibility of the CICS. (FTM3).

B1 and FTM3 link the operation of the rules with public attitudes about criminality and the perception that the public would not support public money being used to compensate those involved in criminality. Whilst research on public attitudes in Ireland in relation to the criminal

⁷⁰ Mulcahy (n 65) 76.

⁷¹ B.Spiecker & J.Steutel, ‘Is a Traumatic Childhood Just Another Abuse Excuse’ (2003) 35(4) *Educational Philosophy and Theory* 443.

⁷² McCullagh (n 17) 544.

justice system suggests that the public do not want a more punitive approach to offenders,⁷³ there is no research in an Irish context on public attitudes in relation to paragraphs 12 and 13. Smith et al, in the British context, establish that the public do not support the inclusion of eligibility criteria which deny compensation to sexual violence victims based on their conduct, character or criminal record. Additionally, Smith et al argue that public attitudes should not be used to determine eligibility criteria. Instead, Smith et al insist that ‘dignity, respect, and fairness’ for victims should be at the core of state compensation frameworks. In this regard, Smith et al submit that eligibility criteria which blame victims of sexual violence for their victimisations should never form part of such a framework.⁷⁴

In *Cunningham*, Gearty J highlighted that the purpose of the CICS is to compensate individuals who have been injured as a result of the actions of criminals and ‘not those who have suffered injuries at the hands of a criminal because they themselves are criminals.’⁷⁵ In this regard, Gearty J stated that some might argue that the public policy reasons for such exclusion ‘are so obvious that they need not be expressly stated.’⁷⁶ These reasons include that criminality should be discouraged,⁷⁷ and that state compensation should not be allowed to become a type of insurance policy for criminals injured or killed in the course of engaging in criminal behaviour.⁷⁸ Gearty J highlighted that when a criminal is injured or killed in a feud or gang related criminal incident, ‘it is a matter of much less surprise and attracts less sympathy because it is obvious that those who involve themselves in serious criminality are more likely to be the subject of such assaults.’ Gearty J cited the Gospel of Matthew, that ‘those who live by the sword, die by the sword.’⁷⁹ Gearty J also stated that the application of the conduct, character and way of life rule does not equate to the CICT holding that the victim deserved to be killed. Rather, the rule underpins a nuanced and important principle of the CICS that:

[T]hose who engage in crime do so knowing the risks. It is not a disproportionate or discriminatory measure to provide that his dependents are not entitled to compensation

⁷³ DOJ, *Criminal Justice Public Attitudes Survey: Results* (2022); DOJ: *Criminal Justice Public Attitudes Survey: Results* (2021); I.Marder, ‘Does the General Public Want Harsher Sentences for Criminals?’ (RTÉ Brainstorm 17 May 2024).

⁷⁴ O.Smith et al, ‘State Compensation as Rape Justice: Are Public Attitudes a Legitimate Foundation for Reform of the UK’s Criminal Injuries Compensation Scheme?’ (2022) 6(1) *Journal of Gender-Based Violence* 79,92; see also O.Smith & J.Gale, ‘Supporting Rape Survivors Through the Criminal Injuries Compensation Scheme: An Exploration of English and Welsh Independent Sexual Violence Advisors’ Experiences’ (2018) 24(9) *Violence Against Women* 1091.

⁷⁵ *Cunningham* (n 29) [6.1].

⁷⁶ *ibid* [6.12].

⁷⁷ *ibid* [6.7].

⁷⁸ *ibid* [6.9].

⁷⁹ *ibid* [6.6].

from the taxpayer if he dies as a result of his criminality, as this would not be in keeping with the State's policy of preventing crime and deterring people from committing crime.⁸⁰

The public policy basis for the inclusion of the conduct, character and way of life rule is reflected in a number of CICT decisions.⁸¹ In these CICT decisions, the CICT states that rejecting applications on the basis of this rule seeks in no way to diminish the emotional and financial loss inflicted on victims and families. Additionally, in the context of fatal claims and the application of the rule to the conduct, character and way of life of individuals killed as a result of homicide, the CICT states that their reliance on the rule to deny compensation in no way seeks to blame the deceased or their family members.⁸² Gearty J in *Cunningham* re-asserted this distinction between blaming the family members and the application of the rule in the context of the deceased person's conduct, character and way of life.⁸³

Of course, CICT members rejecting claims on the basis of paragraphs 12 and 13, and judges in the context of legal challenges to these CICT decisions, are simply interpreting the terms of the CICS as agreed by the Irish Government. In examining the published CICT decisions, CICT members are quite careful not to place blame directly or explicitly on victims in relation to their exclusion from the CICS. Implicitly, however, such an approach is in line with the various victim-precipitation theorists who portray victim behaviour as actively contributing to the criminal event.⁸⁴ Critics of these theorists hold the position that early victimology theories engage in victim-blaming by affirming victims themselves 'as an essential accessory to the crime committed against them.'⁸⁵ Fattah has dismissed this victim-blaming criticism of early victimology scholarship, stating that it is an 'unwarranted attack' and an 'unfounded ideological criticism' of the premise of these early scholars.⁸⁶ He argues that the 'integrity' of victim-precipitation theory is sound as precipitation factors are still relevant to understanding the causes of crime.⁸⁷ He states, however, that the 'execution' of victim-precipitation theory might well be open to criticism as the various precipitation factors should only be used to prevent future victimisation, not to blame victims for prior victimisation.⁸⁸ Fattah argues that it is important to maintain a distinction between precipitation, on the one hand, which relates to the factors from a

⁸⁰ *ibid* [6.11].

⁸¹ F51569/26.August.2022; F51349/26.August.2022; F51407/23.August.2022.

⁸² F51349/26.August.2022, F51407/23.August.2022.

⁸³ *Cunningham* (n 29) [5.13].

⁸⁴ P.Rock, 'Theoretical Perspectives on Victimisation' in S.Walklate, *Handbook of Victims and Victimology* (Routledge 2018) 35-36.

⁸⁵ Iliasdis (n 4) 30-32; J.Windle et al, *Criminology, Crime, and Justice in Ireland* (Routledge 2022) 213; L.Clark & D.Lewis, *Rape: The Price of Coercive Sexuality* (Women's Press 1977).

⁸⁶ E.Fattah, 'Victimology: Past, Present, and Future' (2000) 33(1) *Criminologie* 17,25; Rock (n 84) 36.

⁸⁷ E.Fattah, *Understanding Criminal Victimization* (Prentice Hall 1992) 290-295; Rock (n 84) 36.

⁸⁸ Fattah (n 87); Rock (n 84) 36.

victim's perspective that caused the crime, and provocation, on the other hand, which is relevant to the question of a victim's blameworthiness in relation to a crime.⁸⁹ Fattah maintains that victimologists are not interested in blaming victims but explaining the causes of crime.⁹⁰ According to Fattah, the question of blame or holding victims responsible for the offence is for the courts and compensation boards to decide.⁹¹

Despite Fattah's attempt to defend these early theories and make a distinction between the roles of victimologists and criminal justice actors, the victim-blaming criticism in both contexts is difficult to refute. Whether one frames the issue from the perspective of precipitation or provocation, judgement is being cast on the actions, behaviours or characteristics of the victim which operates to hold a victim less innocent in some manner for the occurrence of the criminal act. Newburn states that a benign understanding of early victimology theories merely indicates that there is a connection of some sort between offender and victim and that it is important to fully understand the nature of any such relationship in order to properly understand the crime and how it came about. Newburn, however, comments that such a benign understanding can tip over into a victim-blaming approach.⁹² The CICT itself and Gearty J in *Cunningham* attempt to distinguish between victim-blaming and the operation of paragraphs 12 and 13. Furthermore, Miers states that the blame in the context of state compensation 'does not refer to a person's actions in respect of the criminal injury, but to his moral worth as a person who should properly be the beneficiary of public money.'⁹³ I argue, however, that the assessment of moral worth in the context of state compensation is inevitably linked to the criminal incident itself, even where the impugned conduct is not directly related to the incident, as the CICT is examining, and thereby casting judgement, on the actions, character, behaviour, lifestyle or some other characteristic of victims in determining whether to award state compensation in respect of the incident. In this manner, victims possess a characteristic which deviates from Christie's criteria for 'ideal' and 'blameless' victims,⁹⁴ making them non-ideal, blameworthy and undeserving of state compensation. In this regard, the CICT's approach tips over into victim-blaming.⁹⁵

⁸⁹ Fattah (n 87); M.O'Connell, 'Victimology: A Social Science in Waiting' (2008) 15 International Review of Victimology 91,94.

⁹⁰ Fattah (n 87) 298.

⁹¹ *ibid.*

⁹² T.Newburn, *Criminology* (Routledge 2017) 370.

⁹³ D.Miers, 'Rebuilding Lives: Operational and Policy Issues in the Compensation of Victims of Violent and Terrorist Crimes' (2006) (Aug) *Criminal Law Review* 695,707; LRC (n 53) [5.5].

⁹⁴ Iliasdis (n 4).

⁹⁵ Newburn (n 92).

5.2.2.4 Balancing Victims' Interests and the Credibility of the CICS

Paragraphs 12 and 13 present particular difficulties for the state in terms of how to balance the interests of victims and grieving families, on the one hand, and the credibility of the CICS as a whole, on the other hand. This is especially the case where there are limited public resources and it is ultimately taxpayers' money that is being used to fund the CICS. Whilst some interviewees opposed the continued operation of paragraphs 12 and 13, most interviewees broadly were of the view that the rules should be retained in some form, despite the victim-blaming dimensions. Interviewees do warn, however, that these rules can be applied in an unjust and inconsistent manner, especially where individual circumstances are considered and where previous criminal convictions are relevant. Whilst Gearty J upheld the validity of these rules in *Cunningham*,⁹⁶ future consideration of these rules ought to determine whether a more appropriate balance can be struck in light of the perspectives raised by interviewees and lessons from the literature. The wording contained in Article 7 of the European Commission's 2002 Proposal might be an appropriate place to begin. This stated that compensation could be 'reduced or refused' by virtue of the applicant's behaviour but only if this behaviour is in 'direct relation to the event that caused the injury or death'.⁹⁷ In ensuring that victim's behaviour before and during the incident is directly or 'causally linked', as the LRC suggests on a preliminary basis,⁹⁸ with the injuries inflicted, I argue that a better balance can be struck between the victim-blaming dimensions to the provisions, the need to be trauma-informed and the need to safeguard the credibility of the CICS as a whole.

Consideration should be given to the rule not applying at all in fatal claims and claims involving sexual violence. In relation to sexual offences, in April 2025, for reasons of universality and ensuring that all victims of crime are treated equally, the British Government announced that they were rejecting the recommendations of the Independent Inquiry into Child Sexual Abuse that victims of child sexual abuse should not have their state compensation claim automatically rejected because of unspent convictions which are likely to be linked to their experience of abuse. Recommendations in relation to online sexual abuse and extending the scheme's time limits in sexual abuse cases were also rejected for the same reason. Whilst there is merit in the principle of universality, ensuring exceptions in particular circumstances does seem reasonable.⁹⁹ For example, fatal claims in Britain are treated differently in relation to prior convictions in comparison to non-fatal claims. Considering the highly restrictive nature of the British

⁹⁶ *Cunningham* (n 29).

⁹⁷ European Commission, *Proposal for a Council Directive COM(2002)562*.

⁹⁸ LRC (n 53) [5.68].

⁹⁹ *The Report of the Independent Inquiry into Child Sexual Abuse* (HC720 October 2022) 291-297; Ministry of Justice, *Criminal Injuries Compensation Scheme Review: 2022 and 2023 Consultations: Government Response* (9 May 2025).

scheme,¹⁰⁰ run by the Criminal Injuries Compensation Authority (CICA), which gives no discretion to decision-makers to accept claims where a victim has served a custodial or community sentence,¹⁰¹ Miers comments that the British scheme does treat fatal claims in a ‘less stringent’ manner.¹⁰² In non-fatal cases, where an applicant possesses a conviction, unless it is a conviction where a custodial or community sentence was imposed, along with other prescribed circumstances, an award will be reduced or refused ‘unless there are exceptional reasons not to withhold or reduce it’.¹⁰³ In fatal cases, however, an award will be made unless there are exceptional reasons to refuse or reduce it,¹⁰⁴ such as if the victim possesses convictions for sexual offences against children or possesses convictions for other serious offences.¹⁰⁵ In relation to reforming paragraph 13 of the CICS in Ireland, Murphy suggests that ‘a more structured discretion’ for the CICS is needed.¹⁰⁶ Certainty, minus the CICA’s lack of discretion to make an award in instances where a conviction involves a custodial or community sentence, the British experience is a useful starting point in attempting to prescribe the scope of this discretion, especially in fatal and other specific cases.

5.2.3 Victim-blaming Eligibility Criteria

Throughout this section I have examined the ‘same roof’ rule under paragraph 10 of the 1986 CICS, the part-responsibility rule under paragraph 12 and the conduct, character and way of life rule under paragraph 13. I have reached the conclusion that the CICS does not take account of victimhood as a social construct. This is because these eligibility rules result in victim-blaming at the CICT in that the rules identify the actions or characteristics of victims who deviate from Christie’s ‘ideal’ and ‘blameless’ victims. As a consequence, victims are at risk of secondary victimisation in the CICT process. Despite this, the solution is not simply to abolish these provisions. Whilst certainly the ‘same roof’ rule should be abolished, paragraphs 12 and 13 warrant more nuanced consideration. In this regard, a potential policy solution might be to amend these rules to ensure that a victim’s past conduct or contribution to the injuries can only be raised if it is directly linked to the criminal incident.

¹⁰⁰ The UK Supreme has upheld the validity of the British scheme in context of criminal convictions in non-fatal cases, see *A & B v CICA* [2021] UKSC 27.

¹⁰¹ Bradford-Clarke et al (n 40) 357.

¹⁰² D.Miers, *Criminal Injuries Compensation: State and Offender Compensation for Violent Crime* (OUP 2018) [4.93]; D.Miers, ‘Compensating Deserving Victims of Violent Crime: the Criminal Injuries Compensation Scheme 2012’ (2014) 34(2) *Legal Studies* 242,269.

¹⁰³ Criminal Injuries Compensation Scheme 2012, Annex D [4].

¹⁰⁴ *ibid* [28(b)].

¹⁰⁵ Miers (n 102) [4.93].

¹⁰⁶ W.Murphy, ‘The Right under EU law to Compensation for Injuries Criminally Inflicted: the Implications of BV for Irish Law’ (2021) 23(1) *Irish Journal of European Law* 219,239.

5.3 The Role of Victim Capital and An Garda Síochána

FTM2 highlights ‘that the problem with the CICT is that there’s no legitimate contradictor’ like there is in criminal or civil courts. There is the CICT, as the decision-maker, and there is the applicant. In a criminal or civil court, however, both sides put forward their arguments and the judge makes their decision. In determining applications under the CICS, the CICT has a particular challenge in that deciding whether the particular eligibility rules apply depends on the evidence of the applicant. In many instances, the only party that can confirm or contradict the applicant is AGS. The mechanism used by the CICT to obtain evidence from AGS is the garda report. The Explanatory Notes section of the relevant CICT application forms provide that ‘[f]ollowing receipt of an application, [CICT] staff must request a report on the incident from AGS or GSOC as the case may be.’¹⁰⁷

According to the LRC, the garda report ‘is used to determine that the injuries directly resulted from a crime of violence [...] [and] is also considered by [CICT] members when exercising discretion as to whether compensation should be refused or reduced.’¹⁰⁸ Specifically, according to the LRC, ‘[r]eliance could also be placed in part or totally on the garda report of the offence to determine whether an applicant contributed to the offence,’ or is otherwise unworthy of an award.¹⁰⁹ AGS provide particular information to the CICT in the garda report in respect of individual CICT claims. In carrying out the interviews, I was informed that this information includes the date, time and location of the incident; when and to whom it was reported; the name and station of the investigating officer, and if witnessed by a Garda; the name and address of the applicant to the CICT; the nature of injuries suffered by the victim; a brief outline of the incident; brief particulars of the criminal record of the victim; whether proceedings were taken, and if so, the date, the venue and the outcome of the proceedings; and finally, what, if any, compensation was paid to the victim or their dependants by the offender. It is unclear who is responsible within AGS for completing the garda report, but one interviewee presumes that it is the investigating officer. Another interviewee, a former CICT member, states that as application forms submitted from CICT applicants often contained very little detail on the nature or circumstances of the criminal incident, the CICT often relies on AGS to ‘fill in a lot of the blanks’ for the CICT.

This section analyses the importance of the garda report in relation to three provisions of the CICS. These provisions are paragraphs 12 and 13, which section 5.2 above also discusses, along with paragraph 1 of the CICS which provides that ‘[t]he [CICT] [...] may pay compensation [...]’

¹⁰⁷ CICT Non-fatal Applications Form, Explanatory Notes [13]; CICT Fatal Applications Form, Explanatory Notes [12].

¹⁰⁸ LRC (n 53) [5.19].

¹⁰⁹ *ibid* [5.46].

in respect of personal injury where the injury is directly attributable to a crime of violence'.¹¹⁰ This is known as the crime of violence rule. The role of AGS is examined in light of Bourdieu's understanding of capital,¹¹¹ as applied in the victims context by Hall.¹¹² According to Hall, Bourdieu's categorisation of capital is useful when studying victims of crime as 'we can see how the command of any of the three distinct forms of capital may well translate into the cultural recognition of their owners as victims when they suffer harm.'¹¹³ For the purposes of this thesis, such recognition is granted by both AGS and the CICT, as the case may be, in relation to the garda report and how it is used at the CICT in relation to the various eligibility rules. First, there is economic capital which refers to pecuniary resources. Second, there is social capital which concerns the social relationships of individuals which afford them positive benefits. Finally, there is cultural capital which refers to 'a collection of symbolic elements such as skills, tastes, posture, clothing, mannerisms, material belongings, credentials [...] that one acquires through being part of a particular social class'.¹¹⁴ In the British context, Hall highlights that state compensation frameworks restrict compensation to conceptions of victimhood which are 'culturally accepted'.¹¹⁵ Whilst Hall's core argument relates to considerations concerning how these culturally accepted versions of victimhood shift over time to the point that victims can gain, retain and lose the 'ideal' victim status,¹¹⁶ this thesis applies Hall's definition of victim capital to the role of AGS at the CICT. Of course, this definition can be applied more broadly to the CICT process. However, for the purposes of this chapter, the role of AGS is the focus.

This section commences in section 5.3.1 which underscores the importance of the garda report in CICT decision-making. Section 5.3.2 then considers the role of victim capital in relation to the garda report, whilst section 5.3.3 explores the role of oral hearings at the CICT. At present, oral hearings only take place on appeal and not at first instance, which is an entirely paper based process. This section concludes that, whilst members of AGS are often the only individuals who can verify particular information in relation to the criminal incident and the CICT applicant, there is a concern that the CICT places too much reliance on the views of AGS in circumstances where the victim disagrees with these views and cannot, due to low levels of victim capital, challenge these views. In evaluating the role of the garda report, it is important to highlight the specific information provided to the CICT by AGS which is relevant in terms of paragraphs 1, 12 and 13.

¹¹⁰ CICS [1].

¹¹¹ P.Bourdieu, 'The Forms of Capital' in J.Richardson (ed), *Handbook of Theory and Research for the Sociology of Education* (Greenwood 1986) 16.

¹¹² M.Hall, *Victims of Crime: Construction, Governance and Policy* (Palgrave 2017) 245.

¹¹³ *ibid*.

¹¹⁴ *ibid*.

¹¹⁵ *ibid* 215; M.Hall, 'Victims of Crime: Culture, Politics and Criminal Process in the Twenty-First Century' (2017) 68(4) Northern Ireland Legal Quarterly 469,472-473.

¹¹⁶ Hall (n 112).

There is information in relation to the nature of injuries suffered by the victim; a brief outline of the incident and brief particulars of the criminal record of the victim. Whilst it is ultimately the CICT who take this information and apply the relevant rule and considering that AGS are generally just setting out the criminal record of the victim in the garda report as it is set out on their systems, my research demonstrates that there are instances where the garda report does contain more information on the incident and the victim than a mere verbatim and neutral account. This section determines that oral hearings may be a measure to ensure that contradictory accounts are properly balanced by the CICT and victims are not excluded from accessing compensation based on incomplete information which they struggle to contextualise.

5.3.1 The Garda Report as ‘Gospel’

The garda report plays a crucial role in how the CICT determines whether to apply paragraphs 12 and 13 of the CICS. It is also relevant in relation to the crime of violence rule under paragraph 1 of the CICS.¹¹⁷ In the specific context of a CICT claim where paragraph 12 was relevant, B2 highlights the difficulties that arise where the applicant’s account and the garda’s account of the criminal incident differs:

The garda report was taken as being gospel pretty much. [...] So, basically the guard gives his opinion as to what happened and he, this particular guard says here that the applicant for compensation was the aggressor in the particular incident and that the person who assaulted him was acting in self-defence. [...] My guy didn’t agree at all, of course, with that version of events and he said, ‘No, that isn’t the case [...] I wasn’t the aggressor [...] I don’t know where the guard has gotten that idea from.’ [...] So, you do have the guards kind of acting as [...] the judge and jury in effect in that the [...] [Garda] was of the view that [...] there was nothing to see here. (B2).

Here, B2 highlights that the CICT places significant weight on the account of the incident set out in the garda report. B4 echoes this and highlights that the CICT ‘tend to go on whatever the guard has described.’ FTM1 points out that the CICT ‘would always generally lean towards the balance of the guards’ because CICT applicants ‘themselves were an awful lot more involved in the crime

¹¹⁷ In *Earls v CICT* [2022] IEHC 679 [60], the High Court approved a number of English authorities on the definition of a personal injury which is directly attributable to a crime of violence. In *R v CICB* [1987] QB 74 p79, it was held that it is the nature of the unlawful conduct, and not its consequences, which must be examined. In *Jones v FTT* [2013] 2 AC 48 [17], it was held that it is necessary for the tribunal of fact to examine the nature of what was done and part of this might involve assessing what the law requires for proof of a particular criminal offence depending on the circumstances of the claim, see Miers (n 102) [2.02]. In *RN v CICA* [2023] EWCA Civ 882, the Court of Appeal in England and Wales held that child victims of online sexual exploitation and abuse can apply for state compensation. Previously, the CICA held that such victims could not apply as no physical injury took place and the victim was not in fear of immediate harm.

than they had led [the CICT] to believe.'

There are a number of published CICT decisions where the CICT favour the account set out in the garda report over the applicants' submissions or submissions from other parties, particularly in relation to the relevance of the conduct, character and way of life rule. In one CICT decision, the garda report stated that it was suspected that the deceased was involved in serious crime. Despite this, the garda report could not conclude that the death was as a result of violence flowing from gangland or drug feuding activities. The garda report went on to set out the criminal convictions of the deceased which included drug possession, possession of an offensive weapon, burglary, and possession of firearms and ammunition. In this regard, the applicant to the CICT in respect of the compensation claim, who was the wife of the deceased, submitted that criminality was not the deceased's way of life. She further submitted that her husband was a drug addict and that he possessed the firearms because he owed a drugs debt. On this, the CICT commented that the applicant's account is directly opposed to the account set out in the garda report that he was suspected of being involved in serious crime. In applying paragraph 13, the CICT held that it did not have to conclude that the death was as a consequence of gangland or drug feud violence. Rather, the deceased's previous convictions, along with the suspicion on the part of AGS that the deceased was involved in serious crime was enough to justify a rejection of the application.¹¹⁸

In another CICT decision, the deceased also had a number of criminal convictions. In this case, they related to assault under section 2 of the Non-Fatal Offences Against the Person Act 1997, threatening, abusive and insulting behaviour, failing to comply with a direction from AGS and possession of knives and firearms. In rejecting the application, the CICT held that it was entitled to take account of these convictions, along with the account set out in the garda report in relation to the nature of the fatal shooting. In this regard, the text of the CICT decision did not set out what the garda report actually said about the nature of the shooting. Here, the applicant for compensation, who was the mother of the deceased, submitted that she did not accept that the deceased was a member of a criminal gang. On the various convictions listed, the applicant stated that the deceased suffered from addiction problems around the time these offences took place.¹¹⁹ In two other CICT decisions, the applicants also submitted that the relevant convictions arose in circumstances where addiction problems were present. Despite this, the CICT decisions did not address the relevancy of these circumstances and relied on the account set out in the garda report to reject the applications.¹²⁰ By way of general comment, it is important to emphasise that there should be a distinction made between low level offending intended to feed an addiction and more

¹¹⁸ F52511/19.October.2019.

¹¹⁹ F51999/3.December.2018.

¹²⁰ F52511/19.October.2019; F51999/3.December.2019.

serious offending where individuals are directing a criminal organisation. Indeed, the recently published non-binding sentencing guidelines from the Judicial Council in respect of certain types of offending in the DSGBV area advise that, whilst self-induced intoxication cannot be a mitigating factor in any crime, ‘[a] genuine effort to deal with addiction is, however, a matter that can be taken into account.’¹²¹ From the published decisions, it is not at all clear that the CICT views a victim’s contribution to their injuries or their previous convictions in a similar manner.

There are further examples of where the CICT favour the verbatim account set out in the garda report and dismiss submissions which might explain this context. In one decision, the garda report set out the extensive criminal record of the victim who was murdered, including details of prison sentences served. According to the garda report, these convictions included ‘37 previous convictions, ranging from assault causing harm, robbery, theft, endangerment, criminal damage, possession of certain articles, unauthorised taking, public order and road traffic offences.’ As well as the garda report being before the CICT, a letter from the Probation Service was also submitted which indicated, according to the text of the CICT decision, that the victim ‘appeared to be making progress whilst under the supervision of the Probation Services’. Despite this, the decision-maker concluded that ‘in the opinion of the [CICT] the Probation report does not outweigh the significant serious offences committed by’ the victim, as set out in the garda report. Paragraph 13, therefore, was applied in this application to refuse an award of compensation. Unfortunately, no specific reason is outlined as to why the letter from the Probation Service does not outweigh the prior criminal convictions as set out in the garda report.¹²² Another CICT decision also mentions statements submitted to the CICT from the Probation Service, along with statements from the applicant and the applicant’s partner. Unfortunately, the CICT does not set out the contents of these statements in the written decision. In noting the existence of these statements, the decision states that the number and frequency, as well as the nature of the applicant’s criminal convictions make it inappropriate for an award of compensation to be made. These convictions included firearms and offensive weapons offences, as well as public order offences. Again, the CICT highlights the summary of the applicant’s previous convictions in the garda report and does not detail the extent to which it took account of the various statements, including from the Probation Service.¹²³

¹²¹ Judicial Council, *Report of the Sentencing Guidelines and Information Committee on the Application of Section 40 of The Domestic Violence Act 2018* (2025) 12. For a detailed account of the relationship between victims, offenders, addiction and state compensation, and the manner in which victims with addictions are treated with distrust and scrutiny, see K. Seear & S. Fraser, ‘The Addict as Victim: Producing the “Problem” of Addiction in Australian Victims of Crime Compensation Laws’ (2014) 25(5) *International Journal of Drug Policy* 826.

¹²² F52553/13.May.2020.

¹²³ 51569/26.August.2022.

Overall, the perspectives presented from individuals who participated in this research, along with the various written CICT decisions, confirm that the importance of the garda report to the CICT process cannot be overstated. Whilst the next section sets out examples of how AGS unfairly influence the CICT process, it is important to emphasise that the problem generally arises not in relation to AGS's summary of a CICT applicant's previous convictions or their contribution to the injuries, but rather whether the CICT has put in place mechanisms to take account of the broader context in relation to these convictions or an applicant's conduct. With this established, the next section examines the role of victim capital at the CICT in relation to the garda report.

5.3.2 Victim Capital and the Garda Report

In understanding how victim capital can influence the granting and retention of legitimate victimhood status, Hall states that economic capital can be put toward lobbying actions to highlight one's victimisation to the public and political class. Social capital then can be used to establish and foster connections in order to influence those in positions of authority. Hall implies that social class and educational attainment are useful in this context also.¹²⁴ According to Young and Billings, individuals who possess high cultural capital 'tend to have styles of engagement that align with the norms and values of elite institutions and the people who inhabit them.'¹²⁵ In researching citizen interactions with police officers in varying suspect rights contexts, Young and Billings' findings demonstrate that individuals with higher levels of cultural capital possess self-efficacy and entitlement in their interactions with the police.¹²⁶ As a result, Young and Billings highlight that this 'may render people with limited cultural capital more vulnerable to investigative authority'.¹²⁷ Young and Billings point out that their research is in line with broader sociological research which suggests that groups with higher levels of capital are more willing, more proactive and more assertive in particular situations.¹²⁸ For example, middle class children are more likely to seek assistance in class and interrupt a lesson to ask for help.¹²⁹ In the context of victims' interactions with the police, McKinley and Rogers highlight that vulnerable individuals can lack social capital for varying reasons, including having an acquired brain injury, their age, living with a disability or suffering from mental illness and trauma, all of which impact their 'ability to understand and effectively present their case or fully participate' in the criminal justice system.¹³⁰

¹²⁴ Hall (n 112) 245.

¹²⁵ K. Young & K. Billings, 'Legal Consciousness and Cultural Capital' (2020) 54 Law and Society Review 33,50.

¹²⁶ ibid 51.

¹²⁷ ibid 52.

¹²⁸ ibid 38.

¹²⁹ ibid; J. Calarco "I Need Help!" Social Class and Children's Help-Seeking in Elementary School' (2011) 76 American Sociological Review 862.

¹³⁰ A. McKinley & C. Rogers, 'Police, Victim and Co-victim Interaction: Insights from Australia' (2024) 7(1) Journal of Victimology and Victim Justice 94,98.

It is often presumed that legal frameworks and rights assertion involve a level playing field for everyone.¹³¹ In fact, when viewed in light of an individual's economic, social or cultural capital, disparities in access to justice become apparent. Access to justice in Ireland has been subject to extensive academic and policy consideration in recent years.¹³² This section contributes to this debate by highlighting the role of victim capital concerning the garda report and the manner in which it influences the CICT process. A4 discusses the role of the garda report in the context of how their loved one's previous criminal convictions resulted in their CICT claim being rejected at first instance. A4 highlights how it was them, as the CICT applicant, who ultimately had to be proactive in challenging incorrect or incomplete evidence put forward in the garda report when they appealed the first instance decision:

There was so many errors in the letter from the guards. [...] I had wrote to the guard who had filled their form [...]. The guard came down and [...] they explained that yes these were errors [...] and they were going to write to the appeals tribunal or the criminal injuries because they felt it was very wrong as well. They said there are specific questions and they answer them. They said that the way it read when they read back on it, it portrayed a different person than [my loved one] was actually though, you know. [...] They apologised that this letter caused us upset. [...] I think they actually sent us out the letter that they wrote to the [CICT] to say like that these letters were not suitable. [...] It didn't actually show like real life. [...] It was just like facts on a piece of paper, but there was more to it than they thought. (A4).

A4 states that ultimately AGS in this case agreed to amend the garda report for the CICT to provide better context in relation to the deceased previous convictions. A4 themselves had to be proactive in appealing the first instance decision, contacting AGS and convincing them to amend their report. A4 states that, at the oral hearing, they explained to the CICT appeal panel that their family is not a typical family in the area where they live as there are two parents in employment. A4 highlights that they felt that the CICT panel took this on board in not applying the conduct, character and way of life rule and making an award of compensation. Without commenting on the specifics of A4's CICT claim, there is a concern that not all CICT applicants will have the ability to be proactive in this way, nor will all CICT applicants be able to highlight their socio-economic status to decision-makers in a way that might shed light on the relevancy of previous

¹³¹ Young & Billings (n 125) 33.

¹³² The Chief Justice's Working Group on Access to Justice: *Civil Legal Aid Review Conference* (2023); C.O'Mahony, *Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities* (Irish Human Rights and Equality Commission 2024).

convictions and the specific circumstances of the incident itself.

In the context of the crime of violence rule under paragraph 1 and the part-responsibility rule under paragraph 12, S1 spoke at length in relation to the importance of AGS to the process:

I have certainly seen cases where the CICT have said that you don't meet the test to qualify based on what the Garda has said. [...] A particularly striking example was where [a group of foreign nationals] were out having a drinks party and fell into a dispute with the neighbour. And the neighbour gets the better of the dispute and one of the [foreign nationals] gets a very bad injury but the cops didn't take the statements from the [foreign nationals] with a [proper] interpreter so ultimately the assailant was given a more credited account and no prosecution follows. The CICT said well look the Garda investigating this didn't prosecute so there wasn't a crime and that excluded that person. (S1).

S1 provides a stark example of where the investigatory role of AGS directly impacts the outcome of the CICT process. There are also several CICT decisions where applications were dismissed due to their being no crime of violence, a conclusion which the CICT reached in light of a number of factors relevant to the roles of AGS and the wider criminal process. For example, where AGS decided not to launch a criminal investigation,¹³³ or where no prosecution was taken,¹³⁴ where a prosecution was taken but it was unsuccessful,¹³⁵ and where the criminal trial of the offender was unsuccessful due to the defence of self-defence being successfully raised.¹³⁶ Equally, there are several CICT decisions where the CICT accepts there was a crime of violence based on factors relevant to the criminal process. For example, that a crime of violence did take place simply because an investigation was launched or a prosecution was taken, regardless of whether it was successful or not,¹³⁷ or a successful prosecution was actually taken.¹³⁸ If the CICT are taking the decision of AGS not to launch a criminal investigation or the decision of AGS or the Director of Public Prosecutions (DPP), as the case may be, not to prosecute as final in terms of there being a crime of violence or not, there is a concern that genuine compensation claims will be excluded as a result of an investigation which does not account for differences in victim capital. In this regard, non-native English language speakers possess a lower level of victim capital than native English

¹³³ 51668/19.September.2022; 51464/26.June.2022; 50739/13.May.2022; 50682/13.May.2022; 50685/13.May.2022; 50682/13.May.2022; 50682/13.May.2022; 23546/17.January.2023.

¹³⁴ 50433/13.May.2022; 50170/28.February.2023; 54175/06.March.2023.

¹³⁵ 50288/16.August.2022; 52166/24.September.2020.

¹³⁶ F586/04.July.2022.

¹³⁷ 53444/06.September.2023; 53169/03.March.2023; 50969/28.November.2022; 50053/13.May.2022; 23744/14.July.2022; 23745/14.July.2022; 50026/07.December.2022.

¹³⁸ F51075/23.January.2023; 54794/24.November.2022.

speakers,¹³⁹ especially in Ireland where English is the predominant language. As a result, these individuals might not ‘have styles of engagement that align with the norms and values of elite institutions and the people who inhabit them.’¹⁴⁰ Indeed, a recent report commissioned by the Policing Authority, now the Policing and Community Safety Authority, and conducted by the Irish Network Against Racism identifies a number of concerns in an Irish context in relation to Brazilians and people of African descent’s interactions with AGS as victims of crime. Whilst positive accounts are included in this research, these concerns include a lack of information provision from AGS in relation to the criminal process, victims feeling that AGS did not take their reporting of a crime seriously because of them not being Irish or because they were not of Irish descent, victims being discouraged from pursuing prosecutions and victims’ accounts of crime being discredited or minimised by AGS when reported.¹⁴¹

Overall, several interviewees raise the issue of victim capital at the CICT. There is a concern that certain victims, with a high level of victim capital, whether it be economic, social or cultural, will find it easier to get their voices heard by AGS in a way that is positive to their compensation claim. For example, certain individuals might be more proactive in engaging with AGS in relation to how previous convictions are presented in the garda report or how the incident itself actually occurred. AGS might be more receptive to such engagement depending on how the victim themselves goes about the task, which might itself be dependent on the victim’s level of capital and their ability to establish and foster connections with AGS.¹⁴² The next section examines how oral hearings can be a potential solution to this concern.

5.3.3 The Role of Oral Hearings

Members of the CICT have a difficult task in balancing the account set out by AGS, on the one hand, and the applicant, on the other. B1 states that ‘there would have to be a way of dealing with’ such differing accounts, especially if the applicant thought that the garda report was incorrect. At present, under the first instance procedure, which is entirely paper based and written, the CICT decide on the basis of all the documentation gathered by CICT staff, including the garda report, the application form, witness statements and expert reports. Whilst the CICT write to the applicant asking them for submissions in relation to the garda report in advance of the matter

¹³⁹ Bourdieu (n 111) 19; D.Jones, “‘Dangerous Conversations’: A Case Study Involving Language’ (2016) 34(5) Equality, Diversity and Inclusion: An International Journal 1,12. The challenges faced by non-native English language speakers in the justice system has been subject to extensive research, see G.Hunter et al, *Language Barriers in the Criminal Justice System* (Institute for Crime & Justice Policy Research 2022) 5; S.Anson et al, *The Experiences of Victims of Crime with the Garda Síochána: Interim Report* (Policing Authority 2020) 40.

¹⁴⁰ Young & Billings (n 125) 50.

¹⁴¹ Irish Network Against Racism, *Experiences of Policing amongst Brazilians and People of African Descent in Ireland* (Policing Authority 2025) 32-41.

¹⁴² Hall (n 112) 215-245.

going before a CICT member for decision, I argue that consideration should be given to there always being an oral hearing when the various CICS eligibility rules are in dispute, including the crime of violence rule, the part-responsibility rule and the conduct, character and way of life rule. This would give CICT members an opportunity to hear directly from applicants in situations where the evidence is disputed.

Interviewees highlight the issue of insufficient information at the first instance stage in relation to both the garda report and the application form itself. FTM3 explains the relevancy of the written first instance procedure in situations where the garda report does not contain sufficient information about the circumstances of the incident:

Sometimes with Garda files you might say 'Look, is there anything...' you know, they might be a one-liner. There was an ongoing issue, I remember, you know the guards would say they were only allowed to write two lines or something. I don't know, sometimes you'd get the whole Garda file, you'd get all the statements, and sometimes you'd just get a '[X] was convicted on the blank day of blank' or 'there was no conviction in this case' you know? And you were supposed to get a bit more information, so often times we'd say 'Look' we'd go back to the CICT [staff] and say, 'Can you get more information?' and sometimes the guards would come back and say 'No, there's a protocol here with the Tribunal and we've given you everything that we want'. [...] Sometimes you'd kind of say 'Look, can we have a look at the statements?' and often they'd be like 'No' and sometimes you'd already been sent the Book of Evidence [...] because sometimes the [applicant's] solicitors might have it. [...] I used to ask for more information, and sometimes you got it and sometimes you didn't. [...] You just had to make a decision on what's in front of you, on the balance of probabilities. (FTM3).

FTM3 points out that the information before CICT members varies from case to case. In some cases, the solicitor for the applicant might have supplied the entire Book of Evidence in the criminal proceedings which would include all the statements from the various parties relevant to the incident. In other cases, however, this would not be available and the garda report itself would be quite brief. FTM3 continues and highlights how the first instance procedure is problematic whereas at the appeal stage, with the oral hearing, CICT members have the opportunity to meet the applicant and make a more informed judgement as to whether the garda report accurately reflects the incident and provides proper context in relation to the applicant.

You make your decision on the balance of probabilities, and you give your reasons for it and credibility, and it might be the weight of the evidence, the preponderance of the

evidence, you know, what someone had the opportunity to see, what they didn't have the opportunity to see. [...] That's tough to resolve on paper. [...] And then things could change completely at an appeal. It's really interesting the difference between meeting somebody, listening to what they have to say, and believing them, do you know? Like if someone says, 'This is what happened to me. I know the CICT at first instance took this view on the paper, but like this actually happened to me.' So oral hearings, I think they're best practice, certainly for bigger cases. (FTM3).

Examples of this difficulty, as between the decision at first instance and the appeal decision is demonstrated in several CICT decisions. It should be said, however, that it is not impossible for the first instance decision-maker to determine these issues at first instance without an oral hearing. In one CICT decision, the CICT went further than simply examining the decision of AGS not to prosecute.¹⁴³ Instead, the CICT member examined the facts as set out before them and applied the balance of probabilities standard in determining whether the requirements of the criminal offence were met. Whilst the application was dismissed due to the reasonable assistance rule, the CICT did satisfy itself, independent of AGS, that a crime of violence did take place. The ECtHR has examined the question of whether an oral hearings is necessary to determine whether an applicant for state compensation suffered personal injury as a result of a crime where the perpetrator was acquitted in the criminal courts. In *Gustafsson v Sweden*, the ECtHR held that, whilst Article 6(1) of the ECHR was engaged and the applicant's claim for state compensation does constitute a civil right for the purposes of the ECHR, it was not necessary for an oral hearing to take place as the decision-makers had before them the complete case file and could make a proper determination on this basis as to whether the applicant met the criteria to qualify under the Swedish scheme. For this reason, the decision-makers did not give the claim 'scant and routine consideration' in all the circumstances, hence there was no breach of Article 6(1).¹⁴⁴

5.3.4 Towards 'A More Even Victimological Playing Field'

Regardless of the fact that it is not impossible to determine the issues at first instance without an oral hearing, an oral hearing certainly makes the process easier, as FTM3 sets out. I argue that consideration should be given to there always being an oral hearing where these eligibility rules are in dispute. Some interviewees highlight how the CICT appeals process and the oral hearings can potentially re-traumatise applicants (A1, A2, B4), especially in the pre-2021 context, before the various amendments and reforms to the CICS were introduced. A2 highlights how the CICT appeals process was incredibly re-traumatising for them because of the extensive delays in organising the hearing and also because of the intense questioning they were put under by CICT

¹⁴³ 50419/04.May.2022.

¹⁴⁴ *Gustafsson v Sweden* (ECtHR 23196/94) [47]-[49].

members. This intense questioning related to the type of losses which A2 incurred and not paragraphs 1, 12 or 13. In an appeal hearing which took place after the 2021 reforms, A5 did state that the CICT personnel present at the appeal hearing were ‘professional and nice’. However, they found the appeal hearing ‘quite intimidating’ due to the number of CICT personnel present, along with the amount of questions asked and the length of the appeal hearing. In this regard, A5 states that they found the hearing to be very like a court procedure, whereas they ‘expected a little bit more of a relaxed meeting’. In one CICT decision, an applicant did not turn up to the appeal hearing and communicated to the CICT on the morning of the hearing that they wished for the matter to be decided on the basis of the papers before the CICT. Here, the applicant stated that appearing before the CICT would be too upsetting. In this decision, one of the matters to be decided was the relevancy of the applicant’s loved one’s previous criminal convictions. Here, the CICT stated that the deceased’s numerous convictions, which were redacted in the decision itself were accumulated over a short life and several were for serious offending. In rejecting the claim as a result on the basis of paragraph 13, the CICT stated that ‘it has little by way of detail to calibrate exactly how serious the offences were’. Whilst the applicant made clear in correspondence that they were not aware of the extent or nature of the deceased’s previous offending; it is not clear from the text of the decision whether an adjournment of the hearing could have taken place to allow the applicant time to compose themselves and perhaps seek support or new legal representation, their previous solicitors having come off the record at some point prior to the hearing. An adjournment might also have allowed the CICT additional time to seek further information from AGS as to the specifics of the serious offending and provide support to the applicant in the context of the hearing.¹⁴⁵

On the other hand, A4, whose hearing was held post-2021, spoke about the appeal hearing and how this was an opportunity for them to explain the circumstances in relation to the incident and how their loved one’s previous convictions had nothing to do with the death. In this regard, A4 was satisfied that they were able to communicate this to the CICT and that the CICT could, therefore, take this context on board. A4 highlights that the oral hearing was ‘very straightforward’ and ‘an easy process’. Additionally, A4 states that the CICT members and staff were non-judgmental and ‘nice’ throughout the hearing. A4 contrasts their treatment at the first instance stage and the appeal stage. At first instance, with the purely paper based procedure, A4 states that they felt judged throughout the process as it was a constant battle to read documents, send replies back to the CICT and justify the claim. In receiving a rejection due to the conduct, character and way of life rule at first instance, A4 states that they were ‘mad’ as ‘they had put me

¹⁴⁵ F51030/12.July.2023. It should be noted that the CICT should be commended for improving the manner in which it writes its decisions in recent years. Here, the CICT member strikes the correct tone in the context of rejecting an application in such difficult circumstances.

through so many hoops to apply for this damn thing.’ In this regard, A4 states that if they knew at the beginning that the first instance decision was going to be decided this way, they would not have made the CICT application in the first place. With the oral hearing at the appeal stage, A4 felt more at ease answering the various questions and with the process in general. In line with A4 and A5, S2 highlights how in recent years the CICT members at the oral hearings have been more respectful to applicants. VSW3 states that the CICT should meet all applicants bereaved by homicide, whether this be in an oral hearing or through some other format during the CICT process. Interviewees discussed how hearings in recent years were conducted remotely. Whilst interviewees did not report any issues or problems with this, further research is needed on the benefits and disadvantages of remote hearings in comparison to in person hearings.

At this point, the diversity of victimisation should be noted in that different victims, across various categories of crime, are impacted in different ways as a result of the criminal incident. Victims physical and non-physical injuries can differ even in similar victimisation scenarios. As a result, victims have diverse social and health needs, their expectations of the criminal justice system will be different and the recovery process after the crime varies from victim to victim.¹⁴⁶ In addressing the diverse consequences of victimisation, it should also be noted that responses to victimisation from victims themselves varies depending on the type of crime, their age, and their gender. Furthermore, their ability to cope, social outlook, access to social support and their relationship with the offender can also influence their responses. Finally, fear of crime before and after victimisation, along with their experience within the criminal justice system can impact victims’ responses to crime.¹⁴⁷ In this regard, CICT applicants navigate the CICT appeals process differently. Whilst oral hearings may be intimidating for applicants, where contentious provisions of the CICS are in dispute, such as the crime of violence rule under paragraph 1, the part-responsibility under paragraph 12 and the conduct, character and way of life rule under paragraph 13, consideration should be given to there always being an oral hearing. This is to ensure that where an applicant’s level of victim capital is low, the CICT can hear directly from the applicant to ensure that full context is before the CICT in relation to the application of these provisions. Whilst it is difficult to challenge the account set out in the garda report as the garda who writes it generally is not present, oral hearings are an opportunity to create ‘a more even victimological playing field’ in that the information contained in the garda report is verified in a manner which takes account of the ability of applicants to engage with the CICT.¹⁴⁸ This further accounts for the

¹⁴⁶ E.Erez, ‘From Cinderella to Consumer: How Crime Victims Can Go to the Ball’ in J.Tapley & P.Davies (ed) in *Victimology: Research, Policy, and Activism* (Palgrave 2020) 328.

¹⁴⁷ S.Green & A.Pemberton, ‘The Impact of Crime: Victictimisation, Harm and Resilience’ in Walklate (n 84) 78.

¹⁴⁸ This phrase ‘a more even victimological playing field’ is borrowed from a separate victimological context, see K.Hearty, ‘When Ideal Victims Don’t Make Ideal Offenders: The (Re)framing of Legacy Case

fact that not all applicants have the capacity to be proactive and reply to a request for submissions in relation to the contents of the garda report in advance of the first instance decision. Furthermore, not all applicants will be proactive and actually appeal the first instance decision if they feel that it was incorrect in some way.

5.4 Conclusion

This chapter has examined whether the CICT takes proper account of victimhood as a social construct. Miers points out that ‘contested cultural representations’ shape societal perceptions of victimhood and as a consequence, unavoidable difficulties arise in developing legal responses to victimisation.¹⁴⁹ This chapter has explored these difficulties by examining specific aspects of the CICS in Ireland and concludes that, whilst these difficulties are a challenge, a legal framework can be designed which takes account of victimhood as a social construct. The first section of this chapter examined victim-blaming at the CICT in relation to the ‘same roof’ rule, the part-responsibility rule and the conduct, character and way of life rule. Whilst the ‘same roof’ rule should play no part in the CICT’s future operation, this chapter demonstrates that a nuanced consideration is warranted to determine whether the part-responsibility rule and the conduct, character and way of life rule should continue. In this regard, this chapter recommends that past conduct or contribution to injury should only be relevant in CICT claims when there is a direct link between this past conduct or contribution and the criminal incident which caused the injuries. The second section of this chapter analysed the role of victim capital at the CICT in relation to the garda report and the application of the part-responsibility rule, the conduct, character and way of life rule and the crime of violence rule. This section warns that differing levels of economic, social and cultural capital may unfairly impact the material provided to the CICT and therefore, ultimately, CICT decision-making. This chapter recommends that oral hearings should take place where these provisions of the CICS are disputed. With it established that the structures provided under the CICS make it difficult for the CICT to properly take account of victimhood as a social construct, Chapter Six now examines the extent to which the CICT takes account of the consequences of victimisation.

Prosecutions Against Elderly Perpetrators of State Violence’ (2024) 20(1) Crime Media Culture: An International Journal 3,14.

¹⁴⁹ D.Miers, ‘Victims, Criminal Justice and State Compensation’ (2019) 9(2) Societies 29,40.

6 CHAPTER SIX: THE CONSEQUENCES OF CRIMINAL VICTIMISATION

6.1 Introduction

State responses to criminal victimisation ought to understand how crime impacts individual crime victims. Depending on the individual circumstances of each case, victims of violent crime experience a number of interrelated consequences. These consequences might include physical injuries and non-physical injuries. Furthermore, victimisation might impact a victims' work and educational prospects, along with their relationships with family and friends.¹ This chapter discusses the third theme constructed in this research which examines three ways in which the CICT struggles to take proper account of the consequences of criminal victimisation. Section 6.2 examines the three-month time limit to apply to the CICT under paragraph 20 of the CICS.² Section 6.3 then analyses the reasonable assistance rule under paragraph 10 of the CICS, which allows the CICT to deny compensation if the CICT applicant does not provide reasonable assistance to the CICT throughout the CICT process.³ Section 6.3 then considers the fact that applicants struggle to access legal assistance and victim support throughout the CICT process.⁴

6.2 Time Limit

Paragraph 20 of the CICS provides that '[a]pplications should be made as soon as possible but, except in circumstances determined by the [CICT] to justify exceptional treatment, not later than three months after the event giving rise to the injury.' Paragraph 20 also provides that '[n]o applications may be accepted by the [CICT] where the event giving rise to the injury took place more than two years prior to the date of application.'⁵ In other words, the CICT's 'exceptional treatment' discretion to admit an application beyond the initial three month period does not apply to applications submitted more than two years since the criminal incident. As a result of the judgment of the High Court in *Bowes v CICT*,⁶ paragraph 20A was added which provides that 'in the case of claimants criminally injured after 30 June 2005 and before 20 April 2021, no application may be accepted by the Tribunal after 30 January 2025.'⁷ As set out in Chapter Three, this allowed applicants excluded due to the introduction of the two year upper limit to apply to the CICS within a specific transition period. The LRC has described the three month time limit set out in paragraph 20 as 'an excessively restrictive time limit',⁸ which has been applied in an

¹ J.Turanovic & T.Pratt, *Thinking about Victimisation: Context and Consequences* (Routledge 2024) 5.

² CICS [20].

³ CICS [10].

⁴ CICS [26].

⁵ CICS [20].

⁶ *Bowes v CICT* [2022] IEHC 703.

⁷ CICS [20A].

⁸ LRC, *Compensating Victims of Crime* (CP672022) [6.29].

inconsistent manner across the various published decisions of the CICT.⁹ The requirements of paragraph 20 are ‘not an easy burden to discharge,’¹⁰ and its general purpose is to ‘discourage delay and ensure claims are brought in a contemporary timeframe’.¹¹ The CICT has noted that ‘fairness must be at the centre of any consideration given by [the CICT]’ and ‘the application in its entirety’ must be considered.¹² According to Holland J in *Bowes*, paragraph 20 must be interpreted in ‘a broad, liberal and generous manner responsive to the particular circumstances of the victim of crime in each case.’¹³ In one CICT decision, the CICT cited the Court of Appeal judgment in *McE v RIRB*,¹⁴ to state that paragraph 20 should be given a ‘wide and liberal interpretation’ and that ‘exceptionality’ should be ‘measured by reference to contemporary standards prevailing within the general public’.¹⁵

Whilst FTM2 highlights that regardless of the time limit that is in place, someone is always going to be excluded, most interviewees consider that the three month time limit under paragraph 20 is a highly problematic aspect of the CICS. S6 points out that the three month time limit is a barrier to people taking CICT claims. According to S5, the provision operates to ‘weed out’ potential claims as victims themselves do not know that the CICS exists, nor are they aware of the relevant timelines, unless they seek legal assistance. FTM3 describes the provision as ‘preposterous’ and ‘ridiculous’, whilst VSW1 states that ‘it’s terrible pressure for families’ to get the CICT application submitted so close to the criminal incident which resulted in the death of their loved ones. In Chapter Three, the three month lower limit and the two year upper limit were contrasted with the six year limit for assault and battery actions under tort law, along with the various state schemes in respect of historical and institutional abuse. Since the *Bowes* judgment, B1, B4 and S2 highlight that the CICT has relaxed its approach to their exceptional treatment discretion under paragraph 20 of the CICS. B2 states that ‘any old excuse at all really will get you over the time limit [...], the days of them fighting people on time are gone.’ Regardless, the two year upper limit under paragraph 20 still applies to unfairly exclude many victims of crime. Importantly, as a result of its introduction in 2021, the CICT now has no discretion to accept applications beyond two years.

⁹ *ibid* [6.24].

¹⁰ 54644/07.May.2022.

¹¹ 52595/13.April.2022.

¹² *ibid*.

¹³ *Bowes* (n 6) [70].

¹⁴ *McE v RIRB* [2016] IECA 17.

¹⁵ F53965/19.April.2022.

6.2.1 Urgency to Submit Puts Pressure on Victims

VSW3 states that the mere continued presence of the three month time limit itself in the CICS continues to cause ‘intimidation, stress and worry’ amongst applicants. Interviewees broadly report that paragraph 20 puts pressure on victims and creates an urgency to submit applications within the time limit. S5 states that the three month deadline puts pressure on legal practitioners to get at least ‘something’ into the CICT, a difficulty which is compounded if a victim is still in hospital receiving treatment for their injuries:

I thought the difficulty with the application form and with the time limits is if you have someone who had a serious assault perpetrated on them, they’re not in their right mind. They can’t give instructions. [...] They may still be in hospital. [...] As a solicitor you’re constantly worried about statutes and timelines. [...] If family members come to you saying, ‘Look, you know, oh my brother, my sister was involved in a serious assault, they’re still in hospital.’ It’s 25 days to the statute. You’re in a situation going, well, ‘What am I going to do here? I have to get something in.’ You know, it’s not ideal. (S5).

In the context of homicide, A3 highlights the difficulties involved in dealing with the aftermath of a violent death of a family member and then having to submit an application to the CICT within the three month deadline:

I think because at the time [...] I was already reeling from the fact that my [loved one] had died. And I thought it was just another kind of added pressure that I had another box I had kind of to tick. I’d already had like funeral arrangements to deal with. I had a lot of press to deal with. [...] It was a lot more pressure on top of already pressure and you’re trying to deal with everything else in the fallout from the actual death as well. (A3).

A5 highlights how filling in the application form can trigger difficult memories which makes it difficult to complete in full in advance of the three month deadline:

You know, you go in with the best of intentions of ‘Yeah, I’m going to get these forms done’. It could take weeks, you know, because it’s so traumatic, because you’re reliving, and you know what, it triggers memories of stuff that you’d forgotten, and next of all you have a memory and you remember and you kind of go ‘Oh my God, I forgot all about that.’ Like these little details pop back in and they come up in your mind, and you’re kind of going ‘Oh wow, actually I forgot all about that’ you know? (A5).

A1 raises the point that the pressure to submit the application within the three month deadline was compounded by the impression given to them that they have to submit certain documents to the CICT by the three month deadline.

When you're given an application form like that and there's such a sense of urgency [in that] it has to be in with the specific timeframe. [...] I couldn't focus anymore on what had happened to me and the healing process because you were then caught up immediately with having to run around to get all these statements when your statement wasn't even finished, you know? [...] Because if they weren't in I thought that, okay, I won't have a [CICT] case here. (A1).

The CICT does not require application forms to be completed in full and for all the required documentation to be submitted in advance of the three month deadline. Rather they will accept a partly completed application form, or even communication of an intention to submit an application form.¹⁶ Despite this, interviewees report that potential applicants to the CICT are under the impression that completed application forms and all the required documentation are required before an application is submitted. A5, an applicant to the CICT, sets out in detail how they delayed making the application until they had all the various documents gathered. By this time, the three months had passed and for this reason the CICT rejected the application at first instance. A5 describes how they reacted to the rejection:

[The CICT] said, 'You said yourself that [...] by the time you got the information it still took you another six months to get everything together, so you were well out of the time.' So, it was like our honesty had been used against us, you know? Because it took us months, you know, it took us months to get the stuff together, you know? [...] Everything to do with a traumatic and a violent death, every piece of paper you look at brings it all back, and it's very difficult to deal with it [...]. And it's very difficult, and sometimes you can't face it. So that first person who made the decision actually said that 'Well it took you a further six months.' Yes, of course. Yes, it did. And we're able bodied and we're able to do what we can do, but what about the people who can't? [...] It's very difficult. Especially if you don't have help. (A5).

The CICT has confirmed on a number of occasions that awaiting reports or documents from AGS or others is not an adequate reason to delay the making of an application. Rather this

¹⁶ 23744/14.July.2022; 23745/14.July.2022; 53821/17.May.2022.

documentation can be submitted at a later stage once the initial application has been submitted.¹⁷ Despite this, the CICT has been inconsistent on this point in that there are several decisions where the CICT applied their exceptional treatment discretion to admit a late application in circumstances where the applicant awaited receipt of documentation from AGS.¹⁸ Whilst the latest versions of the CICT's non-fatal and fatal application forms state that '[a]dditional information to support the application can be provided AFTER the application has been accepted', demonstrating that the CICT are aware of the information provision issues for CICT applicants and are committed to finding solutions to these issues, the ongoing presence of the three month time limit continues to cause unnecessary stress for CICT applicants.

6.2.2 Reasons Applications are Submitted Late

Interviewees set out several reasons why victims do not meet the three month deadline. S4 highlights how a victim's injuries might not be known within the three month timeframe. It might only be after this time period that the extent of the injuries are clear and the victim might consider applying to the CICS. Despite this, whilst there is no system of precedent at the CICT and decisions are made on a case by case basis, decision-making at the CICT appears to lack consistency in relation to the validity of this particular reason for submitting a late application. In two CICT decisions, the CICT held that the presence or extent of injuries not being known within the three months does not amount to circumstances which justify exceptional treatment.¹⁹ In a separate decision, however, the CICT held that such circumstances do justify exceptional treatment as the CICT applicant in this case only missed the three month deadline by a 'short amount' of time.²⁰ Whilst these decisions are dated prior to the *Bowes* judgment and the movement towards increased flexibility in relation to the time limit, these decisions are contemporaneous to each other and highlight concerns in relation to inconsistent decision-making.

A further reason why a victim might not meet the three month deadline is that, whilst they might know what their injuries are, they are still recovering from them. Victims of violent crime are at a significant risk of being physically impacted as a result of victimisation, on a short term and long term basis. Such impacts range from minor physical injuries to more chronic injuries and even permanent disability, such as acquired brain injuries, or death.²¹ These physical injuries often require long term hospital treatment and prolonged medical interventions.²² Additionally,

¹⁷ 51478/12.August.2022; 51429/12.August.2022; 53975/24.June.2020.

¹⁸ 51568/26.August.2022; 51323/26.August.2022.

¹⁹ 22726/26.September.2022; 51711/28.July.2022.

²⁰ 51182/06.September2022.

²¹ T.Dinisman & A.Moroz, *Understanding Victims of Crime: The Impact of the Crime and Support Needs* (Victim Support UK 2017) 7.

²² *ibid* 19.

certain physical injuries have particular long term consequences in relation to day-to-day tasks, such as putting on and taking off clothing such as shoelaces, along with cooking, cleaning, and driving. Along with direct physical injuries sustained, Dinisman and Morez state that particular forms of violence, such as domestic and sexual violence, also have a long term physical impact in that these victims often see a decline in their general physical health as a result of the emotional and psychological impact.²³ Understandably victims are focused on recovering from these physical injuries well after the three month deadline.

Additionally, the trauma inflicted on them as a result of the criminal incident is still present after the three month deadline has passed. In the context of domestic violence victims, VSW2 highlights that three months is not enough time to allow the healing process to conclude. S6 points out that victims of serious assaults, sexual violence and homicide ‘aren’t thinking about compensation for the first six, eight months [because] they’re getting over quite a traumatic situation.’ S5 also highlights that victims are shocked and traumatised in the months after a violent criminal incident. S5 emphasises that if victims are thinking about any aspect of the criminal justice system in the months after the incident, it is not the compensation process, but rather it is reporting the matter to AGS and engaging with them in relation to the criminal investigation and prosecution. Despite S5’s salient point that victims are not thinking about compensation in the months after the incident, the CICT have rejected CICT claims on the basis of paragraph 20 and have suggested that if an applicant can make a report to AGS in relation to the crime, then they can also submit a CICT application within the time limit.²⁴ Whilst the CICT does make exceptions in cases involving sexual violence,²⁵ the typical approach of the CICT is that awaiting the outcome of the criminal investigation,²⁶ the criminal trial itself,²⁷ or the conclusion of civil proceedings,²⁸ are not circumstances which can justify exceptional treatment under paragraph 20. In light of the significant length of time which criminal investigations and prosecutions take, especially in Ireland,²⁹ it could be many months or even years before a victim is in the mindset to think about compensation.

²³ *ibid* 7-8.

²⁴ 54023/19.February.2021; 51140.20.December.2021; 53137/08.October.2019; 51375/12.August.2022; 51336/23.June.2022; 53339/29.August.2019; 54023/19.February.2021; 50798/13.May.2022; 54502/20.April.2022.

²⁵ 51293/26.July.2022; 50125/02.March.2022; 50120/02.March.2022; 10570/16.August.2022; 10558/08.November.2019; 10528/16.February.2011.

²⁶ 52384/24.October.2022; 51216/10.August.2022; 51051/12.August.2022.

²⁷ 23669/06.August.2023; 51246/26.July.2022; 53099/03.September.2023; 52975/26.January.2023; 51784/16.March.2023; 51106/04.January.2023; 50656/22.March.2023; 52687/21.August.2022; 51858/28.October.2022; 24119/26.October.2022; 53053/17.June.2020; 54428/16.June.2022; 51858/28.October.2022.

²⁸ 53645/01.March.2021; 52975/26.January.2023; 52725/14.July.2022; 51207/09.August.2022.

²⁹ *McFarlane v Ireland* (ECtHR 31333/06).

Separately, several interviewees emphasise how individuals bereaved by homicide are not ‘thinking straight’ in the months and years after the death of their loved one. VSW3 states that victims are on ‘autopilot’ as they try and go about their lives. A4, whose family member was killed as a result of homicide, underscores the ‘insensitive’ and ‘ridiculous’ nature of the three month deadline and how it disrupts the grieving process:

I’d say it was a good four years before we were even thinking straight. It’s silly to think that this is grief, so you grieve and you have till this date and then you get over it and you apply for this or you cannot get it. (A4).

A5, also an individual bereaved by homicide, highlights how homicide results in a particular type of trauma for families:

With a regular death in the family, you’re all over the place at the best of times, but a death by violence is so traumatic, you can’t think straight. I don’t even remember half the things half the time. It’s just a blur [...]. It’s like a dream and it’s like it didn’t happen. (A5).

Clearly, the three month time limit does not take account of the profound psychological consequences for victims. Such consequences include the long-lasting emotional effects of violent crime on victims and their families which often results in behavioural and social changes in victims’ lives.³⁰ Victims of violent crime typically experience shock, a loss of trust in society and guilt in relation to their victimisation.³¹ Victims can also develop anxiety, depression, fear, and confusion following a violent incident,³² along with sadness, anger,³³ and stress.³⁴ Whilst most victims recover from a traumatic criminal event within a few months,³⁵ Dinisman and Moroz report that 21% to 33% of individuals develop Post-traumatic Stress Disorder (PTSD) in the aftermath of a violent crime.³⁶ According to Kunst et al, one in every two applicants to the Dutch state compensation scheme has PTSD many years after the victimisation itself and the conclusion of the state compensation process.³⁷ PTSD is diagnosed where an individual experiences an event

³⁰ J.Shapland et al, *Victims in the Criminal Justice System* (Gower 1985) 106.

³¹ Dinisman & Moroz (n 21) 4.

³² *ibid.*

³³ *ibid*

³⁴ *ibid.*

³⁵ D.Formolo et al, ‘Adaptive Modelling of Trauma: Development and Recovery of Patients’ (2016) 88 Procedia Computer Science 512,512.

³⁶ Dinisman & Moroz (n 21) 6.

³⁷ M.Kunst et al, ‘Prevalence and Predictors of Posttraumatic Stress Disorder Among Victims of Violence Applying for State Compensation’ (2010) 25(9) Journal of Interpersonal Violence 1631,1646.

which involves actual or perceived threats to life and serious injury to oneself and others which results in intense fear, helplessness or horror.³⁸ According to Kilpatrick and Acierno, PTSD is a common emotional problem experienced by victims of violent crime. PTSD can result in reexperiencing, hyperarousal and avoidance types of behaviours.³⁹ Reexperiencing might include nightmares or flashbacks, whilst hyperarousal might include an elevated startle response, sleeping issues, hypervigilance, and concentration problems. Kilpatrick and Acierno describe avoidance behaviour as a type of cognitive escape from thoughts, feelings, individuals, or places relevant to the traumatic incident.⁴⁰ When victims with PTSD are exposed to situations which are identical or like the original incident itself, a learned anxiety response develops, and ‘individuals will escape from and subsequently avoid things or people or places that remind them of the trauma.’⁴¹ In the context of victims’ interactions with the criminal justice system, where the victim must deal and interact with multiple agencies and officials, victims with PTSD are particularly vulnerable. Individuals who have experienced trauma face significant barriers in engaging with officialdom, especially when there are multiple different administrative processes to deal with and relationships to maintain, from the police and prosecution services to medical, social, and other supports.⁴² Homicide has particular consequences for family members and friends of someone killed unlawfully in a violent manner. These consequences include the various levels of emotional distress and psychological injuries, including PTSD, which is heightened in the context of homicide.⁴³ In the homicide context, Murphy et al highlight that 50% of participants (n = 261) in their study reported being unproductive in work in the months after their child was murdered.⁴⁴

Ultimately, requiring victims to submit within three months does not take account of reexperiencing, hyperarousal and avoidance types of behaviours. Hall states that ‘trauma develops over time and in directions many steps removed from the initial act (criminal or otherwise) that initiated the victimisation.’⁴⁵ These types of behaviours can result in victims delaying the reporting of their victimisation to the police and can cause victims to avoid taking

³⁸ D.Kilpatrick & R.Acierno, ‘Mental Health Needs of Crime Victims: Epidemiology and Outcomes’ (2003) 16(2) *Journal of Traumatic Stress* 119,125.

³⁹ *ibid* 125-126.

⁴⁰ *ibid* 126.

⁴¹ *ibid*.

⁴² D.Kealy & E.Lee, ‘Childhood Trauma Among Adult Clients in Canadian Community Mental Health Services: Toward a Trauma-informed Approach’ (2018) 47(4) *International Journal of Mental Health* 284,292.

⁴³ S.Murphy et al, ‘PTSD Among Bereaved Parents Following the Violent Deaths of their 12 to 28-Year-Old Children: A Longitudinal Prospective Analysis (1999) 12(2) *Journal of Traumatic Stress* 273,284-286.

⁴⁴ *ibid* 286.

⁴⁵ M.Hall, ‘Victims of Crime: Culture, Politics and Criminal Process in the Twenty-First Century’ (2017) 68(4) *Northern Ireland Legal Quarterly* 469,473.

legal action to enforce their rights.⁴⁶ Furthermore, in the specific context of the CICT, these behaviours result in victims struggling to submit on time as demonstrated by the perspectives of research participants presented above.

There are various other reasons why an applicant to the CICT might not apply within the time limit. First, if the applicant was a child at the time of the criminal incident, the CICT will generally admit the application.⁴⁷ Although, the two year upper limit will exclude many victims who do not apply within two years of them turning 18, where the time limit runs from, if they have not already applied before this. If the applicant received no legal advice or incorrect legal advice about the application process and the relevant time limit, the CICT typically rejects the application.⁴⁸ Although, on occasion, they have accepted that an error in legal advice is an excuse to justify exceptional treatment.⁴⁹ An error on the part of AGS, as to what a victim can do,⁵⁰ and who a victim can speak to,⁵¹ about their criminal complaint, was a reason to justify exceptional treatment. Interestingly also, an error on the part of the CICT, in not granting an applicant an opportunity to make submissions on the application of paragraph 20, was deemed to justify exceptional treatment.⁵² Finally, if an applicant does not give the CICT a reason for why they submitted the application late, the claim will be rejected.⁵³

6.2.3 Are Victims Informed about the Existence of the CICS?

A further reason why victims might not meet the deadline to apply to the CICT is that they do not know that the CICS exists and that they can access compensation. In one decision, the CICT accepted that lack of knowledge as to the existence of the CICS did amount to sufficient circumstances to justify exceptional treatment.⁵⁴ Furthermore, Holland J in *Bowes* stated that whilst ‘ignorance of the scheme will not automatically constitute exceptional circumstances, it cannot be excluded that it may do, depending on the circumstances’.⁵⁵ Despite this, the CICT has consistently held that lack of knowledge about the existence of the CICS is not an excuse which justifies exceptional treatment. This occurred in 37 CICT decisions analysed as part of this research. In one decision, the CICT stated that ‘[t]he Tribunal is of the view that there is some

⁴⁶ S.Ring et al, *Child Sexual Abuse Reported by Adult Survivors: Legal Responses in England and Wales, Ireland, and Australia* (Routledge 2022) 177.

⁴⁷ 54197/13.October2022; 23712/23.January.2023; 50678/10.March.2023.

⁴⁸ 53083/10.February.2020; 53156/21.January.2020; 50143/16.May.2022; 53758/10.November.2022; 52722/12.July.2022; 51576/06.September.2022; 53531/19.February.2021.

⁴⁹ 50489/10.May.2022; 50395/13.May.2022; F54635/15.July.2022; F586.04.July.2022.

⁵⁰ 54129/12.April.2022.

⁵¹ 10508/July2011.

⁵² F544/29.May.2020.

⁵³ F54397/09.September.2022.

⁵⁴ 54892/15June.2023.

⁵⁵ *Bowes* (n 6) [70].

responsibility on applicants to seek out their rights if they wish to rely on them.’ Furthermore, the CICT held that there are sufficient opportunities for applicants to learn about the CICS in that its existence is adequately publicised through information provision in Garda stations.⁵⁶

Article 4(1)(e) of the Victims’ Rights Directive states that victims have a right to receive information from the first contact with a competent authority on how and under what conditions they can access compensation.⁵⁷ Ireland has transposed this requirement under section 7(1)(h)(i) of the Criminal Justice (Victims of Crime) Act 2017 (2017 Act), which provides that when a victim first contacts AGS in relation to an alleged offence, they shall be offered ‘information relating to [...] any scheme relating to compensation for injuries suffered as a result of a crime.’ The relevant provision continues and sets out requirements in relation to the form of this information,⁵⁸ that the victim ‘shall be provided with such information [...] as soon as practicable, and [...] in so far as is practicable’,⁵⁹ and that any information offered or requested is recorded by AGS.⁶⁰ Whilst the 2017 Act has been criticised as lacking practical implementation within AGS’s dealings with victims,⁶¹ nonetheless, victims have a right to information in relation to compensation schemes. If CICT applications are being refused in circumstances where the victim was not aware of the CICT’s existence, is this right to information being adequately respected? This issue is further compounded in that even if a victim is given such information, say in the form of an information leaflet, they might not read this information and/or act on it for the various reasons set out in the last section.

The current procedure is that victims are to be given information on their rights, including in relation to the CICT and the three month time limit, by AGS. This information is given in the form of the Victim Information Booklet.⁶² As of 2020, the practice is that this booklet is distributed to victims by the local Garda Victim Services Office. The local office is notified of the incident by the local Garda superintendent or the reporting office via the Garda PULSE computer system. Within three working days, the local office sends an automated letter to the victim confirming that the incident has been reported. This letter includes the Garda PULSE

⁵⁶ 50968/24.June.2022.

⁵⁷ Directive 2012/29/EU OJNoL315.14.11.2012.p57.

⁵⁸ Criminal Justice (Victims of Crime) Act 2017, section 7(2).

⁵⁹ *ibid* section 7(3)(a)-(b).

⁶⁰ *ibid* section 7(8).

⁶¹ S.Leahy & E.Spain, ‘Exploring the Impact of the Victims’ Directive on Service Provision for Victims of Crime in Ireland’ (2017) 68(4) Northern Ireland Legal Quarterly 519,521; Victims’ Rights Alliance, *Submissions to the Commission on the Future of Policing in Ireland* (2018).

⁶² Victim Information Booklet 2022 <<https://www.garda.ie/en/victim-services/garda-victim-service/victim-information-booklet-september-2022.pdf>> accessed 22 May 2025.

incident number and it also includes an online link to download the Victim Information Booklet.⁶³ It also includes instructions on how to request a hard copy. Where the victim is deemed vulnerable because of the nature of the crime, for example if the incident involves domestic or sexual violence, human trafficking or hate related motivations, this letter is not distributed. Instead, victims are contacted on a face to face basis by the investigating officer or a Family Liaison Officer (FLO) in serious cases.⁶⁴ In relation to the victim support role played by the FLO, A4 argues that there should be an independent support person appointed to liaise between AGS, on the one hand, and victims and families, on the other hand. A4 expresses a concern that the FLO is not always trained properly to deal with grieving families. Whilst some officers come across brilliantly and were very helpful, others, according to this interviewee, were of little assistance to them. VSW2 and VSW3 acknowledge that problems do arise but also that AGS have made significant progress in recent years. In the context of domestic violence, VSW2 states that 'they've come a long way from where they started.' In the context of homicide, VSW3 highlights that:

I think largely they do a very good job. We do occasionally hear difficulties that arise. But in our experience when that happens, we [...] liaise with the guards, sometimes they will change an FLO because you know, personalities can clash. We generally have found the guards to be extremely good at what they do and extremely well meaning, and well informed about the type of trauma that they're dealing with. (VSW3).

The annual Garda Public Attitudes Survey examines whether victims of crime report being given details about victims' helplines and services. From 2015 to 2023, this figure has varied from 34% to 51% of participating victims who say that they have been given the relevant information. Whilst the Garda Inspectorate, now the Policing and Community Safety Authority, has found that PULSE records indicate that '73% of victims of a domestic-motivated crime incident had been given an information leaflet [about victim support services], up from 14% in 2018', gaps in information provision in this area remain in that 51% of surveyed participants (n = 728) report that they did not receive information from AGS about victim support services.⁶⁵ Whilst there are no specific statistics in relation to information provision concerning the CICT, and whilst information provision generally has improved in recent years, as VSW2 and VSW3 confirm,

⁶³ It is not clear whether this link is a URL or a QR code, but certainly a QR code would be preferable so that individuals can scan the code when they receive the letter and be directed straight to the Victim Information Booklet without having to physically type the URL into their browser.

⁶⁴ S.Anson et al, *The Experiences of Victims of Crime with the Garda Síochána: Interim Report* (Policing Authority 2020) 26.

⁶⁵ Garda Inspectorate, *Domestic Abuse: An Inspection of the Garda Síochána's Approach to Prevention, Protection, Prosecution and Victim Support* (2024) 34-35.

especially in relation to ongoing Garda contact with victims, the helpline and services figure has remained consistent. This points to a concern that victims are not adequately aware of their rights to seek help and support,⁶⁶ including in relation to state compensation. The recently published report by the Irish Network Against Racism, commissioned by the Policing Authority, and mentioned previously in Chapter Five, identified gaps in information provision provided by AGS to victims who are Brazilian and of African descent.⁶⁷ Indeed, research conducted in the United States points to police officers themselves not being aware of victims' rights and the available resources.⁶⁸

When discussing the time limit, A4 points out that when a victim support service first told them about the CICT, and indeed A4 states that this was confirmed to them by AGS, they were told that there was no time limit in relation to fatal CICT claims. A4 insists that they saw literature online confirming there was no time limit in fatal applications. Whilst the present copy of the Garda Victim Information Booklet specifically mentions the three month deadline, older literature from AGS, which is still present on the Garda website and available through a Google search, wrongly states that there is no time limit in fatal cases. There is nothing within this document to suggest that there is a newer version of the Victim Information Booklet.⁶⁹

Several interviewees spoke at length about the right to information and whether applicants are in fact being informed adequately about their right to apply for compensation under the CICS. In speaking about these issues, many interviewees linked this right to information with the unfair and tight three month deadline. VSW3 highlights that 'most families don't know anything about [the CICS] until well after the three months.' B1 points out that three months 'is just an unacceptable time limit [and] there is a problem in terms of the publicity for the CICS.' FTM2 states that 'I know it's been in existence for a long time but I think it wasn't perhaps as well-known as it should have been.' B3 says that 'ignorance may well be an excuse if it hasn't been sufficiently made known to the public.' Despite this, S2 speaks at length about how publicity efforts in recent years have increased awareness of the existence of the CICS:

⁶⁶ Leahy & Spain (n 61) 523; AGS, *Garda Public Attitudes Survey* (2023) 67; AGS, *Garda Public Attitudes Survey* (2022) 52; AGS, *Garda Public Attitudes Survey* (2021) 47; AGS, *Garda Public Attitudes Survey* (2020) 20; AGS, *Garda Public Attitudes Survey* (2019) 15; AGS, *Garda Public Attitudes Survey* (2018) 16; AGS, *Garda Public Attitudes Survey* (2017) 15; AGS, *Garda Public Attitudes Survey* (2016) 12; AGS, *Garda Public Attitudes Survey* (2015) 10.

⁶⁷ Irish Network Against Racism, *Experiences of Policing amongst Brazilians and People of African Descent in Ireland* (Policing Authority 2025) 32-41.

⁶⁸ K.McMahon & B.Campbell, 'Police Officers' Familiarity with Resources Available for Sexual Assault Survivors (2025) 0(0) *Policing: An International Journal* 1.

⁶⁹ An Garda Síochána Victim Information <<https://www.garda.ie/en/victim-services/garda-victim-service/victim-information-booklet-contacts-online-en.pdf>> accessed 22 May 2025.

Things have changed with that as well. I think beforehand nobody knew the CICS. Now it seems to be a little bit more known. There are ads out on the radio. [...] Beforehand, it was very unknown, and nobody really knew about it. But I do think the publicity around the CICS is much better now than it was even four years ago. (S2).

There certainly has been increased publicity in relation to the rights of victims in recent years. This includes several public information campaigns run by the DOJ on TV, radio and social media.⁷⁰ Whilst these campaigns have highlighted the existence of the CICS, they do not specifically mention the three month deadline and the urgency required in order to submit applications within the time limit. Additionally, despite these publicity campaigns, interviewees remain concerned that there still exists a lack of awareness about the CICS amongst legal practitioners and victim support workers. Furthermore, there is a concern that AGS are not adequately informing victims about the CICS and the relevant deadline. Whilst victims might in fact be told about the CICT at some point and not take on board the information, VSW1 highlights how many of their clients have not heard at all about the CICS from AGS:

I'm dealing with [multiple] families currently and [...] none of them had heard about it from anyone only from me [...]. The information isn't out there. I don't know it's kind of under the radar or something [...]. Nobody will inform [families] if we don't inform them. [...] They never heard it from any organisation or from AGS. (VSW1).

S6 emphasises that the role given to AGS under the 2017 Act in relation to information provision is problematic in that 'the Gardai have their own job, they're not legal advisors, they're there to investigate crime more than anything else.' A1 echoes this and states that AGS are 'all about the case [...] and when it is about you, it's just to make sure that you're right on track for going to court as a witness.' S6 and A1 acknowledge that AGS play an important role in informing victims about the existence of the CICT but suggest that AGS's role in relation to investigating the criminal incident might limit the extent to which they can offer adequate support to victims generally.

In relation to lack of awareness amongst legal practitioners and victim support workers, FTM1 states that there are 'an awful lot of qualified practitioners who didn't know the CICT existed.' S5, S6 and B1 highlight that a victim might only ever hear about the CICT's existence if they seek legal advice. This typically would not occur as victims generally do not have legal assistance

⁷⁰ DOJ, 'Minister Harris Launches Major New Campaign Highlighting Rights and Supports for Victims of Crime' (23 April 2023).

in the criminal process. S6 emphasises, however, that only solicitors with experience of the CICS will know how to argue for the exceptional treatment discretion under paragraph 20 to be applied:

Unless they go to a solicitor who has experience in it, the solicitor might not know there's such a short timeline, right? If the solicitor knows there's this timeline, they're going to say, 'Oh, you've missed it' and not know that if you give reasons, you are able to get in. (S6).

Lack of knowledge and experience of the CICS is not an issue unique to legal practitioners. VSW2 highlights that there is also a lack of awareness about the CICS within the victim support sector:

I think that the clients that I have mentioned it to are very unaware that this is out there. There's not a lot of information out there. I had a colleague actually who's been with the [organisation] for 25 years and [they] had never heard of the CICS until I came on board with the organisation. (VSW2).

VSW2 also identifies a pressure for victim support organisations as to when is the correct time to inform victims about the CICT. Whilst they have to inform victims prior to the three month deadline so that victims have an opportunity to apply on time, VSW2 highlights that a victim might not be ready to receive this information. This, therefore, puts the victim support worker in a very difficult position:

I have the information and then it's my job to kind of give all of that information to the client and then I think we definitely have like a mantra in our organisation, that you have to meet the client where they're at. You have to keep yourself client focused. I can give that information to them, as can the other staff now that they know about it and it's just that empowering piece for the woman. She's going to be able to make those decisions when she feels the time is right. (VSW2).

VSW2 goes on and highlights that some victims are ready to receive such information and other victims are not. This is especially the case in the context of domestic violence:

It's just a matter of meeting the clients where they're at. [...] If you can kind of gauge that they're not there, [that] they're not ready to take anything on board. They're just trying to keep their head above water as it is, it may not be appropriate. But then you have some who are very determined and very strong willed and then you would say, 'Oh yeah, this

client can handle a little more and may be interested in this.' It's just giving them that information and letting them make an informed decision and you being there to support them through that. (VSW2).

The difficulty of when to give the relevant information to victims was echoed by VSW1 who states, in the context of family members bereaved by homicide, that they would always give the CICT application form to the family at their first session but would wait a couple of sessions before bringing it up again and pointing out the need to submit the form. Also in the homicide context, VSW3 points out that the FLO is generally the most appropriate person to give information to the family about the CICS. As they get to know the family very well in the aftermath of a violent death, they are best placed to know when to impart the relevant information. However, VSW3 highlights that the FLO should not wait too long to inform the family. In the context of homicide, this should occur after the funeral so that the family are aware of the time limit and the necessity to keep receipts and gather relevant documentation.

6.2.4 Medical Evidence to Prove Reason for Delay in Applying

The wider issue of victim support is examined again in section 6.4 below, for now a further example of the problematic application of paragraph 20 is in relation to the requirement imposed by the CICT in respect of medical evidence as proof of the particular reason for the delay in applying. S2 highlights that 'if you had a strong medical report citing mental health issues that would be very very helpful' in terms of securing an extension of the time limit. S2 continues and states that a GP's report would suffice if an individual suffered an assault and it impacted them mentally and 'their life has fallen apart or they had issues which were reasonable to delay them making the application.' S2 lists being on medication, being addicted to alcohol or prescription drugs or being embarrassed to come forward because of the nature of the crime all as reasons which could be included in a medical report to justify an extension of the time limit.

In several CICT decisions, the CICT applied their exceptional treatment discretion and accepted applications on the basis of medical reports which confirmed that the injuries inflicted on the applicants caused them to miss the initial three month deadline.⁷¹ Depending on the circumstances of the injuries, in some instances a medical report from the applicant's GP will suffice,⁷² whilst in other circumstances an expert medical report was provided to the CICT.⁷³ In one decision, the

⁷¹ 52462/11.June.2022; 53444/06.September.2023; 54126/17.May.2022; 53580/12.May.2022; 54498/02.July.2022; 53928/04.September.2023; 52270/20.October.2022; 52153/11.November.2022; 51409/21.August.2022; 53756.23.July.2022; 51067/17 May 2022.

⁷² F54393/21.August.2023; 52462/11.June.2022; 51258/28.July.2022; 51409/21.August.2022.

⁷³ 53951/25.March.2023; 54658/26.August.2022; 54498/2.July.2022.

applicant went as far as to secure a report from a Consultant Neuro-Psychiatrist as to how his post traumatic amnesia and mental health issues contributed to him applying to the CICT outside the time limit. The CICT accepted this evidence and admitted the application.⁷⁴ Several CICT decisions set down a requirement that the medical report submitted to the CICT as part of the application must specifically link the injuries with an applicant's incapacity to get the application submitted within the time limit. There are several CICT decisions where a medical report is mentioned or the applicant's extensive injuries are set out but it does not clearly link these injuries with the time limit. In these circumstances, the applications are generally rejected and the exceptional treatment discretion is not applied.⁷⁵ Separately, there were two CICT decisions where the CICT at first instance rejected the claims for being submitted outside the time limit and in doing so, stated that should the applicant decide to appeal the first instance decision, the appeal panel would benefit from the applicant submitting a medical report attesting to the reasons for the delay in bringing the application.⁷⁶

Fassin and Rechtman state that legal systems struggle to adapt to understandings of trauma which seek to recognise the reexperiencing, hyperarousal and avoidance types of behaviours that flow from PTSD. Victims are, therefore, required to seek medical proof that their diagnosed PTSD exists and can legitimately be used by the legal system in their favour. For example, as a reasonable excuse for avoiding or delaying legal action. Fassin and Rechtman highlight that trauma inflicted as a result of some sort of harm experienced or imposed can be politicised in favour of or against the victim. The practitioner certifying the trauma for the purposes of a legal rule or practice becomes a sort of activist who testifies to the victims' trauma in order for them to obtain some benefit. If a victim cannot access such a practitioner willing to certify the trauma and its consequences, a further injustice is inflicted in that a victim's trauma is ignored and diminished in the eyes of the legal system.⁷⁷ For this reason, the requirement for CICT applicants to seek medical proof of their trauma as a reason for a delayed submission is highly problematic in that not everyone will know that a medical report of this kind can be used for the purposes of the time limit. Furthermore, not everyone will be able to access a medical practitioner who is willing to specifically link the trauma to the time limit. What's more, as the time limit is so short, there is a question as to whether the trauma and its symptoms should be presumed to exist and, therefore, impact the applicant's ability to submit within the time limit. In this manner, the time

⁷⁴ 52166/24.September.2020.

⁷⁵ 52788/13.February.2023/ 51283/09.May.2022; 10544/07.February.2013; 52456/11.July.2022.

⁷⁶ 10559/11.July.2022; 53673/14.July.2023.

⁷⁷ D.Fassin & R.Rechtman, *The Empire of Trauma: An Inquiry into the Condition of Victimhood* (PUP 2009) 219-249. For further research on the relationship between medical information and state compensation, see M.Kunst et al, 'The Impact of Information From Mental Health Care Providers on Decisions About State Compensation for Violent Crime Victimization' (2023) 38(11-12) *Journal of Interpersonal Violence* 7510.

limit, and by extension the CICT, does not take account of the consequences of criminal victimisation.

6.3 Reasonable Assistance

Paragraph 10 of the CICS provides that ‘[n]o compensation will be payable to an applicant who has not, in the opinion of the Tribunal, given the Tribunal all reasonable assistance, in relation to any medical report that it may require, and otherwise.’ In one decision, the CICT describes paragraph 10 as ‘a far reaching provision’ with the purposes of serving as ‘a sanction against those who do not co-operate with the [CICT]’ and ‘to encourage applicants to give the [CICT] reasonable assistance.⁷⁸ This language was repeated in several other CICT decisions.⁷⁹ The purpose of paragraph 10, therefore, reflects the reality that the CICT can only assess a suitable award of compensation if the applicant themselves supplies the relevant supporting documentation and information. In another decision, the CICT stated that it ‘cannot guess how much money might have been spent or how much may be needed for future counselling or other treatment, or how the applicant may have lost out on earnings.⁸⁰ Additionally, the CICT has stated that ‘it cannot award compensation without having a solid basis for doing so’ and ‘[v]ery often, the information that would substantiate a claim can only come from the applicant.⁸¹ The CICT has stated that paragraph 10 should not be used ‘in an irrational or arbitrary way’ and comments that there are two primary factors which must be taken into account when deciding whether paragraph 10 should be applied in a particular case. First, they state that the ‘nature of the information or assistance sought by the [CICT]’ is relevant, especially if ‘its absence prevents a proper decision being made’. Furthermore, ‘the frequency of requests and time elapsed wherein no adequate response has been received by the CICT’ from the victim is relevant for the purposes of paragraph 10’s applicability.⁸²

6.3.1 Victims and Families must be Proactive in Pursuing Compensation

Paragraph 10 requires applicants to the CICT to be proactive in their compensation claims by seeking out and submitting to the CICT all the necessary documentation, including medical and expert reports, receipts in respect of any losses incurred and replying to any other requests for information. According to FTM1, applicants often would not meet this requirement:

Cases were often presented in a very poor and haphazard fashion. [...] Claims would be

⁷⁸ 50120/02.March.2022.

⁷⁹ 50469/28.June.2022; 23765/24.August.2022; 50330/13.May.2022.

⁸⁰ 10495/17.January.2023.

⁸¹ 24099/19.May.2022; 51460/24.June.2022.

⁸² 50469/28.June.2022; 23765/24.August.2022; 50330/13.May.2022.

made in very very round terms and [...] they would sort of go, ‘We’ll leave it up to you’, but not have any specifics. [...] They kind of almost expected the CICT then to do all the leg work for them. [...] They didn’t actually present their case at all. [...] That was more common than you’d think, including in cases where people were represented. (FTM1).

Whilst this reality frustrates the CICT process and makes assessing compensation claims quite difficult, the requirements of paragraph 10 ought to be considered in light of the fact that applicants are asked to sign an authority, in their CICT application form, that the CICT can request and receive information directly from the medical attendants and employers of applicants, along with relevant state bodies, including the Department of Social Protection and the Revenue Commissioners. According to the LRC:

Because an applicant must provide certain documents themselves and must also authorise the Tribunal to seek the same documents [...] an applicant may have the incorrect impression that the Tribunal will “fill in the blanks” where an applicant cannot or does not provide necessary documentation. This is not the case. The onus of proof is on the applicant to provide details of their costs and expenses.⁸³

It is clear from the various CICT decisions available that the CICT do commission their own medical and expert reports from time to time.⁸⁴ Whilst, of course, applicants will be expected to engage with these experts in order to prepare the various medical and expert reports, it is clear that the onus is not always on the applicant to organise the reports themselves. On this issue, interviewees had differing experiences on whether the CICT would source these reports or whether it was entirely up to the applicant. FTM3 states that they couldn’t recall, apart from on a small number of occasions, the CICT ever organising their own expert reports. S5 comments that in their experience it is always up to the applicant or their legal representatives to source expert reports. Meanwhile, S2 describes the process as more of a ‘mixed bag’, where sometimes the CICT would organise the reports themselves and on other occasions they would not:

Recently I’ve asked the [CICT] to pay for reports and to be fair to them they have done it in several cases. And they did it in a prompt manner. Some of them didn’t. Yeah it’s a mixed bag. I had to provide the funds for my clients to pay for them. So, it’s a mixed bag of results. But most clients wouldn’t really know what reports they’re looking for. They wouldn’t know how to get an actuary’s report. They wouldn’t know that they might need

⁸³ LRC (n 8) [6.18].

⁸⁴ 51609/06.September.2022; 23970/27.October.2022; 10520/10 March 2010.

an occupational therapist's report to get an actuary's report. It would just be beyond them. (S2).

S2 highlights that sometimes they, as the applicant's solicitor, would have to pay for the reports up front and seek reimbursement from the CICT at the end of the process. On other occasions, the CICT organised and paid for the reports themselves. It is not clear why the CICT decides to source its own expert reports in some cases and not in others. In these situations, it is interesting to note that it was S2 who asked the CICT to organise the reports. In this regard, the applicant, through their legal representative, still had to be proactive in getting the CICT to do so. The importance of having a solicitor is, therefore, clear. This is especially the case in light of the fact that applicants themselves will not know what reports they have to submit in order to prove their claim. B4 points out that the CICT provides little to no advice on how to go about organising expert reports. A1 and S6 highlight that applicants who represent themselves will find it very difficult to secure proper expert reports by themselves. If applicants do manage to get a solicitor on board to represent them, interviewees highlight that not all solicitors are prepared to front the cost of such expert reports and await the outcome of the CICT process for reimbursement. FTM1 states that 'one of the difficulties you often encountered a lot of the time was that solicitors weren't necessarily prepared to expend the necessary money on the preparation of the cases.' FTM1 highlights how, as a result, claims would sometimes not be adequately prepared in advance of the matter doing before a CICT member for a decision. S2, S3 and S5 state, on the contrary, that solicitors were often quite willing to expend their own monies on expert reports and await the conclusion of the CICT process to receive reimbursement, especially where the client's injuries are particularly bad and there is no way they themselves could pay for the reports.

FTM1 points out how appeal hearings would sometimes have to be adjourned to allow the solicitor to go back and secure particular reports or information. However, one lawyer highlights how the CICT only provided leeway to applicants and their legal representatives in particular situations:

I got another case and it was for a family of a man who was murdered. It was a good example of actually if you're representing very decent people [the CICT are] eager to help you. Certainly, on that occasion, [the CICT members] were asking all of the right questions. [...] They helped me during the hearing to identify where there was heads of claim. And really we should have had a lot of reports from experts identifying the calculations and things like that but we didn't have them. (Lawyer).

This lawyer went on to compare these 'decent people' with other applicants who they have

represented before the CICT. This lawyer states that some applicants ‘present’ in a particular way to the CICT which, according to this lawyer, comes across as ‘criminal’ to the CICT. This lawyer states that ‘You could imagine the type of fellow I’m talking about’. Here, there are echoes to Chapter Five and the CICT potentially treating applicants with higher levels of victim capital in a better way in comparison to other applicants.

Separately, it is important to re-emphasise the challenges faced by applicants and their legal representatives in the context of paying for expert reports. These two interviewees, both solicitors, highlight the challenge in relation to the cost of both medical and actuarial reports:

The medical reports are very expensive. Actuarial reports are very expensive. They are very detailed. They have to be for a reason. They’re very costly. They’re exceptionally costly. Trying to ask a client to fund those upfront is very difficult. Most clients just simply cannot do that. I mean, your specialist medical reports could be anywhere up to €800. Your actuarial report could be €2000 or €3000. [...] Technically it’s a bar to access to justice because unless you have these reports you will not get the full compensation you deserve. (S5).

If someone comes in and they’re a victim of crime a lot of times they are people who don’t have money. So, you’re either saying to them, ‘You’ve to pay for the report’ or the solicitor is saying, ‘Well, I’ll pay for the report and you can pay me back’. But that’s difficult as regards [the CICT] as you don’t know if you’re going to get the money back. As regards actuarial reports, the difficulty there is they’re expensive. And unless you have a relationship with [an actuarial firm], they may want money upfront. Unless you’re a solicitor who’s dealt with them a lot, they’ll say, ‘Yeah, that’s fine we’ll wait until the end. We know you’ve plenty of other cases with us and we’ll get paid.’ (S6).

With the access to justice issue highlighted by these interviewees, the question arises as to whether it would be better for the CICT to organise expert reports in all cases. According to B4, this could work quite well if the system was in place to do so:

Nearly all the cases are of a similar type. [...] They have their experts, and you go visit them and it’s all arranged by the CICT. And that would be, you know, perfectly rational and fine if that was the process, but it’s not. (B4).

Whilst it would appear to be a possible solution to the challenges applicants and their legal representatives face in securing expert reports, the applicants I spoke to as part of this research

highlight a number of potential problems with this approach. There is the issue of the CICT committing to secure reports and information themselves, then not doing so and blaming the applicant for not progressing the application under the reasonable assistance rule. A2 highlights that this occurred in their CICT claim in relation to the securing of an actuarial report:

At one point I phoned in to say [...], 'I'm four years waiting on ye to get an actuarial report done on me.' [...] They tried to blame me for the delay. I said 'No, I have it in writing, you were to get me actuarial assistance. You never did.' (A2).

Clearly, this resulted in a significant delay in the processing of the CICT claim. A1 also states that this occurred in the context of the CICT needing certain information from their employer:

They did make initial contact with my employer. My employer had said that they rang in relation to, I actually can't remember what it was [...]. They came back to me four years later. They had said I had never submitted my P45 or a contract of employment and that's when I had said to them that 'You would contact my employer. That's what you were doing.' They said, 'Oh no that's your job, you weren't actively trying to help us in this.' [...] I was taken aback [...] (A1).

Here, A1 and A2 describe how the CICT give them a particular impression of the process in relation to the securing of reports and information. Several years later, A1 and A2 were told that the CICT did not actually do what they originally said they would do. The CICT attempted to highlight to the applicants the reasonable assistance requirement and accused them of not adequately advancing their claims. A1 highlights that at one point in the CICT claims process, the CICT accused them of not submitting any medical reports at all. When they pointed out that they had in fact done so, the CICT staff member acknowledged this. Applicants who participated in this research strongly feels that the CICT were being deliberately obstructive in how they went about engaging with them in relation to the various expert reports and documentation. Applicants describes in detail how the CICT caused them considerable stress and worry throughout the process, and in doing so, the CICT caused them to experience secondary victimisation. It is clear that applicants are under a considerable burden during the CICT claims process. It is one thing to require CICT applicants to be proactive in the claims process, but it is altogether another thing to give contradictory information and then punish applicants for acting on the initial information. Whilst CICT decision-making has improved in recent years in relation to secondary victimisation, as set out in Chapter Seven, there is a need for clarity in relation to the circumstances of when and how the CICT organise expert reports. Furthermore, there is a need for a less adversarial and more inquisitorial approach where less onus is on the traumatised applicant to actively prove their

claim and an increased obligation is placed on the CICT to assist the applicant in putting forward their claim in the best possible manner.

6.3.2 The Role of Trauma and the Reasonable Assistance Rule

In addition to this incorrect impression given to applicants about the CICT process, there is a concern that the reasonable assistance rule, in requiring applicants to proactively carry out particular tasks in order to support their claim, does not take account of the genuine trauma inflicted on violent crime victims. There are several CICT decisions where the reason for the delay in submitting the application was accepted by the CICT to justify exceptional treatment under paragraph 20 of the CICS, but the same reason was not taken into consideration in relation to an applicant's ability to provide the CICT with reasonable assistance.⁸⁵ In one decision, the hospitalisation of the applicant after receiving his injuries, the fact that he was in an induced coma for five weeks, his consequential poor memory and concentration, his slurred speech and that he had to rely on others to help him with the application, were all used as grounds by the decision-maker to justify extending the three month time limit under paragraph 20 and admitting the application. Extraordinarily, however, the same grounds were not even considered in the decision in relation to paragraph 10 and the application was rejected on the grounds that reasonable assistance was not forthcoming.⁸⁶

There is a concern that the reasonable assistance rule does not take account of how a victim's injuries and trauma impact their ability to engage properly with the CICT. A1 describes the difficulties they experienced at the beginning of the CICT process:

Keeping every single original receipt for them because they wouldn't accept copies. Then trying to make photocopies yourself. Sure, I wasn't mentally able to deal with all that at all. That was the first thing I noticed with the application, with the CICT was the receipts because that meant that you were really actively pursuing proper kind of documentation that would continue on for a long time. [...] But in the beginning, I was so naive and so traumatised. I was devastated with what had happened to me. I hadn't the mental capacity to deal with them properly at all. (A1).

A1 highlights how difficult it was to keep track of the original receipts in respect of the various expenses incurred. In light of the trauma experienced by them in the aftermath of the criminal incident, ensuring that these original receipts were submitted to the CICT, as is required under

⁸⁵ 51409/21.August.2022; 51609/06.September.2022; 53983/03.September 2023.

⁸⁶ 53580/12.May.2022.

paragraph 10, was extremely difficult.⁸⁷ This difficulty in relation to original receipts is echoed by another CICT applicant:

I got a letter [which] gave me a list of things I was missing. Stupid things [which] in my head had nothing to do with the claim I was submitting. Things like the receipt for the afters of the funeral, [which a family member] paid for. So, I try to explain this to them. I did not pay for it. I was not out of pocket. My [family member] was not claiming this back. So, I would prefer to leave it out because I didn't want to go back and ask my [family member] for this receipt and they said I couldn't put in the application until I had this receipt. So, and I rang them and I said, 'Look it, I don't have the receipt. I have no way of getting the receipt.' I actually said [the family member who paid it] had passed away because I was just sick because I wasn't going back [to the family member] after three or four years to try and get this receipt. [...] So, I argued with them. So that took I'd say about two months to get around this and they said, 'Okay'. They put it through without the receipt. (CICT applicant).

This CICT applicant states that the CICT's insistence on this receipt being submitted unnecessarily delayed the processing of the claim. Furthermore, it clearly caused this applicant an inconvenience in that they had to ring and interact with the CICT to convince them that the particular expense was not being claimed. Other interviewees echo this difficulty in the context of other documentation needed to support a CICT claim. In the context of individuals bereaved by homicide, these two interviewees emphasised the challenges faced by families in gathering this documentation and also trying to deal with the violent death of a loved one:

Families find the process difficult. Getting received statements of income of loved ones is overwhelming when families are already traumatised and in a low mental state and barely coping with day-to-day living. (VSW1).

It can be very burdensome obviously chasing up medical reports, chasing up employment records, social welfare records. There's a lot of onus on the family who very often are in a very traumatised state. [...] And when that's your mind set at the time, it's very hard to start chasing receipts and reports and employers. It's a lot, you need help really with it.

⁸⁷ In a number of decisions, 50032/13.June.2022; 50125/02.March.2022, the CICT rejected the applications as the applicants did not provide to the CICT original receipts proving incurred out-of-pocket expenses. The text of these decisions do not set out if copy receipts were provided and explanations as to the necessity for original receipts. It would appear that copy receipts should be no impediment to the CICT vouching the incurred expense. Interestingly, receipts were not required in 50969/28.November.2022 in respect of travel for medical reviews and GP visits.

(VSW3).

A5 states that it was ‘nerve-wracking’ having to gather birth certs, waiver letters, receipts and information about their loved one’s financial situation. In the context of domestic violence, VSW2 highlights how these victims face particular difficulties dealing with the aftermath of leaving a violent domestic environment:

And the other thing would be, I would say, is the information gathering piece. So, a lot of women who we see have obviously experienced a lot of trauma, and trying to gather that information, whether it be the social welfare, the revenue, and the medical receipts that are required, that can be a bit of a barrier for them. So, they need support in that and sometimes they may not even have access to those things because they’ve left the home and they’re staying in crisis accommodation. (VSW2).

S4 spoke at length about the particular difficulties victims of human trafficking experience in attempting to get this documentation together for the CICT. This is because these victims often experience a prolonged period of exploitation, making it next to impossible to keep track of incurred losses.

6.3.3 Does the CICT do their ‘Best by People’?

Despite the difficulties discussed so far in relation to the reasonable assistance rule, FTM1 highlights how the CICT always tried to do their best for applicants and dealt with incomplete claims as best they could:

I felt that the CICT members ran things as efficiently and as judicially as possible. We did have difficulties when people arrived in presenting very, very vague claims. Making claims for things that they knew the CICT didn’t have the power to grant. This resulted in incomplete applications but you know we would do our best by people. (FTM1).

It is worth recalling the specific standard set down by the CICT in the context of whether paragraph 10 applies or not. First, there is whether the ‘nature of the information or assistance sought by the [CICT]’ is relevant, especially if ‘its absence prevents a proper decision being made’. Second, there is the ‘the frequency of requests and time elapsed wherein no adequate response has been received by the CICT’ from the victim.⁸⁸ In relation to the last element of the standard set down, the frequency of requests and the specific amount of time which has passed

⁸⁸ 50469/28.June.2022; 23765/24.August.2022; 50330/13.May.2022.

where no response has been received from the applicant is not always set out in sufficient detail in the various CICT decisions.⁸⁹ Furthermore, the regular reliance on written requests for information takes no account of victims' ability and capacity to engage in protracted written correspondence. Moreover, in some instances, where no response had been forthcoming from applicants to written requests, the decisions do not set out if alternative means of communication were employed by the CICT to contact applicants. Of the 685 CICT decisions analysed as part of this research, only two CICT decisions expressly mention that the CICT telephoned the applicant.⁹⁰ When decision-makers do set out the number of times the CICT has contacted applicants, it doesn't always set out the type of information requested and why the information is needed. It is, therefore, difficult to evaluate whether the lack of engagement from applicants amounts to an absence of reasonable assistance.

Two former CICT members comment on the appropriateness of particular forms of contact with applicants, whether this be via written communication or by telephone. One former CICT member is clear that the CICT made sufficient efforts to contact applicants by telephone, whilst another former CICT member highlights that not every applicant could be telephoned and written communication was appropriate, particularly where there was no contact with the CICT for many years. This former CICT member goes on to state that many of these decisions were first instance decisions and applicants were free to appeal the decision if for some reason the application of paragraph 10 was not appropriate, despite the length of time which had passed:

These would be decisions at first instance. If they came back then and said, 'Look, I want to appeal because I didn't get [correspondence] or I moved or something,' they could have, you know, ask to re-enter it or appeal it or whatever. So, it wasn't the end of the story as far as they were concerned. But I mean, the applicants have to cooperate. [...] You can't be expected to keep writing to them and they don't write back or whatever. And if they are looking for compensation and say their address has updated, it's incumbent on the person to update the CICT with their contact details as well. (Former CICT member).

This participant makes clear that there had to be some limit on the extent to which the CICT is made to follow up with applicants. Whilst this is certainly the case, it is not clear from the CICT

⁸⁹ 50120/02.March.2022; 50673.27.May.2022; 52811/27.May.2022; 50753/13.May.2022; 50674/13.May.2022; 50704/13.May.2022. Of the 685 CICT decisions analysed, where the reasonable assistance rule was engaged, 94 expressly mentioned that written contact was made once, 83 expressly mentioned that written contact was made twice and 40 mentioned that written contact was made three or more times.

⁹⁰ 51989/13.October.2022; F54432/17.April.2023.

decisions mentioned above that sufficient efforts were in fact made to make contact with applicants. On this, it is clear that when additional CICT members were appointed in 2021, there was a considerable backlog in cases at the CICT. As part of this backlog, there were a significant number of cases where no action had been taken for many years. In these situations, the CICT wrote to the applicant and if no response was received it was rejected. In relation to these CICT claims, this same former CICT member describes the process which took place:

So, what would happen was that there had been no contact for years and years and years and then a letter was sent out by the Tribunal saying, you know, do you wish to proceed with your case, and if no response was heard, you know, within a timeframe, within a month or two months or whatever it was. I can't remember. I think it was a month. That there was no contact back from the applicant then the matter would be dealt with on the basis that there had been no contact and that the applicant didn't wish to proceed with the case. (Former CICT member).

In light of the significant period of time where no contact was made, in some cases over 10 and 20 years,⁹¹ it is concerning that the published decisions do not clarify whether telephone contact was used to contact applicants. Kunst et al highlight that telephone contact is the optimum method to contact compensation applicants and not written communication.⁹² Whilst it is reasonable to conclude that these CICT applicants genuinely did not wish to progress their case, especially after such a long period of time, and taking into consideration that there are limits in terms of what the CICT can do to bring about engagement, from the CICT decisions themselves, there is a concern that these historic cases were not adequately administered and decided contemporaneously by the CICT in the period leading up to 2021 when many of them came before the CICT for decision once the additional CICT members were appointed.

It should be said that FTM1 and FTM3 state that when they were given files to make a decision on, they would often have to go back to the CICT staff requesting more information on a particular point or issue. Sometimes this was provided, whilst on other occasions this was not. It appears that CICT members had minimum interaction with applicants themselves. Rather, it was the CICT staff who interacted with the applicant and judged when the matter was ready to be forwarded to a CICT member for decision. There is a concern, therefore, that CICT staff might put incomplete applications before a CICT member and the CICT member might not always proactively seek

⁹¹ 50981/14.September.2022; 51969/02.September.2023; 23550/04.October.2023; 23575/02.October.2023.

⁹² M.Kunst et al, 'Performance Evaluations and Victim Satisfaction With State Compensation for Violent Crime: A Prospective Study' (2017) 32(19) Journal of Interpersonal Violence 3027,3037.

further information if it were missing but might rather dismiss the application on the basis of paragraph 10.

Separately, in relation to the type of information which was requested, which was not then provided and for this reason the particular applications were rejected, there was a varied type of information which the CICT was seeking. For example, there were requests for submissions in relation to the part-responsibility rule and the conduct, character and way of life rule,⁹³ there were requests for information in relation to the status of the criminal proceedings,⁹⁴ and the status of civil proceedings against the offender.⁹⁵ Additionally, in the context of family members bereaved by homicide, there were requests for information in relation to dependants who were eligible for compensation under the CICS. Some interviewees highlight the struggles faced by families in gathering this documentation. In the context of the wide range of dependants which might be eligible for compensation under the CICS, VSW1 sets out a specific example and highlights that having to secure waivers from dependants to confirm that they do not want to take part in the compensation claim causes stress and upset for families:

This is another thing that I have a huge thing about, the definition of a dependent i.e., brothers, sisters, stepsisters, stepbrothers. Why have the compensation so widespread? [...] In one of the cases [that I was dealing with], okay, [the person] dies and [they] have children and grandchildren, okay? And [the] brothers and sisters, there could be [loads] of them, and they're all included. [...] There was arguments as some wanted it and some didn't. [...] [The applicant] was exhausted and [they] had been in hospital. [...] I cannot for the life of me understand why that isn't more streamlined. [It] puts people off as well. [...] I think it has caused so much extra stress and emotional trauma [...]. (VSW1).

Here, VSW1 confirms that the pressure to gather this documentation, in order to meet the requirements of paragraph 10, puts people off applying for compensation. VSW1 argues that the number of qualifying dependents should be more streamlined. It should be noted that due to the CJEU judgment in *Burdene*, set out in Chapter Three, that it may be difficult to exclude dependents in this way unless the CICT examines each case on its merits and does not automatically exclude a particular category of family member.⁹⁶

⁹³ F51462/20.July.2022; F51180/15.August.2022; 51812/28.October.2022; 51774/10.October.2022; 50447/13.May.2022; 52270.20.October.2022; F51180/15.August.2022.

⁹⁴ 53924/03.September.2023.

⁹⁵ 50486/22.July.2022.

⁹⁶ C-126/23 *Burdene* ECLI:EU:C:2024:937.

Overall, cognisance must be had to the reality that the CICT cannot make decisions where applications are incomplete. Despite this, whilst CICT staff and members genuinely do their best to assist applicants, especially in recent years, there is a concern that the reasonable assistance rule operates to unfairly exclude applicants who don't co-operate not because they decide not to, but because they cannot. This is principally due to the presence of trauma which, as outlined in section 6.2 above in relation to the time limit, can result in reexperiencing, hyperarousal and avoidance types of behaviours. There is a concern that the reasonable assistance rule, in requiring applicants to proactively carry out tasks to support their claim, does not take account of the genuine trauma inflicted on violent crime victims. The CICT, as a whole, therefore, can do more to engage with applicants who themselves struggle to engage with them. One way in which this might occur is in relation to providing legal assistance and victim support.

6.4 Legal Assistance and Victim Support

From the analysis presented so far in relation to the time limit and the reasonable assistance rule, it is clear that applicants are not adequately supported in the CICT process. In relation to the time limit, there is a concern that victims are not being properly informed about the CICT in the aftermath of the criminal incident. Interviewees also highlight that when victims do get access to proper victim support and legal assistance, very often these services are not aware of the CICT and how it works in practice. This can result in individuals not submitting their applications within the three month time limit, which results in them having to provide the CICT with reasons to justify the late application. This likely involves them going to the time and expense of organising a medical report to prove that they were too traumatised to get the application in on time. In relation to the reasonable assistance rule, whilst the CICT will sometimes organise the expert reports for applicants, applicants generally must be proactive in requesting this of the CICT or going about organising their own expert reports. When the CICT commits to or victims are given the impression that they will secure expert reports on the applicant's behalf, there is potential for secondary victimisation if this does not happen later on.

In light of these findings, it is difficult to agree with the decision of the Court of Appeal in *Doyle v CICT*, that legal costs should not be paid by the CICT or provided to applicants under the provisions of the legal aid scheme.⁹⁷ It appears that a sworn affidavit from the CICT's secretary as to the simplicity of the CICT's processes and procedures was influential in the Court of Appeal coming to this conclusion.⁹⁸ This affidavit resulted in the Court of Appeal concluding that the CICT process is neither akin to a court procedure nor an adversarial procedure because 'the CICT

⁹⁷ *Doyle v CICT* [2020] IECA 342 [94]-[115].

⁹⁸ *ibid* [114].

is willing to organise and pay for any necessary reports'.⁹⁹ In this regard, the Court of Appeal held that the proceedings are 'relatively legally straightforward', and therefore, the appellants did not meet the EU and ECHR requirements in respect of legal aid and legal costs.¹⁰⁰ Considering the findings of this research in relation to the time limit and the reasonable assistance rule, it is difficult to see how the proceedings are in fact 'relatively legally straightforward'. Additionally, as discussed in Chapter Five, the various victim-blaming eligibility criteria relevant to particular CICT applications involve significant barriers to access to justice for CICT applicants. I agree with the preliminary conclusions of the LRC in relation to the question of legal aid and legal costs, that they are 'inclined to the view that legal costs should be recoverable by applicants in certain circumstances, such as those where the applicant is unable to complete the application process themselves'.¹⁰¹ The LRC states that:

The blanket exclusion of legal aid and legal costs does not take into account applicants' individual circumstances, nor the fact that applicants may be traumatised by their experience of the crime, may be vulnerable persons or minors, may be physically or mentally incapable of making an application without representation and that there is a restrictive three month time limit to apply under the Scheme.¹⁰²

At present, under Article 13 of the Victims' Rights Directive, victims are entitled to legal aid when they have the status of parties to criminal proceedings.¹⁰³ As victims do not possess this status in Ireland, victims are generally not entitled to legal assistance. The only exceptions to this are for victims of sexual offences in respect of applications to cross-examine victims as to their sexual history,¹⁰⁴ and in respect of disclosure applications on behalf of the defence to view counselling and other third party records.¹⁰⁵ Human trafficking victims are also entitled to free legal advice, as distinct from legal aid or legal representation,¹⁰⁶ in certain circumstances, although this has been criticised as ineffective in practice as it only applies to certain victims at particular stages of the criminal process.¹⁰⁷ In addition, under section 26(3A) of the Civil Legal

⁹⁹ *ibid* [115].

¹⁰⁰ *ibid* paras [115]-[116].

¹⁰¹ LRC (n 8) [6.72].

¹⁰² *ibid* [6.66].

¹⁰³ Victims' Rights Directive (n 57).

¹⁰⁴ Criminal Law (Rape) Act 1981, section 4A, as amended.

¹⁰⁵ Criminal Evidence Act 1992, section 19A; *DPP v AM* [2025] IESC 16.

¹⁰⁶ According to section 25 of the Civil Legal Aid Act 1995, as amended, legal advice includes oral or written advice on a legal matter, along with taking steps to assist a person in relation to the matter. According to section 27, legal aid refers to actually representing an individual in civil proceedings or at an inquest.

¹⁰⁷ Civil Legal Aid Act 1995, as amended, section 26(3B). See also G.Conway, 'An Evaluation of the Impact of the EU Victims' Rights Directive on the Scope of Victims' Rights in Ireland' in J.Burchett & A.Weyembergh, *Stronger Victims' Rights in EU Law? Assessment and Prospects* (Hart 2025) [III].

Aid Act 1995, as amended, victims of certain sexual offences are entitled to free legal advice from the Legal Aid Board where there is a prosecution in respect of the offence.¹⁰⁸ The O’Malley Report on the review of sexual offences in Ireland commented that this provision is not commonly known or used and could be amended in the future to provide a more widely recognised right to free legal advice for victims of sexual offences, including where no criminal complaint has been made.¹⁰⁹ Considering these exceptions, Ireland is the only EU Member State where victims do not have a general right of access to legal representation during the criminal process.¹¹⁰ If victims wish to engage a solicitor to pursue compensation, either through the CICS or the civil courts, they must pay for this themselves.¹¹¹

Of course, in reality, the right to legal aid varies across EU Member States. Victims might only assume being a party to the criminal proceedings at a certain point, such as at the end of the proceedings for the purposes of securing a compensation order. In the Netherlands, victims of sexual and violent crimes have a right to free legal aid and can access free legal assistance from a specially trained victims lawyer.¹¹² The right to free legal aid is also available in Romania, although there has been very little uptake of this right as victims are not granted access to a lawyer automatically but must request one. This often does not occur due to poor information provision.¹¹³ In Italy, legal aid is subject to a financial means test, but such a means test does not apply to certain categories of victim including victims of gender-based and domestic violence and child victims of certain sexual offences.¹¹⁴ The European Commission’s 2023 Proposal includes provisions amending the Victims’ Rights Directive which may impact the provision of legal assistance in the EU. These include a new Article 10a, providing for a right to assistance in court in relation to information and emotional support, and Article 10b, providing for a right to review decisions taken during court proceedings including but not limited to decisions in relation to interpretation services and special measures for vulnerable victims.¹¹⁵ It is not clear how these provisions will operate in practice and whether victims will be entitled to legal aid in respect of challenging court decisions. Whilst the European Commission’s 2023 Proposal does not include

¹⁰⁸ Civil Legal Aid Act 1995, as amended, section 26(3A).

¹⁰⁹ T.O’Malley, *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences* (Department of Justice 2020) 89-92.

¹¹⁰ N.Elberts et al, The Role of Victims’ Lawyers in Criminal Proceedings in the Netherlands (2022) 19(4) European Journal of Criminology 830,845.

¹¹¹ O’Malley (n 109) 90.

¹¹² S.van der Aa, ‘Victim Rights in the Netherlands: Unconditional Compliance or Pursuing the National Agenda?’ in Burchett & Weyembergh (n 107) [III.D].

¹¹³ D.Ionescu, ‘Victims’ Rights in Romania: The Gap between Adoption of Legal Texts and their Effective Implementation’ in Burchett & Weyembergh (n 107) [E].

¹¹⁴ V.Scalia, ‘The Protection of Victims of Crime in the Italian Criminal Justice System’ in Burchett & Weyembergh (n 107) [VI.A.ii].

¹¹⁵ European Commission, *Proposal for a Directive Amending Directive 2012/29/EU* COM(2023) 424final29.

provisions to amend Article 13 of the Victims' Rights Directive in relation to legal aid, the COE's recently adopted Recommendation on the rights, services and support for victims of crime includes a provision which holds that Member States should not just provide legal aid to victims at least where they have the status of parties in criminal proceedings, but are also 'encouraged to ensure access to free legal aid for victims concerning all decisions where the interests of justice so require.'¹¹⁶

In reflecting on the current provision of legal assistance in Ireland and Europe and considering the judgment of *Doyle* at the Court of Appeal and the preliminary views of the LRC on the matter, it was surprising that only some interviewees in this research echo the call for proper legal assistance. Interviewees also highlight problems in relation to legal assistance including the issue of how legal costs are calculated. Interviewees also comment that victim support organisations ought to play a greater role in relation to supporting victims in the CICT process. Finally, interviewees comment on the role of AGS both in relation to the CICT process itself and the importance of victim support more broadly. The following sections now examine these various issues.

6.4.1 The Benefits of Legal Assistance

Some interviewees agreed that legal assistance for CICT applicants is necessary. A1 argues that 'legal representation should be immediate', whilst A3 points out that 'somebody of a legal mind' is needed to assist victims in the filling out of the application form. A2 states that 'without a solicitor involved I would never have been compensated.' FTM3 highlights that whilst 'you don't need one', applicants are at 'a disadvantage if [they] don't have a lawyer'. S1 and S2 state that having a solicitor involved can help reduce delay and speed up the decision-making process. S3 states that 'until it happens to yourself nobody ever realises the actual value of a lawyer being there to help you and so on'. S4 highlights that victims of human trafficking have a heightened need for legal assistance in relation to the CICT process and the criminal justice process generally. VSW1 points out that regardless of whether the applicant has a solicitor or not, they must still go about and gather important documentation themselves. Furthermore, VSW1 highlights that what applicants need is for somebody to encourage them to complete every step as the CICT process progresses, not necessarily a solicitor. If the CICT process can be simplified, S5 highlights that there might not be a need for lawyers in the process at all:

¹¹⁶ COE, *Recommendation of the Committee of Ministers to Member States on Rights, Services and Support for Victims of Crime* (CM/Rec(2023)2), Article 12; L.Bachmaier, 'Council of Europe Instruments and the Case Law of the ECtHR on Victims' Rights: What Influence on EU Law?' in in Burchett & Weyembergh (n 107) [II].

I think it could be made more application friendly without the need for you know, legal advice all the time or legal guidance. [...] If a crime is perpetrated on you and you're entitled to compensation, then you should be able to get that compensation yourself and go through the procedures yourself rather than having to rely on your solicitors to battle their way for you. (S5).

B2 points to the provisions of the 2017 Act and the obligation on AGS to inform victims about the CICS. B2 argues that a lawyer would not be needed if this process worked properly and the relevant information was actually given to potential CICT applicants. B1 states, however, that CICT applicants need 'something a little bit more active' than mere information provision. In this regard, a victim might receive information from AGS or a victim support service about the CICT, but they need someone to actively support them in relation to acting on the information:

In more recent times it may be that the victims' organisations are providing more publicity or handing out leaflets. But one almost needs something a little bit more active. In other words, to have somebody who actually gives advice. You should actually go to a solicitor about this if somebody has a serious injury as a result of a criminal act, they should really be told to go to a solicitor in my view. And there are a lot of people who have missed out as a result [...]. (B1).

According to B1, access to legal assistance is crucial in terms of securing the correct amount of compensation. S3 highlights that whilst people should be able to represent themselves at the CICT, in certain circumstances, especially where the injuries are particularly serious, there will still be a need for legal assistance:

I think people should actually be able to do these things themselves. They're not complex but people fear self-representation which is understandable. And they also fear state agencies because whose side are they on at the end of the day really? [...] I suppose certainly in more significant levels of injury, the catastrophic injury kind of stuff, you can understand why people might want, let's call it expert or professional representation to interact with a state agency. There's no reason why people could not do these things themselves ultimately and ultimately they would save fees but good luck to them as far as that is concerned. (S3).

In stating 'good luck to [applicants]' as far as self-representation is concerned; this solicitor is pointing to the difficulties applicants will face in the CICT process. For this reason, applicants with catastrophic injuries should be able to access a solicitor for the duration of the CICT process

with provision for legal costs.

6.4.2 Applicants Struggle to Access Solicitors

Despite the need for solicitors in serious cases, interviewees report that applicants struggle to get a solicitor to take on their compensation claim at the CICT. In relation to these catastrophic and serious injuries, B3 points out that 'it's farcical to suggest somebody in that extreme situation should proceed without legal advice.' A1 and A4, however, state that they contacted solicitors when they first heard about the CICT but none of them were willing to take on their cases as the CICT 'were too difficult to deal with.' According to A4, a solicitor told them, the CICT applicant, that they were wasting their time submitting a CICT claim. It is unclear the type of law firms that actually take on CICT claims. Many of the solicitors interviewed as part of this research worked in general practice where both criminal and civil legal work is conducted. Additionally, it is unclear how a victim is to identify such a firm. Interviewees highlight that choosing a law firm typically depends either on the victim, or a family member or friend, dealing with a particular solicitor's firm previously or on the basis that the solicitor they went to was just local to their area.

S3 and S5 state that they would only take on a CICT claim if the injuries were catastrophic and serious. S3 describes their general feelings towards the CICT process and their experience of representing clients at the CICT:

I wouldn't take a case because it is not an area of work where one can achieve any kind of satisfaction. There's no fee payment structure. The delays are so disastrously appalling that it is incomprehensible A, to myself and B to someone who unfortunately has been the victim of an injury resulting from a criminal assault and is expecting some kind of compensatory payment. My general reaction to it is, unless the event was so significant, monetarily significant for the client in terms of financial loss, I wouldn't do the case. (S3).

S5 describes how they decide to take on cases involving a CICT claim:

It depends on the seriousness of the assault, right? That's number one. It depends if this client is a previous client, if it's a long-term client, a new client. We have to take all those into account. And then kind of see where we're at, but we would always, as a matter of course, lodge a claim so that we can stop the time limit on it. If it's a case of this is not going anywhere, we would advise the client, 'Look in our view, we've lodged it, it's safe, you know, maybe you should find another the firm of solicitors, maybe you can, you

know, deal with this yourself.' We wouldn't recommend it because it's very difficult to deal with this yourself. It depends on how far it goes. I think that the cost element is very prohibitive in relation to it. It's an issue because the solicitor will want to be paid for their work. But a client needs work done for them. (S5).

S5 highlights that the absence of legal costs at the CICT is a significant factor in them deciding to take on a CICT claim or not. If the injuries were so catastrophic and serious that a significant award of compensation were due, it appears that solicitors will be more likely to take on the case as their legal costs will ultimately be paid from the significant award which the applicant receives.

6.4.3 The Issue of Legal Costs

Whilst it is optimum that victims would have legal assistance in these situations, the calculation of legal costs is an issue raised by several legal practitioners interviewed as part of this research. S3 highlights that it is difficult to predict the amount of work involved in CICT cases, particularly where catastrophic injuries are involved:

I could not possibly tell you how many hours would be spent pursuing a case. A lot of it is administrative or paperwork but there would still be hours and hours of consultations, review of files, review of reports, interaction with guards to prove that this was an injury of a criminal nature in the first place, all that stuff has to be proven. Then dealing with the client, you could have 30, 40, 50 hours, that kind of time. Maybe not that much, it depends on the case. Catastrophic would certainly be more complex and lengthier. Lawyers charge an hourly rate of 300, 350, 400 an hour. People think it is a lot of money but it's not because lawyers are paying office costs, secretarial costs, insurance, rates, light, heat [...]. While it looks like a rather large fee at the outset it whittles down considerably when you consider the outpayments that need to be carried by lawyers. (S3).

S3 points out that lawyers are often criticised in relation to legal costs but that when the legal fees are broken down in a particular case, they begin to become more understandable. B4 also sets out the type of work involved in a CICT case and the amount of work involved, especially again in catastrophic cases:

Where would you even know where to start? [...] I mean, there's huge amounts of work going into that in terms of organising the reports, preparing the reports. [...] And then it's extraordinary that you identify what this person is entitled to and then you turn around and say, 'Well, now you have to pay your legal team out of what you have there.' So, it's not very fair. (B4).

The removal of extensive legal costs from the applicant's award is unfair, according to B4. B4 warns that sometimes applicants can be taken advantage of by lawyers:

There are some really unscrupulous lawyers out there. [...]. If you don't have provision for legal costs, who is to stop the lawyer overcharging the client? There's whole procedures for the courts where you can get your costs taxed. Whereas it's not going to exist [with the CICT]. (B4).

B4 argues that there ought to be some mechanism at the CICT for the adjudication of appropriate legal costs. If some of these legal costs were paid by the CICT, S1 suggests that such a mechanism would reduce delays in decision-making at the CICT as the CICT would have an incentive to make decisions more quickly in order to ensure lower legal costs. S5 warns that the issue of legal costs can potentially lead to conflict with clients:

You're then at a situation where your client gets the award and you're saying, 'Well, this is our bill of costs.' And then ultimately you have to negotiate with your client what are reasonable costs to come out of your reward. And then unless the client agrees with you, [...] ultimately, you're fighting with your clients over payment of your fees, which is not a satisfactory place to be in. It's unfair, you know, like a very serious crime has been perpetrated against them, yet they have to carry all the burden of the expenses and everything to get to a certain stage, which seems kind of contradictory. (S5).

S5 points out that being in conflict with your client is not a satisfactory place to be, especially where the client has been seriously injured in a criminal incident and now has to pay their legal costs out of their CICT award. S3 highlights that generally clients understand the nature of legal costs and appreciate the amount of work the solicitor has done for them:

At the outset, when you tell a client what your rates are they go, 'Oh I'd love that job' and then you'd say, 'would you really?'. First, [lawyers have] to deal with all the grief of court. Secondly, you got to factor in the costs that are associated with running a legal business, you know insurance, lights, rates, staff, etc. And then clients do begin to appreciate, 'Oh yeah, I get it.' And then they do actually become accepting of the fact it is a reasonable charge actually. I won't say they all appreciate it. [But] I think in fairness it is the willingness of lawyers to wait until the thing is done, through the endless and tortuous system of the CICT, [to] get paid at the end of the exercise. Yeah, they do tend to accept it. (S3).

S3's account of what is involved in running a legal business and running a CICT file demonstrates that lawyers provide an important service to CICT applicants. Without lawyers, it is potentially more difficult to achieve a satisfactory outcome. S6 observes that when a solicitor does engage in CICT related work, which is quite rare for the average solicitors' practice, some solicitors tend to not charge full legal costs, especially when these legal costs are coming out of the applicant's CICT award:

You see someone come in, they're a victim of crime, their life is falling apart. Maybe their schoolings failing apart or they can't get work or maybe they're self-harming. And then you're trying to bring the case with them. You're trying to basically increase your overdraft to pay for the reports. And then at the end of this you've to turn around and say, 'Oh by the way you need to pay me for this.' [...] I suppose if you have a bit of a heart, you're going to turn around and say, 'Look, we'll make money somewhere else.' I'll charge this person just to break even on this thing. (S6).

It is hardly fair or effective that the functioning of the CICT system as a whole relies on the goodwill of lawyers. Overall, the various legal practitioners interviewed as part of this research highlight conflicting viewpoints on the issue of legal costs. It appears that running a CICT file, especially where serious and catastrophic injuries are involved, involves a huge amount of work and commitment from lawyers. Interviewees point out that lawyers sometimes take advantage of clients in CICT claims, whilst it is also apparent that there is a lot of goodwill amongst lawyers when it comes to victims and the CICT process.

Elbers et al set out the significant improvements that have been made in the Netherlands in recent years concerning victims' access to legal assistance. Since 2006, victims of violent and sexual offences can access legal assistance free of charge. According to Elbers, state funding covers 11 hours of legal aid work at a set rate of €105.00 per hour. This intends to cover attending the police interview, preparing the compensation claim in the criminal court, assistance in drafting the victim impact statement, attending meetings with the prosecutor and attending elements of trials.¹¹⁷ Whilst this arrangement relates to legal aid work conducted in relation to the criminal process, including obtaining a decision on offender compensation in the criminal trial, and not the Dutch state compensation framework, it is suggested that a similar framework could be introduced in Ireland in relation to the CICS.

¹¹⁷ Elbers et al (n 110) 832. See also van der Aa (n 112) [III.D].

6.4.4 Victim Support

Whilst some victims receive legal assistance in the CICT process, other victims rely solely on support from victim support organisations. This is especially the case in relation to the broader criminal justice system. Several individuals interviewed as part of this research agreed that the victim support sector in Ireland needs better funding to provide an enhanced level of support for victims throughout the criminal process. In the homicide context, it became clear throughout this research that victim support organisations who work with individuals bereaved by homicide do an extraordinary amount of work, often on a voluntary basis, and receive very little state funding in relation to this work. From this research, it clear that the victim support sector in Ireland is highly fragmented and an effort needs to be made at governmental level to examine service provision and assess the support needs of all victims of crime. In this regard, some interviewees suggest that a victims' ombudsman or commissioner should be created to monitor service provision and the extent to which victims' rights are properly provided for.

In the specific context of the CICT, the Victims' Charter provides that the CICT will work with a victim support organisation that is acting for the victim.¹¹⁸ One individual interviewed as part of this research who volunteers with a victim support organisation highlights that CICT applicants must give written permission to the victim support organisation and the CICT for this to occur. In practice, this requirement can delay a victim support organisation practically assisting victims in the process. Separately, interviewees point out that victims need particular help in filling in the relevant CICT application form. One interviewee, who works with a victim support organisation acknowledges that the CICT application form is relatively straightforward and written in as plain language as possible but that it is too long:

They definitely need support in filling out the application because while it is quite straightforward, it can be triggering for a woman who's experienced domestic violence. [...] I'm looking at the application as we speak, it is kind of plain language, which is good, but [...] it's hard for women who experience domestic violence to filter. They want to be heard and they want to say everything. So, when you're giving them kind of a couple of dotted lines, I don't know if that's enough. So, you definitely need someone to kind of assist them with the application itself. It is quite long as well. (VSW2).

VSW2 highlights that it is very difficult, especially for victims of domestic violence, to fill out the application form section by section, box by box, as they find it difficult to determine what information ought to go where on the application form. This is also the case in relation to victims

¹¹⁸ Irish Government, *Victims Charter* (2020) 83.

of human trafficking. On the application form, the criminal incident is framed as a single incident, whereas human trafficking victims experience multiple victimisations on a daily basis. The application form, therefore, in framing crime as a single incident, does not take into account the complicated nature of this category of victimisation, according to S4. In the homicide context, VSW1 highlights that families find having to set out information in relation to the criminal incident difficult and re-traumatising. This is compounded if there are literacy issues:

There's one particular family. [They] actually never filled in the form even though I've tried and tried and tried. [They] said to me that you have to fill in a part [...] around the incident and the death and what you know about the death and when it occurred [...] but [they] said [they] [...] could not write down what happened and how it happened. Because [they] said it was just re-traumatising. [They] just could not do it. [...] They never got any money. [...] Now that to me is shocking. (VSW1).

VSW1 points out that they do not see why applicants themselves have to fill this information out when the same information is being provided by AGS in the garda report. Whilst S6 and A4 thought that filling out the application form itself was straightforward, VSW3 argues that individuals bereaved by homicide should not have to fill out an extensive application form. Instead, it should be enough for them to simply notify the CICT and the CICT should then contact the family and meet with them on a one-to-one basis and fill out the application form with them.

Ryan contends that administrative application forms are a means through which access to justice can be facilitated in an administrative body.¹¹⁹ Furthermore, Ryan argues that administrative application forms should be designed to increase scope for personal narrative ‘to ensure individuals are given better opportunities to relay their story to the decision makers.’¹²⁰ With the CICT non-fatal application form, there is scope for personal narrative in relation to the incident itself,¹²¹ the reasons why the application was submitted late,¹²² where applicants set out if the incident was reported to An Garda Síochána,¹²³ and details in relation to personal injuries sustained.¹²⁴ On the fatal application form, there is space for personal narrative in relation to why

¹¹⁹ A.Ryan, ‘The Form of Forms: Everyday Enablers of Access to Justice’ (2023) 32(5) Social and Legal Studies 690,709.

¹²⁰ *ibid* 708.

¹²¹ CICT Non-fatal Application Form, Question 3.

¹²² *ibid* Question 4.

¹²³ *ibid* Question 5.

¹²⁴ *ibid* Question 7: ‘Are there any other special features of the injuries you wish to mention in this application form?’

the application was submitted late,¹²⁵ and the criminal incident itself.¹²⁶ Furthermore, there is a space at the end of the fatal form allowing the CICT applicant to set out any other relevant information to the CICT.¹²⁷ Both the fatal and non-fatal application forms set out a number of questions allowing the CICT applicant to set out their losses but these are prescriptive questions and do not have a sufficient open-ended basis.¹²⁸ In the specific context of social welfare applications, Meers warns that, whilst scope for personal narratives should increase on administrative forms, further research is needed to determine whether ‘increasing space for personal narrative risks disproportionately benefiting those best placed to articulate their own deservingness - and the burdens imposed on decision-makers themselves.’¹²⁹ Whilst further research is also needed on the CICT application forms, especially in relation to the accessibility of the forms for individuals with low literacy levels, and the potential benefits of increasing space for personal narrative, I argue that CICT applicants need assistance and support in filling out the application forms. Increasing personal narratives should be part of this process and if the proper assistance and supports can be put in place, differences in ability to articulate deservingness can be minimised. In other words, as discussed in Chapter Five, differences in economic, social and cultural capital can be accounted for and the victimological playing field can be levelled. Importantly, however, whilst victims need assistance and support filling in the application form, Mulder, in the context of the Dutch state compensation framework, argues that applicants who filled out the form themselves are significantly more satisfied about the procedure than those who did not. In this regard, legal advisers and victim support workers should not fill out the form themselves but rather should do so together with victims.¹³⁰

Whilst victim support organisations assist in the filling out of the application form, it should be said that this type of support is distinct from formal legal assistance where victims are represented at all stages of the CICT process. In Britain, a practice existed whereby victim support organisations did represent victims in claims to the CICA, which is the British state compensation scheme. As part of this representation, these organisations advised victims on eligibility and the type of compensation which they could apply for.¹³¹ At present, however, these organisations only provide emotional support for victims going through the compensation process as a result

¹²⁵ CICT Fatal Application Form, Question 4.

¹²⁶ *ibid* Question 5.

¹²⁷ *ibid* Question 12.

¹²⁸ CICT Non-fatal Application Form, Questions 8, Question 9. CICT Fatal Application Form, Question 9, Question 11.

¹²⁹ J.Meers et al, ‘Perceptions of Procedural Fairness and Space for Personal Narrative: an Experimental Study of Form Design’ (2025) 51(1) *Journal of Law and Society* 81.

¹³⁰ J.Mulder, *Compensation: The Victim’s Perspective* (Wolf Legal Publishers 2013) 97.

¹³¹ Victims’ Commissioner, *Compensation Without Re-traumatisation: The Victims’ Commissioner’s Review into Criminal Injuries Compensation* (2019) 104.

of a court ruling in Scotland which held that Victim Support Scotland failed to provide reasonable skill and care in representing a victim before the CICA and advising them on the type of compensation they were entitled to. As a result, this victim missed out on thousands of pounds in compensation in respect of lost earnings.¹³² The practical delimitation between what victim support organisations currently do for victims in the CICT process and legal assistance is not clear from this research. It does appear, based on comments from the three victim support individuals interviewed as part of this research, that victim support organisations lean towards emotional support and not any kind of formal representation. Regardless, there is a limit on what victim support organisations can do, indicating that legal assistance has to be part of the offering to CICT applicants.

Overall, according to Elbers et al's research, again in the context of offender compensation in the criminal trial, where there are complex injuries, victims are said to be better off if they have legal assistance as lawyers have the expertise to calculate damages and draft the claim.¹³³ Additionally, it was said that compensation amounts are higher if a lawyer is involved.¹³⁴ Elbers' findings suggest that because lawyers are better placed to substantiate compensation claims, the risk of the claim being deemed inadmissible is less.¹³⁵ In this manner, victims are more likely to receive compensation through the APS, as set out in Chapter Three. Whilst Elbers' findings suggest that some lawyers create too high expectations about the sentencing or compensation process,¹³⁶ the findings also demonstrate that legal assistance brings added value to the practical provision of victims' rights as lawyers protect victims from secondary victimisation in the criminal process and they ensure that victims are heard and empowered throughout the process, but particularly in the courtroom.¹³⁷ This is especially the case in relation to information provision and explaining the different elements of the process to victims.¹³⁸ In the context of tort-based compensation claims in the UK, 'expectation management' was also a key element to Godden-Rasul and Wiper's findings which demonstrate that the role of lawyers should be to bring transparency to the legal process and the possible outcomes.¹³⁹ Much of these benefits of legal assistance can be applied to the CICS. Where there are serious injuries or complicated claims, CICT applicants should be entitled to free legal assistance. In other claims, assistance should take another format,

¹³² *D v Victim Support Scotland* [2017] SCEDIN85.

¹³³ Elbers et al (n 110) 843.

¹³⁴ *ibid* 842.

¹³⁵ *ibid* 838.

¹³⁶ *ibid* 844-845.

¹³⁷ *ibid* 843-844.

¹³⁸ *ibid* 841.

¹³⁹ N.Godden-Rasul & C.Wiper, Trauma-informed Lawyering in the Context of Civil Claims for Sexual Violence (2024) 51 Journal of Law and Society 189,203.

perhaps via the various victim support organisations.¹⁴⁰ The provision of broader legal assistance throughout the criminal process should also be part of the equation. Further research is needed to determine how this can be practically brought about. For now, it can be concluded that with the three month time limit and the reasonable assistance rule not taking into account the consequences of criminal victimisation, enhanced legal assistance and victim support is crucial to ensure that victims are able to properly navigate the CICT process.

6.5 Conclusion

It is important to highlight again the diversity of victimisation and that different victims will react differently to similar types of criminal incidents and traumatic events.¹⁴¹ Green and Pemberton state the importance of resilience and agency in the recovery process for victims in the aftermath of victimisation. They state that whilst victims often merely endure and cope in the aftermath of victimisation, many victims also adapt and flourish in the manner they interpret and experience the consequences of victimisation.¹⁴² In this manner, different victims experience and suffer the consequences of similar victimisation events in different ways. Despite this, a legal process should take account of these consequences regardless of individual differences between victims. This chapter has examined the extent to which the CICT takes account of the consequences of criminal victimisation. An approach which takes account of these consequences, especially in relation to hypervigilance, reexperiencing and avoidance types of behaviours, would ultimately not require applicants to comply with such a short time limit, which puts applicants under extraordinary pressure in the immediate aftermath of a crime. Additionally, such an approach would reject the need to legalise an applicant's trauma through the necessity to obtain a medical report to prove the existence of the trauma, for the purposes of extending the time limit. Furthermore, such an approach would not demand an applicant be proactive in engaging with the CICT under the reasonable assistance rule. Finally, such an approach would ensure that applicants are appropriately supported throughout the process. In serious claims, this likely should be legal assistance and in other claims, it likely should take another format.

¹⁴⁰ A similar distinction was made by the Victims' Commissioner in England and Wales in respect of the CICA. Recommendations were also put forward in relation to simplifying the process so that victims do not need legal assistance in the first place and support can be provided by the CICA, see Victims' Commissioner (n 131) 104-105.

¹⁴¹ E.Erez, 'From Cinderella to Consumer: How Crime Victims Can Go to the Ball' in J.Tapley & P.Davies (ed) in *Victimology: Research, Policy, and Activism* (Palgrave 2020) 328.

¹⁴² S.Green & A.Pemberton, 'The Impact of Crime: Victimisation, Harm and Resilience' in S.Walklate, *Handbook of Victims and Victimology* (Routledge 2018) 84-87.

7 CHAPTER SEVEN: TREATMENT OF CICT APPLICANTS

7.1 Introduction

The final substantive chapter of this thesis examines the fourth theme constructed from the interview data in relation to the treatment of applicants in the CICT process and the extent to which the CICT takes steps to prevent secondary victimisation. Mawby and Walklate comment that as a result of their exclusionary eligibility criteria, the lack of information available to victims as to their entitlements to apply and the poor experiences of victims who do submit claims, ‘there is a danger of state compensation schemes featuring more as agents of secondary victimization than as sources of justice.’¹ When victims receive insensitive treatment and a lack of understanding of their needs by stakeholders in the criminal justice system, the emotional and psychological impact of their victimisation is intensified.² Procedural justice theorists maintain that if a system can treat an individual fairly, individuals will feel more satisfied with the system as a whole, even if the outcomes themselves are not as favourable as they would have wished.³ In the compensation context, whilst individual differences between victims’ perceptions of fairness are important,⁴ research suggests that how an applicant receives compensation is more important than the amount of compensation received.⁵ This chapter examines examples of the re-traumatising treatment experienced by applicants in the CICT process. First, section 7.2 considers the expectations of applicants and practitioners when they first engaged with the CICT. In section 7.3, various inefficiencies and the non-responsive nature of the CICT in many instances is considered. Section 7.4 considers CICT applicants’ experiences of communicating with the CICT about their claims, particularly on the telephone. Section 7.5 then explores the case management procedures at the CICT. Section 7.6 points to a more recent trend at the CICT where the treatment of applicants has improved considerably. Finally, section 7.7 analyses how procedural justice can be further improved at the CICT in light of international and comparative experiences.

7.2 Prior Expectations

In examining the expectations of victims and practitioners prior to their engagement with the CICT, this section provides context to ground the discussion in later sections about whether these expectations were in fact met. A4 states that they expected that the process would ‘be a lot more straightforward’ than it ended up being. A1 highlights that they were ‘expecting [the CICT] to be

¹ R.Mawby & S.Walklate, *Critical Victimology* (Sage 1994) 157.

² J.Doak, *Victims’ Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties* (Hart 2008) 51.

³ M.Kunst et al, ‘Performance Evaluations and Victim Satisfaction With State Compensation for Violent Crime: A Prospective Study’ (2017) 32(19) *Journal of Interpersonal Violence* 3027,3037.

⁴ R.Holder & K.Daly, ‘Recognition, Reconnection, and Renewal: The Meaning of Money to Sexual Assault Survivors’ (2018) 24(1) *International Review of Victimology* 25,40.

⁵ J.Mulder, *Compensation: The Victim’s Perspective* (Wolf Legal 2013); Kunst et al (n 3).

a fast, efficient, and compassionate process.' S5 highlights that a priority for victims is to have the matter dealt with as quickly as possible. S5 points out that it can be frustrating when this does not happen due to the delays in decision-making at the CICT:

[Victims] want it finalised. They want to get some compensation here and they want to just draw a line under it because you're constantly, especially with serious assault, you're constantly digging up the trauma for them. You know, every day they come in to see you, they are re-living it if they can remember what happened to them. [...] They know the blackouts, the pain, the flashbacks. That is really unfair on a victim to have to go through this whole process and speak to solicitors and speak to doctors and re-live and re-live and re-live the process all over again until three or four years down the line you finally get a decision on it. (S5).

When a decision is issued, S5 points out that it can be even more frustrating when there is an issue with the decision itself:

And in my experience, out of all the decisions we go through, we find issues with most of them. And we have to go back. [...] You would imagine at that stage they've gone through it and would have had the T's crossed that the I's dotted [...]. But in my experience, that's not what I find. (S5).

Applicants and practitioners expect the CICT process to run both quickly and in a respectful manner. Furthermore, there is an expectation of efficiency and that the process will operate in a manner whereby any issues or problems that arise will be dealt with promptly. The following sections examine examples of how this has not always occurred in practice.

7.3 Inefficiencies and Non-responsiveness

One of the first examples identified by individuals interviewed as part of this research includes the slow processing of claims at the CICT and the difficulties involved for applicants and legal practitioners getting a response from the CICT on particular queries. S3 describes the process as 'tortuously slow'. Interviewees consistently point to the fact that each issue to be resolved took months to be resolved. Whether it was the CICT acknowledging receipt of the application form or submitted documentation, the organisation of medical consultations, the finalisation of actuarial reports, the organisation of appeal hearings or confirming when the award would actually be paid out, interviewees consistently described a process whereby they would make a request to the CICT and each request would take a number of months to be sorted out. This was compounded by the need for the applicant themselves or their representative to constantly

contact the CICT looking for updates in relation to the query. One CICT applicant told me that after nearly a decade of back and forth between them and the CICT, they decided to engage a solicitor to deal with the CICT. It was only then that they noticed some progress being made in relation to the application. Another applicant, A3, told me that they got the ‘impression that [the CICT] were kind of just bunking [them] off’. S5 sets out in detail the troubles they have had in getting responses from the CICT on particular points:

Very slow [...]. Every solicitor’s file I have in relation to this is constant communication from the solicitor one way. It’s very difficult to get feedback. It’s very difficult to get acknowledgement. Once we send in applications, we do it by registered post and we have to chase up and chase up because nothing is coming back. So, you might not get an acknowledgement for a period of time, which is not satisfactory. And until you follow up and you have your attendance over telephone calls with the CICT and you at least then know they have acknowledged it per telephone but yet it’s not in writing. If you needed it [in writing], you have to keep pushing and pushing. It depends on who you get. It depends on who answers that phone and that’s not satisfactory. (S5).

VSW3 states that more one-to-one contact on a face-to-face basis is needed in the CICT process:

It’s a very legal densely legal process. And I think it needs to be more empathetic and more compassionate. And I believe that if they met people who are traumatised on a one-to-one basis initially and provided that one-to-one contact throughout the process for a family, that if they had a difficulty or a question, when they ring they would get to speak to that person or would get an email response from that person. I think that would be hugely helpful. At the moment it’s very cold, very impersonal. [...] It’s a trial for families at the moment and I don’t think it needs to be like that. (VSW3).

VSW3 highlights that the CICT is often experienced as being cold and impersonal in their dealings with CICT applicants. According to VSW3, a change in approach is needed, especially in the context of individuals bereaved by homicide. This is echoed by a CICT applicant, who argues that when it comes to the actual CICT decision, applicants should meet with the CICT so that the decision, whether an award is made or the application is rejected, can be explained to applicants and family members. VSW1 points out that telephone contact with applicants should be more routine, especially as receiving written correspondence from the CICT out of the blue can potentially be re-traumatising. VSW1 highlights this in the specific context of individuals bereaved by homicide receiving the garda report, which contains traumatic details about the criminal incident, in the post from the CICT without prior warning via telephone.

7.4 Poor Communication Practices

Several interviewees spoke about the cold and impersonal attitude of the CICT as experienced by them in their telephone contact with the CICT. One interviewee, a CICT applicant, describes how a CICT staff member told them to get off the phone because there could be somebody else with worse injuries trying to ring the CICT. Another applicant, A4, told me that one of the staff members they were dealing with was so rude that nearly every time they got off the phone they cried. A4 told me that eventually they had to get another family member of theirs to ring the CICT each time they had a question as they themselves could not face ringing anymore. In this regard, A4 describes how the compensation was just not worth the hassle. VSW1 highlights that '[the CICT] staff were shocking' and that 'they didn't understand where families were coming from.' In this regard, VSW1 told me that their clients would 'get off the phone and they'd ring me and they were crying'. VSW3 describes their impression of how the CICT engaged with applicants:

We've had people complain to us about the rudeness when they phone the office. They feel they've been treated rudely and they can never get a name of the person. They can't get the same person again. [...] It almost feels like it's obstructive. But I think it's just a lack of empathy and a lack of understanding of what it is to be really traumatised. [...] People need to be dealt with more humanly. They need to humanise the process, I think. (VSW3).

Here, VSW3 suggests that the approach of the CICT to applicants feels almost 'obstructive' and is certainly indicative of a lack of insight into the reality of criminal victimisation. This lack of insight was experienced by other interviewees in different contexts. Applicants told me that a CICT representative accused them of lying about and exaggerating the extent of their claim. A1 was told by the CICT that interim awards were never paid out by the CICT, only later to be told that they are in fact available. A1 and S5 told me that the CICT refused to answer questions about discrepancies in first instance decisions and that any queries submitted would constitute an appeal. One CICT applicant told me that the appeal process itself was so stressful for them that they ended up becoming physically ill in the months after the appeal hearing and ended up in hospital. Overall, several applicants to the CICT told me that many of their interactions with the CICT were incredibly upsetting and re-traumatising. A1 highlights that in the years after the criminal incident their life was controlled by the CICT in that their predominate focus was on bringing the stressful and re-traumatising CICT process to a conclusion. A1 states that eventually receiving the compensation award represented 'mental freedom' from the compensation process itself as the CICT 'were no longer going to be in [their] life'.

7.5 Case Management at the CICT

In trying to explain why the CICT interacted with applicants in such a manner, one explanation might relate to the file management procedures at the CICT. FTM1 highlights that:

The administrative structures within the CICT were very out of date. Literally bundles of files would be sent out to people with little coddles holding them together. Loose sheets of paper run through the photo copier. And in effect there was no real record kept of who had what for how long or who was dealing with what. Like even the most basic case management or case recording system that even a small one man solicitor's firm would have, like even something you'd get free with Microsoft wasn't operating. (FTM1).

The image of disorganised physical files is echoed by A1 who was told by one of their doctors that their CICT file was 'an absolute disgrace', with multiple copies of the same documents being sent to the doctor by the CICT, along with unredacted personal and financial information of the applicant. In this regard, the division of labour at the CICT involves both CICT members and CICT staff. CICT members make decisions in individual cases, but CICT staff are responsible for file management, receiving and processing applications, along with liaising with applicants, doctors and other stakeholders.

On file management, B4 describes the room in which appeal hearings were held as being incredibly disorganised with files placed randomly around the room. Multiple interviewees stated that applicants' files or part of the files would often go missing. Sometimes the files would be found but on other occasions applicants and their legal representatives would have to submit the same information twice. VSW1 describes how the CICT at one point lost original birth certificates in relation to fatal claims submitted by dependents of an individual who died by homicide. Other interviewees expressed frustration that the CICT consistently spelt their name wrong or used the wrong name for their deceased loved one when communicating with them about their CICT claim. Other interviewees expressed frustration that it did not appear that any particular individual in the CICT was in charge of particular files. This resulted in confusion when applicants or legal representatives telephoned the CICT and a different person would answer the phone and this person would not know where particular files were located or whether particular documentation which had been submitted had in fact been received by the CICT and recorded appropriately. S1, a solicitor with extensive experience of representing applicants at the CICT, summarised their concerns in relation to the case management procedures:

If I was starting practice again in the morning, I might have a better view but your view

is covered by having 30 years knowing that the system hasn't been resourced. I think the staff were demotivated because you've got all these cases and you know your files are in a mess because they are running for too long and people don't respond promptly to your correspondence because you can't respond promptly to theirs [...]. The unmanageability of it is deterring for everyone (S1).

S1 makes a salient point that if the entire CICT process is unmanageable for both applicants and the CICT staff themselves, it is no wonder that there is an overwhelmingly negative attitude towards the CICT. S1 points out that the CICT has been under-resourced for many years, which has undoubtedly contributed to the problems experienced throughout the CICT process.

7.6 Recent Reform Measures at the CICT

In this light, it is important to note that significant improvements have been made in recent years in relation to the CICT process as a whole. In Chapter Six, notwithstanding the problems that remain, I set out how the CICT is now more flexible in relation to the time limit under paragraph 20. VSW1 also points out that it is now easier to get an award of compensation before the conclusion of the criminal trial. Whilst one CICT decision stated that the CICT 'does not require that criminal proceedings be concluded, merely that the incident is reported to AGS,'⁶ a practice developed at the CICT which delayed the finalised CICT decision until the conclusion of the criminal trial. Several interviewees, including VSW1, A1 and B3, understood that it is established practice that a CICT decision will not be forthcoming until after the conclusion of the criminal process. There are also written CICT decisions where it is stated that this is the established practice.⁷ Whilst there are several reasons as to why this practice has developed, including being able to see if offender compensation is paid at the criminal trial, which therefore can be recouped under paragraph 15 of the CICS,⁸ in light of extensive delays in the criminal process in Ireland,⁹ it is to be welcomed that the CICT now conclude the process in advance of the criminal trial concluding in certain circumstances.

Additionally, because of developments in EU law and the increase in judicial reviews against the CICT in recent years, S2 and S4 report that more categories of victim are now applying for compensation at the CICT and the CICT itself are becoming more transparent and speedier in their decision-making processes. FTM2 reports that CICT members and staff regularly undertake training in trauma informed and responsive practices so that their engagement with

⁶ CICS [22]; 51784/06.March.2023.

⁷ 51828/29.October.2022; 23715/13.May.2022; 50153/15.June.2022.

⁸ CICS [15].

⁹ *McFarlane v Ireland* (EctHR 31333/06).

applicants does not cause secondary victimisation. This has occurred since 2021 when additional CICT members were appointed. In this regard, one lawyer describes the approach of CICT members to applicants prior to this time period ‘as mean spirited, snobby, rude [and] a bit holier than thou.’ This lawyer goes on to describe the approach of CICT members since 2021 as different and states that the CICT ‘seems like a different organisation now’ and that the CICT members are now ‘better [...] [and] kinder people [...] [and] more eager to help people’.¹⁰

VSW1 and VSW3 confirm that a different approach is evident and the CICT as a whole are more willing to engage with victims’ rights organisations to improve their approach further. Evidence of improvement was consistently reported by interviewees, especially in relation to how the CICT now treats applicants, particularly on the telephone. VSW1 states that the CICT are now much quicker in replying to correspondence and queries from applicants. Additionally, this interviewee highlights that their own clients have confirmed a change in approach at the CICT:

There is definitely much better [and] improved interaction on the phone with clients [...] and they [are] more sympathetic no matter what they ask [...]. Even the families that had a terrible experience would ring me and say, you know, they’d say to me, ‘I can’t ring them because they’re going to give out or they’re going to be annoyed or they’re going to be upset [...].’ But they would ring me back and then say, ‘God they’ve really changed. They’ve had new people.’ (VSW1).

In this regard, applicants I spoke to as part of this research confirm that when they first submitted their application and in the months after, they found the CICT staff to be unhelpful. However, in recent times, toward the end of the process, these applicants found the CICT staff to be much more helpful and polite. A number of legal practitioners interviewed as part of this research also confirm this change in approach.

Indeed, the DOJ and the CICT have agreed an oversight agreement in respect of the operation of the CICS. The latest oversight agreement confirms that the number of full-time staff at the CICT, as drawn from the DOJ, currently stands at seven.¹¹ This includes an Assistant Principle Officer

¹⁰ Despite these improvements, interviewees report that the renumeration, on the basis of a fixed fee per decision and appeal hearing, of CICT members is still quite low. Whilst some decisions are straightforward and the time involved significantly less than complicated claims, payment does not reflect the substantial amount of work needed to properly decide CICT applications. For example, CICT members are renumerated at €272.39 per CICT meeting; €160.84 per single member decision under the CICS; €235.91 per single member decision under the Prison Officers Scheme and €361.39 for appeal hearings, see CICT, *Annual Report (2019)* 34.

¹¹ CICT, *Oversight Agreement 2024-2025* (2024) [7].

thereby ensuring senior managerial experience directly within the CICT. In 2019, the number of staff was five.¹² The oversight agreement outlines the roles and responsibilities of CICT staff including handling, photocopying and scanning paper files; managing correspondence; assisting members of the public and other stakeholders enquiring about the CICS; preparing files and corresponding with applicants on the completion of applications; sending files to CICT members for decision, organising appeal hearings; communicating outcomes to applicants; and finally, liaising with other stakeholders including AGS in relation to the garda report.¹³ Additionally, the oversight agreement confirms that CICT members should issue 30 decisions per year and take part in eight appeal hearing per year, depending on file allocation. Additionally, when given a file to make a decision on by CICT staff, a first instance decision should issue within one month, whilst an appeal decision should issue within six weeks.¹⁴ Furthermore, the oversight agreement sets out data protection measures,¹⁵ public sector equality and human rights duties,¹⁶ and training commitments.¹⁷ It also mentions a case management system to properly track and record correspondence and documentation.¹⁸ According to the agreement, the DOJ has committed to putting in place a new case management system.¹⁹ Overall, it is clear that the CICT and the DOJ have committed to wide-scale reform of CICT practices, which is to be welcomed.

7.7 Procedural Justice and the CICT

It is difficult to definitely determine the relevant factors as to why the CICT have committed to changing their approach in recent years. Certainly, developments in EU law and recent successful judicial reviews have been factors, along with new CICT staff. There are also the wider governmental and societal changes in relation to DSGBV, trauma-informed practice and victims' rights generally. As set out in Chapter Four, monetary compensation aims to give practical benefits, acknowledgment and agency to victims of violent crime. In order for these aims to be realised, the process through which compensation is accessed must safeguard against secondary victimisation. Indeed, this is a legal obligation under Article 18 of the Victims' Rights Directive.²⁰ In order to prevent secondary victimisation, it is essential that procedural justice is at the core of how state compensation schemes are administered. Procedural justice raises the question of victim satisfaction with the awarded levels of compensation. In this regard, a key concern is whether victims care more about the amount of compensation received or the process which they

¹² 2019 CICT Annual Report (n 10) 5.

¹³ CICT Oversight Agreement (n 11) [3.4].

¹⁴ *ibid* [3.2].

¹⁵ *ibid* [3.9].

¹⁶ *ibid* [3.10].

¹⁷ *ibid* [5].

¹⁸ *ibid* [3.4].

¹⁹ *ibid* [5].

²⁰ Directive 2012/29/EU OJNoL315.14.11.2012.p57.

must go through in order to receive the compensation. Mulder's study examined this question through a survey of victims of violent crime (n = 217) who applied and received a compensation decision as part of the Dutch state compensation system.²¹ Mulder concludes that how an applicant receives compensation is more important than the amount of compensation received. Holder and Daly also come to this conclusion and highlight that 'it is not the precise amount of money that matters, but rather how survivors come to view the amount as being right and fair to them.'²²

Mulder states that the amount of time between the application being submitted and the decision being made is a key factor in determining whether victims are satisfied with the outcome. In this regard, if an applicant felt that the process is 'quick', they are more satisfied with the outcome in comparison to applicants who regard the process as 'slow'.²³ Other procedural factors which lead to increased satisfaction include the number of times in which applicants were in contact with officials administering the compensation scheme. More contact on issues such as the process and outcome of decision-making results in increased levels of satisfaction.²⁴ Research conducted by Kunst et al, also in the Dutch context, demonstrates that overall satisfaction with the state compensation scheme is dependent on positive perceptions from victims on their treatment by employees of the scheme, such as whether or not they were treated with respect.²⁵ Furthermore, positive perceptions in relation to information provision are also important. For example, this might include receiving information on the status of the application.²⁶ If treatment by employees and information provision can be addressed, Kunst et al point out that applicants' prior expectations about the level of compensation they will receive can be better managed, which in turn improves satisfaction levels.²⁷ On this, Kunst et al point to the Dutch scheme's adoption of telephone calls as the primary method of communication with applicants, as opposed to through written correspondence, as an important measure in addressing the question of applicants' expectations.²⁸

7.8 Conclusion

Overall, whilst the substantive rules of the CICT have not changed much, there does appear to

²¹ Mulder (n 5) 81.

²² Holder & Daly (n 4) 40.

²³ Mulder (n 5) 100. This is consistent with other studies on this issue, see Kunst et al (n 3) 3037; O.Smith & J.Galey, 'Supporting Rape Survivors Through the Criminal Injuries Compensation Scheme: An Exploration of English and Welsh Independent Sexual Violence Advisors' Experiences' (2018) 24(9) Violence Against Women 1091,1100.

²⁴ Mulder (n 5) 97-98.

²⁵ Kunst et al (n 3) 3032.

²⁶ *ibid* 3032.

²⁷ *ibid* 3037.

²⁸ *ibid*.

be important improvements in terms of procedural justice. It appears that the CICT has made efforts to improve communication with applicants and practitioners in recent years. There has been a commitment within the CICT to change approach, undertake appropriate training and be more flexible generally with applicants in relation to some provisions of the CICS. In light of Mulder, Kunst et al and Holder and Daly's findings above, recent developments at the CICT are likely to lead to an improvement in overall satisfaction levels with the CICT process as a whole. These developments include reduced delays and more respectful telephone contact. In this regard, the CICT should continue to improve processes, especially in relation to expectation management, information provision and support. The last chapter of this thesis considers specific ways in which this can occur.

8 CHAPTER EIGHT: CONCLUSION

8.1 Introduction

This thesis has examined state compensation for victims of violent crime in Ireland, as provided for under the CICS and within an overarching EU legal framework. In considering the lived experience of individuals who have direct knowledge of the CICT process, this thesis contributes to legal and societal understandings of the place of victims in the criminal justice system. Recognising that no one victim has the same experience, becoming a crime victim puts an individual in an inherently vulnerable position. Victims experience the injustice of being subjected to a violent crime and the pain and suffering that results in terms of physical and non-physical injuries.¹ There is then the process, if a victim so decides, of reporting the criminal incident and engaging with AGS in relation to the crime. There then is the waiting involved in terms of the investigative process, prosecutorial decisions, hearing dates and the criminal trial itself. Of course, there is the ordeal of going through the criminal trial, giving evidence and being cross-examined. Perhaps the offender entered a guilty plea at the last minute or there is a delay for some particular reason. All the while, the victim must sit in a courtroom or wait around in the vicinity of the courtroom and be patient as the wheels of justice turn. Victims might have access to emotional support during this time from family, friends or victim support workers or volunteers, or they might not have access to such supports. There is the financial expense involved in each stage described so far and that's only in terms of the criminal process. Outside the criminal process, there are the constant GP visits, hospital appointments and perhaps counselling sessions if they can be accessed. If a victim cannot continue to work because of their injuries, there is a need to engage with the Department of Social Protection and other state agencies about income supports and housing payments. Victims of domestic violence and abuse may be homeless and living in a refuge with their children. Substance misuse may follow after experiencing violent crime which exacerbates health and social problems. Relationships with family and friends may breakdown and victims may be quite alone in dealing with the multitude of problems that flow from victimisation.²

All of this may run in parallel with the state compensation process. If victims are fortunate enough to have their rights respected and are properly informed about the CICT's existence, many of the problems associated with the criminal process also present in the context of the CICT, and some others besides. This puts CICT staff and decision-makers in a difficult position and makes their role all the more important. Of course, victims must navigate a lengthy application form and an extremely strict three month time limit. If they do not submit on time, victims have up to two

¹ J.Turanovic & T.Pratt, *Thinking about Victimisation: Context and Consequences* (Routledge 2024) 5.

² *ibid.*

years to get their application submitted but must demonstrate that there are exceptional circumstances to justify why they were late. Once within the system, victims must give all reasonable assistance to the CICT, they must prove there was indeed a crime of violence which caused the injuries and if relevant, they must overcome the hurdles of the part-responsibility rule and the conduct, character and way of life rule. Furthermore, whilst improvements have been made, there are the delays involved in the process, rude and unhelpful interactions with the CICT and an absence of compensation for non-material damages. Alongside dealing with the CICT, the wider criminal justice system, and recovering from their injuries, victims must go about their lives, care for their families and respond to the normal challenges that arise in life.

According to Clements, legal problems encountered by people who live with disadvantage ‘don’t come in single discrete packages [...] but are multiple, interlinked and both concurrent and successional.’³ Clements’ references a number of circumstances where such ‘clustered injustices’ occur including individuals living in poverty, people with a disability, migrants, carers and victims of domestic violence.⁴ I submit that Clements’ arguments can be applied generally to all victims of crime and specifically arise in the context of state compensation frameworks where many of the ‘clustered injustices’ experienced by victims meet and are exasperated. Up until relatively recently, and in many respects still at present, the CICT process involves several ‘clustered injustices’ where at every stage of the CICT process, there is a barrier which CICT applicants must overcome. State compensation schemes are intended to assist victims, but in many respects these barriers create further injustices for an already vulnerable group of individuals. In this manner, the legal framework benefits those victims who have the capacity and victim capital to tackle each barrier as it comes and disadvantages those who do not.⁵

In this concluding chapter, I reflect on the key findings of this thesis concerning state compensation, the many ‘clustered injustices’ faced by victims in this process, along with broader questions in relation to victims’ rights and the place of the victim in the justice system. I also consider future research opportunities and the implications of this research in relation to law reform and policy development. Finally, I discuss the contribution of this thesis to the field. First, however, I provide an overview of the thesis and the key findings set out in each chapter.

8.2 Overview of Thesis and Key Findings

This thesis commenced in Chapter One where I set out the socio-legal methodology employed in this research. The socio-legal approach I adopted involved an initial desk-based analysis of the

³ L.Clements, *Clustered Injustice and the Level Green* (Legal Action Group) 2.

⁴ *ibid* 125-142.

⁵ *ibid* 16.

relevant legal and associated policy materials. These included the CICS, domestic legislation pertaining to victims' rights, EU legislation and policy materials relevant to the field, Irish and comparative caselaw, 685 published CICT decisions, archival materials from the NAI, along with other materials. Following this desk-based research, I also interviewed 21 individuals with experience of the CICT process including victims of crime, legal and victim support practitioners and former CICT decision-makers. Chapters Two and Three primarily set out the desk-based findings and Chapters Four to Seven then considered a number of thematic issues pertaining to state compensation in Ireland based on the interviews and the CICT decisions.

In Chapter Two, I examined the background and context in relation to state compensation for victims of violent crime, along with the wider victims' rights architecture, comparatively and in Ireland. Here, key findings included deference to the Irish Government on the part of the Irish Superior Courts in relation to the operation of the CICT. Furthermore, this chapter set out that the original conception of state compensation in Ireland and comparatively was dominated by a desire to be seen to do something for victims, whilst also limiting the financial exposure of the state. In this manner, strict procedural and eligibility criteria were put in place which limited state compensation to 'deserving' victims only. The question of who is deemed a 'deserving' victim is decided with reference to conceptions of social solidarity and sympathy with the predicament of innocent crime victims, grounded in conceptions of the welfare state which offers welfare in return for contribution, and the political capital available from supporting such victims in their time of need.⁶

I then explored the role of the EU concerning state compensation and its impact on Ireland in Chapter Three. Here, the historical, constitutional, legislative and judicial contexts in relation to the EU's provision for victims' rights was considered. In particular, the CJEU's judgment in *BV* and how this judgment has impacted the operation of the CICT in Ireland was analysed.⁷ Recent attempts at reform in the field of compensation were also examined at EU and Irish levels. Key findings in this chapter include that, despite the European Commission's focus on compensation from the offender in the criminal trial,⁸ there is still a need for comprehensive EU minimum standards in respect of state compensation schemes. Be that as it may, a further finding is that the one minimum standard that is present, i.e., Article 12(2) of the Compensation Directive and the requirement to put in place 'fair and appropriate' state compensation,⁹ is positively improving

⁶ K.Buck, 'State Compensation to Crime Victims and the Principle of Social Solidarity' (2005) 13(2) European Journal of Crime 148; D.Miers, *State Compensation for Criminal Injuries* (Blackstone 1997) 10.

⁷ C-129/19 *BV* ECLI:EU:C20:566.

⁸ European Commission, *Proposal for a Directive Amending Directive 2012/29/EU* COM(2023) 424final29.

⁹ Directive 2004/80/EC OJNoL261.6.8.2004.p15.

access to state compensation in Ireland. As a result of the *BV* judgment, there is now a right to state compensation for all victims of violent crime in the EU. The development of such a right will certainly continue to improve access to state compensation for victims going forward.

Keeping in mind that the CJEU are likely to provide further guidance on the scope of this EU right to state compensation in the future, Chapters Four to Seven set out a number of thematic issues, based on the qualitative semi-structured interviews and the CICT decisions, which identify specific areas for improvement in relation to the CICT itself. Chapter Four examined the question of why the state provides compensation to victims of violent crime. This chapter highlighted that state compensation has several aims including offering practical benefits to victims and providing them with a degree of acknowledgement and agency in the aftermath of criminal victimisation. Additionally, this chapter demonstrated, in line with the relevant literature,¹⁰ that whilst state compensation cannot fully return the victim to their former position, compensation affords victims a level of ‘solace’ which assists them to move on with their lives. Further to these positive aims of state compensation, this chapter examined the negative associations of compensation and the limited scope of state compensation in an Irish context, particularly the absence of compensation for non-material damages and the lack of long term non-monetary supports for victims. Overall, this chapter determined that the limited scope of the CICS is not being adequately explained to victims, resulting in ill-managed expectations and secondary victimisation.

Chapter Five reflected on the extent to which state compensation takes into account the social construction of victimhood. First, this chapter considered a number of victim-blaming eligibility criteria in operation under the CICS. This chapter found that these eligibility criteria seek to distinguish between Christie’s ‘ideal’ and ‘non-ideal’ victim.¹¹ In this manner, these rules engage in victim-blaming. Whilst such an approach is entirely inappropriate in some respects, in others a more nuanced consideration of the role of state compensation and its credibility from the point of view of the public at large is necessary. Chapter Five, therefore, considered how these victim-blaming provisions can be justified and their impact minimised through appropriate safeguards and limitations. It also examined the role of AGS and victim capital at the CICT. This chapter highlighted concerns that the CICT relies too much on evidence supplied by AGS in deciding whether key procedural and eligibility criteria apply in individual claims. It emphasised that the

¹⁰ R. Holder & K. Daly, ‘Recognition, Reconnection, and Renewal: The Meaning of Money to Sexual Assault Survivors’ (2018) 24(1) International Review of Victimology 25, 28.

¹¹ N. Christie, ‘The Ideal Victim’ in E. Fattah (ed), *From Crime Policy to Victim Policy* (Palgrave 1986) 18-19.

level of economic, social and cultural capital possessed by victims varies from case-to-case,¹² which risks evidence from AGS going unchallenged and uncontextualised and state compensation applications being unfairly denied. This chapter argued that oral hearings should always take place where these procedural and eligibility criteria are in dispute.

Chapter Six then looked at the consequences of criminal victimisation and the extent to which state compensation understands these consequences and accounts for them. In examining the three month time limit under paragraph 20 of the CICS, the reasonable assistance rule under paragraph 10 of the CICS and the fact that victims struggle to access legal assistance and victim support in the CICT process, this chapter concluded that the CICT does not properly take into account the trauma inflicted on victims as a result of violent criminal victimisation. Specifically, this chapter considered the hypervigilance, reexperiencing and avoidance types of behaviours which victims engage in after a violent crime.¹³ It concluded that the procedural rules underpinning the CICT and absence of proper supports for victims fails to take on board these types of behaviours. In this manner, the CICT fails to be trauma-informed and responsive in relation to the consequences of criminal victimisation.

Finally, Chapter Seven measured procedural justice at the CICT. This chapter examined shortcomings in how applicants are treated by the CICT. These shortcoming include the presence of significant delays in processing times and decision-making, along with poor telephone manner and communication procedures. This chapter also evaluated recent improvements in how victims are treated in the process, the reasons as to why these improvements have been made and the effect, if any, on victim satisfaction levels with the CICT. Overall, this chapter concluded that reducing delays, improving communication procedures and better managing victims' expectations all contribute to achieving procedural justice for victims of crime at the CICT.¹⁴

8.3 Future Research Opportunities

It is appropriate to reflect on some of the limitations of this thesis and identify areas for future research. One limitation which is worth noting in the context of this thesis relates to the materials relied on. Whilst I had access to 21 individuals with experience of the CICT process, 685 published CICT decisions and a range of other legal and policy materials, I did not have access to individual files relating to particular CICT claims. Access to such files, as researchers have had

¹² M.Hall, *Victims of Crime: Construction, Governance and Policy* (Palgrave 2017) 245.

¹³ D.Kilpatrick & R.Acierno, 'Mental Health Needs of Crime Victims: Epidemiology and Outcomes' (2003) 16(2) *Journal of Traumatic Stress* 119.

¹⁴ M.Kunst et al, 'Performance Evaluations and Victim Satisfaction With State Compensation for Violent Crime: A Prospective Study' (2017) 32(19) *Journal of Interpersonal Violence* 3027.

in other jurisdictions,¹⁵ would prove extremely useful in terms of analysing individual claims from start to finish and how the CICT takes on board particular aspects of a claim. Additionally, it would allow me or another researcher to actually view submitted garda reports and be able to determine the level of detail contained in relation to how AGS present the criminal incident to the CICT and information in relation to an applicant's previous convictions. This would prove extremely beneficial in terms of clarifying the role of the garda report at the CICT. Whilst of course protecting the anonymity of individual CICT claimants, future research on this point, in collaboration with the CICT and the DOJ, would be welcome. Further research would also be welcome on paragraph 22 of the CICS which requires applicants to co-operate with AGS in respect of the investigation and prosecution of the offence.¹⁶ This was not an issue which was discussed in this thesis but certainty warrants further attention.

Separately, and notwithstanding Maguire's research where District Court judges were interviewed on sentencing practices, including the relevancy of compensation,¹⁷ in light of the European Commission's 2023 Proposal focusing on offender compensation in criminal trials,¹⁸ future research should consider the scope and practice of offender compensation in criminal trials in Ireland. This issue was alluded to throughout this thesis but did not form part of the primary focus. Indeed, the issue was discussed by some research participants but for reasons of space, this was not set out in this thesis. Consideration should be given to conducting court observations to investigate the scope of practices in relation to compensation. Future research should also examine the victims' rights competencies under the EU Treaties to further investigate the permissible scope of EU action. Other issues or areas to consider as part of future research include empirical research on state compensation practices in other EU Member States. Whilst some research has been conducted on this point,¹⁹ further and more specific research is necessary. Further empirical research is also required in Ireland and comparatively on different aspects of victims' rights including in relation to the right to information, the right to legal aid, the right to victim support, along with other provisions of victims' rights.

¹⁵ M.Kunst et al, 'Prevalence and Predictors of Posttraumatic Stress Disorder Among Victims of Violence Applying for State Compensation' (2010) 25(9) *Journal of Interpersonal Violence* 1631.

¹⁶ CICS [22].

¹⁷ N.Maguire, *A Study of District Court Judges Views on Sentencing and the Sentencing of Relationship Violence* (SETU 2024).

¹⁸ European Commission's 2023 Proposal (n 8).

¹⁹ See J.Burchett & A.Weyembergh, *Stronger Victims' Rights in EU Law? Assessment and Prospects* (Hart 2025); H.Soleto Muñoz et al, 'Ineffectiveness of the Right to Compensation for Victims of Sexual Violence: A Comparison Between Five EU Member States' (2024) 4 *International Criminology* 93.

8.4 Law Reform and Policy Priorities

Based on the findings set out in this thesis, there are a number of legal and policy reforms which should be prioritised at both Irish and EU levels. These include, but are not limited to, the points discussed below. In this regard, it should be said that these points intend to provide an overview of the law reform and policy priorities. Specific and more detailed analysis is necessary as the law reform process in Ireland continues and both the LRC and the DOJ publish their respective plans for CICT reform.

First, at an EU level, I argue that comprehensive minimum standards in respect of state schemes should be introduced as the European Commission intended to do originally prior to the passage of the Compensation Directive in 2004. Second, in Ireland, the CICS should be placed on a statutory footing. Importantly, the procedural and eligibility requirements should be set out in the primary legislation and not in any statutory instrument coming into force subsequently. In Britain, the Criminal Injuries Compensation Act 1995 sets out the broad parameters in respect of the applicable scheme.²⁰ However, the procedural and eligibility criteria and the substantive rules are set out under a statutory instrument.²¹ In order to give certainty to victims and ensure that criteria cannot be further restricted by future Ministers for Justice, it is important that the bulk of the CICS itself is set out in primary legislation.

Third, related to the question of legislation, the CICT should be abolished and replaced with an independent statutory agency to administer the CICS. The DOJ, the Injuries Resolution Board and the State Claims Agency are not suitable structures, rather a specialist body is needed. This agency should be genuinely independent of the Irish Government and the DOJ in terms of functions, procedures and funding. In time, such an agency could function as a national victim's office to bring together monetary and non-monetary forms of compensation, as a 'one stop shop' for all victims of crime.²² Within such an agency, a trauma-informed and responsive culture can develop which takes into account the consequences of victimisation and develops best practice in relation to communicating with and supporting victims. Alongside such an agency, it is important that independent monitoring functions operate which could include a national victims' ombudsman or commissioner.

Fourth, the application process should be simplified. When a victim applies to the CICT, or whatever body or agency replaces the CICT, a straightforward notification from the victim to the

²⁰ Criminal Injuries Compensation Act 1995.

²¹ D.Miers, *Criminal Injuries Compensation: State and Offender Compensation for Violent Crime* (OUP 2018) [1.27].

²² LRC, *Compensating Victims of Crime* (CP672022) [6.29].

CICT via the CICT's website should suffice. Here the victim would confirm that they suffered an injury as a result of a violent crime and on receiving this notification, the CICT would contact the victim and support them in filling out the application form. Such support would be available from the CICT throughout the claims process. Victim support should be available independent of the CICT where required and funded legal assistance would be available in serious cases.

Fifth, compensation should be available in respect of both material and non-material damages. Caps set at fixed or tariff amounts can be imposed but only at appropriate upper limits and having considered that public health and social care services are not sufficient in Ireland at present to meet the needs of victims of crime. Importantly, as set out in Chapter Four, the preliminary views expressed by the DOJ in the Working Group Report in respect of caps on material damages should not be implemented.²³

Sixth, explicit provision for the retrospective abolition of the 'same roof' rule should be provided for. In Northern Ireland, the Court of Appeal held that the prospective nature of the Northern Ireland scheme, as it relates to victims of domestic abuse, was unlawful having regard to Article 14 of the ECHR and Article 1 of the First Protocol of the ECHR.²⁴ In response to this important judgment, the NIDOJ announced that the scheme would be amended so as to abolish the rule retrospectively. In this regard, victims who were previously excluded from the scheme were actively encouraged to apply to the amended scheme within a certain prescribed time period of two years from the date of the amendment. A similar measure was also taken in Britain in respect of the scheme there.²⁵

Seventh, the part-responsibility rule and the conduct, character and way of life rule should be amended. I argue that the provisions of the European Commission's 2002 Proposal is a good place to start.²⁶ Article 7 stated that compensation could be 'reduced or refused' by virtue of the applicant's behaviour but only if this behaviour is in 'direct relation to the event that caused the injury or death.'²⁷ There is a place for an explicit reference in the CICS to spent convictions under the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, as amended.²⁸ In this regard, only very serious criminal convictions or those directly related to the victimising event

²³ DOJ, *Report of the Working Group to Examine Matters Relating to the Criminal Injuries Compensation Scheme* (2020).

²⁴ *Meehan v DOJ* [2018] NICA 42.

²⁵ NIDOJ, 'Justice Minister Announces Changes to the Criminal Injuries Compensation Scheme' (9 June 2020); Ministry of Justice, 'Compensation Rule Abolished Allowing Victims to Reapply' (13 June 2019).

²⁶ European Commission, *Proposal for a Council Directive* COM(2002) 562.

²⁷ *ibid.*

²⁸ Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, as amended.

should be included within the remit of the CICS. Additionally, where the rule is in dispute, an oral hearing should always be held.

Eight, and finally, the time limit under paragraph 20 is also in need of amendment. I argue that the provisions of the European Commission's 2002 Proposal should be followed.²⁹ Here, Article 13(1) stated that time limits for submitting applications cannot be 'less than two years from the end of the police investigation or the end of the criminal proceedings instituted as a result of the crime, whichever comes latest.'³⁰ If investigations or proceedings have not started, then the two year period 'shall run from the date of commission of the crime.'³¹ Article 13(2) then stated that exceptions to the time limit, where victims 'could not have been reasonably expected to submit the application within the prescribed period', should be provided for.³² Importantly, there should be no upper time limit, as presently exists, on a decision-makers discretion to admit a late application. I submit that exceptions to the limit must obligate the decision-maker to make an assessment of the applicant's individual circumstances to determine whether these reasonably resulted in the application being submitted after the time limit. It should not be necessary to demonstrate medical proof of these circumstances. Where a victim delays due to the trauma inflicted on them because of the crime, this should be presumed by the CICT. In this regard, the reasonable assistance rule should be abolished or at the very least amended to include obligations on the CICT to properly support applicants.

8.5 Contribution of this Thesis and Concluding Remarks

Reflecting on the socio-legal methodology employed, along with the findings set out in this thesis, and taking into consideration the need for intellectual humility and an awareness that qualitative research is never complete,³³ I am confident that what I did and what I am claiming in this thesis provides a comprehensive and coherent account of how victims access state compensation in Ireland. Initially, this thesis comprehensively examined the available legal materials including the CICS, 685 CICT decisions, material from the NAI, along with victims' rights legislation and policy in Ireland and the EU. Subsequently, it was necessary to go beyond these materials and consider lived experience of the CICT process in order to comprehensively answer the research question and the sub-research questions which I developed. These questions all focus on understanding how victims practically access state compensation in an Irish context and how this

²⁹ European Commission's 2002 Proposal (n 26).

³⁰ *ibid.*

³¹ *ibid.*

³² *ibid.*

³³ R.Hoskin, 'Femme Praxis: Using Femme Theory to Foster Vulnerability within Research Design and Institutions' in B.Clift et al (eds), *Qualitative Researcher Vulnerability: Negotiating, Experiencing and Embracing* (Routledge 2023) 193; V.Braun & V.Clarke, *Thematic Analysis: A Practical Guide* (Sage 2022) 148.

access can be improved. In order to answer these questions, I decided that a perspective external to the law was required, hence the inclusion of lived experience from victims, practitioners and former decision-makers. In examining lived experience and relating this back to the relevant legal framework, the field of victimology was an appropriate yardstick in which to consider lived experience and evaluate the CICT. Victimology provided important lessons in this thesis in relation to the expectations of victims, the social construction of victimhood, the consequences of criminal victimisation and procedural justice. In researching the rights of victims of crime, a critical realist ontological approach and a contextualist epistemological outlook allowed me to take into consideration a broad assortment of perspectives on how state compensation is currently provided for in Ireland and the measures needed to bring about positive legal change and improved access for victims.

Taking these ontological and epistemological positions, and through evaluating the CICT with reference to lived experience, interpreted through the lens of victimology, this thesis make a number of novel and original contributions in relation to the law, the role of the state, victims' rights and the importance of state compensation. In providing compensation in respect of criminally inflicted injuries, which must be reported to AGS,³⁴ state compensation is inherently connected to the criminal process. It is also linked to the civil process in that state compensation schemes were originally established due to the inability of offenders to pay compensation.³⁵ At the same time and taking into consideration compensation orders in the criminal trial which are intended to blend, in a limited manner, criminal and civil processes, because compensation is paid by the state and not the offender, state compensation is also distinct from the criminal and civil justice systems. In this manner, state compensation is primarily reparatory, but also punitive in that it excludes certain individuals as a collateral consequence of holding a criminal record.³⁶ It is also somewhat distributive in nature and can be justified with reference to the distinct harm which society ascribes to violent criminal behaviour, although certainty the distributive nature of state compensation is practically curtailed by the design and operation of state schemes.³⁷ In this regard, state compensation acknowledges and provides a measure of justice for victims. Importantly, this measure of justice forms part of a broader architecture of victim support, healthcare and social welfare provision. States, therefore, and Ireland, in particular, whilst not

³⁴ CICS [22].

³⁵ M.Fry, 'Justice for Victims' (1959) 8 Journal of Public Law 191,191-192.

³⁶ L.Bradford-Clarke et al, 'When "Ideal Victim" Meets "Criminalised Other": Criminal Records and the Denial of Victimisation' (2022) 69 Probation Journal 353, 369.

³⁷ A.Ashworth, 'Punishment and Compensation: Victims, Offenders and the State' (1986) 6(1) Oxford Journal of Legal Studies 86, 107. For more information on the distributive nature of reparations, see J.Gallen, *Transitional Justice and the Historical Abuses of Church and State* (CUP 2023) 197-198.

fully and explicitly attuned to the underlying goals of the established legal mechanisms, ‘do good’ by victims in providing state compensation.

Despite the positive underlying aims of state compensation and indeed wider victims’ policy, this thesis demonstrates that the state struggles to live up to its aspirations in providing for the needs and respecting the rights of victims. State compensation schemes constitute one element of a fragmentated state response to criminal victimisation and the ‘clustered injustices’ that result in and flow from violent crime.³⁸ Whilst a key finding from this thesis is that the newly developed EU right to state compensation has and will continue to improve access to state compensation in EU Member States going forward, I am sceptical that such a rights-based approach will bring about comprehensive change in the underlying foundation of state compensation and how victims are dealt with generally by the state. In recent years, since the passage of the Victims’ Rights Directive in the EU,³⁹ but also in other contexts also, there has been a shift from a needs-based approach to a rights-based conception of victimisation.⁴⁰ Whilst the language of rights is of course important and should not be understated, it also should not be overstated. Limitations are likely to be present due to restricted funding, meaning that procedural and eligibility criteria will operate to exclude certain categories of crime victim.⁴¹ Regardless of what ‘rights’ victims have and the enforcement mechanisms required to realise such rights, challenges in relation to victim-blaming, victim capital, the consequences of victimisation and procedural justice are likely to remain as state compensation frameworks seek to limit the financial exposure of the Exchequer. Hall, writing in the British context, argues that the limitations inherent in state compensation schemes reflect broader cultural attitudes about crime and victimisation which shift over time.⁴² According to Hall, whatever policy directions the government go towards, be that in relation to state compensation or other areas, ‘such policies will inevitably be adapted to suit the contemporary cultural attitudes and meanings attached to different victims and different forms of victimisation.’⁴³ This will result in inherent limitations in the scope of state compensation unless these underlying cultural attitudes are challenged.

Herein lies the challenge for the law reform process in Ireland in relation to the CICS. How can the CICS take account of the causes and consequences of victimisation and victimhood, whilst also ensuring the financial viability of the CICS? This is a challenge experienced across the EU,

³⁸ Clements (n 3).

³⁹ Directive 2012/29/EU OJ No L315.14.11.2012, p57.

⁴⁰ J. Milquet, *Strengthening Victims’ Rights: from Compensation to Reparation* (European Commission 2019); FRA, *Victims’ Rights as Standards of Criminal Justice: Justice for Victims of Violent Crime Part I* (2019).

⁴¹ Miers (n 21) [1.01]-[1.02].

⁴² Hall (n 12) 215.

⁴³ *ibid* 299-300.

the UK, Australia and other jurisdictions. Whilst access to state compensation has indeed been improved as a result of EU law developments, in order to bring about fundamental change, reform has to tackle the underlying challenges identified in this thesis. In order for this to occur, pragmatic but imaginative solutions are needed to ensure that as many previously excluded categories of victim are included within the parameters of any reformed CICS. Any proposed restrictions on access to state compensation need to be scrutinised and minimised as much as possible. Properly detailed guidance for decision-makers and applicants should be drafted and discretion should be exercised according to such guidance. As part of broader changes to information provision and support for victims in the criminal justice system, legal assistance and enhanced support for victims throughout the CICS process should be provided. In all dealings with victims, state officials should be properly trained, supported and resourced to deliver a proper and respectful service to victims. It is anticipated that the many years of frustration experienced by CICT applicants is now being met with a genuine hope that positive change is coming. Ultimately, increased political will and additional financial resources are needed to continue the progress that has been made to date and ensure that as many victims as possible have effective access to state compensation.

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Appendices

Appendix A: Criminal Injuries Compensation Scheme

General

1. The Criminal Injuries Compensation Tribunal established under Paragraph 16 of the Scheme may pay compensation in accordance with this Scheme in respect of personal injury where the injury is directly attributable to a crime of violence, or, as provided for in Paragraph 4, to circumstances arising from the action of the victim in assisting or attempting to assist the prevention of crime or the saving of human life. The injury must have been sustained within the State or aboard an Irish ship or aircraft. Arson and poisoning will be regarded as coming within the scope of the expression “crime of violence” and, in determining whether any act is a crime for the purposes of the Scheme, the Tribunal will not take account of any legal immunity which the person who inflicted the injury may have by reason of his mental health, his youth or otherwise. The word “injury”, as used in the Scheme, includes a fatal injury.

2. The Tribunal will be entirely responsible for deciding in any particular case whether compensation is payable under the Scheme, and, if so, the amount. There will be no appeal against or review of a final decision of the Tribunal.

Persons who may claim compensation under this Scheme

3. The Tribunal will consider claims for compensation made by or on behalf of;

(a) the person who sustained the injury (the victim);

(b) any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred any expenses as a result of the victim’s injury;

(c) where the victim has died as a result of the injury, any dependent of the victim or, if he has no dependent, any person who incurred expenses as a result of his death;

(d) where the victim has died otherwise than as a result of the injury, any dependent of the victim.

4. The Tribunal will also consider claims in respect of injury received in the following circumstances:

(a) because of, or in the course of, the victim’s coming to the assistance of a member of the Garda Síochána

(i) because of an unlawful attack upon the member, or

(ii) because the member was attempting to prevent a crime or to take a person into custody, or

(iii) in the course of a riot, or a disturbance or threatened disturbance of the peace, or

(iv) in the course of an attempt to rescue a person in custody, or

(v) because the member was engaged in saving a human life;

(b) because of, or in the course of, attempting to prevent a crime in a public place;

(c) because of, or in the course of, attempting to prevent, in a public place, the escape of a person who had committed a crime, or the rescue of a person in custody;

(d) because of, or in the course of, attempting to save a human life.

5. If the injury is inflicted in the circumstances set out in the Scheme and any person would be entitled to claim compensation (whether statutory or non-statutory) otherwise than under the Scheme for the injury, he will not be prohibited from also claiming compensation under the

Scheme but the Tribunal will decide the claim on the basis that no payment under the Scheme should result in compensation being duplicated and may accordingly decide either to make no award or to make a reduced award and may, moreover, decide that an award will be subject to conditions as to its repayment in whole or in part in the event of compensation being subsequently received from another source.

Nature and extent of compensation

6. Subject to the limitations and restrictions contained elsewhere in this Scheme, the compensation to be awarded by the Tribunal will be on the basis of damages awarded under the Civil Liabilities Acts except that compensation will not be payable

- (a) by way of exemplary, vindictive or aggravated damages;
- (b) in respect of the maintenance of any child born to any victim of a sexual offence.
- (c) in respect of loss or diminution of expectation of life;
- (d) where the victim has died, for the benefit of the victim's estate, or
- (e) in so far as injuries sustained on or after 1 January, 2006 are concerned, with the exception of fatal cases, in respect of pain and suffering. In fatal cases, the maximum award for compensation for pain and suffering is limited to the maximum amount set in any Statutory Instrument made pursuant to section 49 (1A) of the Civil Liability Act 1961 as amended.

7. Where the victim has died otherwise than as a result of the injury the Tribunal may award compensation in respect of loss of earnings, expenses and liabilities incurred before the death but only to a dependent who would, in the opinion of the Tribunal, otherwise suffer hardship.

8. Compensation will be by way of a lump sum payment, rather than a periodical pension, but it will be open to the Tribunal to make an interim award and to postpone making a final award in a case in which a final medical assessment of the injury is delayed.

Limitation and restriction of compensation

9. No compensation will be payable unless the Tribunal is satisfied that the injury is such that compensation of not less than €500 should be awarded.

10. No compensation will be payable to an applicant who has not, in the opinion of the Tribunal, given the Tribunal all reasonable assistance, in relation to any medical report that it may require, and otherwise.

11. No compensation will be payable in respect of injuries inflicted in a traffic offence except in a case where there has been, in the opinion of the Tribunal, a deliberate attempt to run down the victim.

12. No compensation will be payable where the Tribunal is satisfied that the victim was responsible, either because of provocation or otherwise, for the offence giving rise to his injuries and the Tribunal may reduce the amount of an award where, in its opinion, the victim has been partially responsible for the offence.

13. No compensation will be payable where the Tribunal is satisfied that the conduct of the victim, his character or his way of life make it inappropriate that he should be granted an award and the Tribunal may reduce the amount of an award where, in its opinion, it is appropriate to do so having regard to the conduct, character or way of life of the victim.

14. Compensation will be reduced by the value of the entitlement of the victim or claimant to social welfare benefits payable as a result of the injury and will be reduced, to the extent determined by the Tribunal, in respect of the entitlement of the victim to receive, under his conditions of employment, wages or salary while on sick leave.

15. The Tribunal will deduct from the amount of an award under this Scheme any sums paid to or for the benefit of the victim or his dependants by way of compensation or damages from the offender or any person on the offender's behalf following the injury.

Finance and administration

16. The Scheme will be administered by the Criminal Injuries Compensation Tribunal, the members of which will be appointed by the Minister for Justice. It will consist of a Chair and 13 ordinary members. The Chair and each member will be either a practising barrister or a practising solicitor. The members of the Tribunal will act on a part-time basis but they will be paid fees for work done on a basis to be determined by the Minister for the Public Service.

17. Compensation will be payable out of funds made available to the Tribunal out of moneys provided by the Oireachtas. [See Annex.]

18. The Tribunal will submit annually to the Minister for Justice a full report on the operation of the Scheme together with their accounts. The report and accounts will be laid before both Houses of the Oireachtas. In addition, the Tribunal may, in connection with its annual report or otherwise, publish such information concerning the Scheme and decisions in individual cases as may, in its opinion, assist intending applicants for compensation.

Procedures

19. The Tribunal will be free to draw up and publish any instructions it considers necessary regarding the procedure for administering the Scheme. However, these instructions will be consistent with the provisions of the Scheme and with the general intention that the administration of the Scheme and, in particular, proceedings before the Tribunal, should be informal.

20. Applications should be made as soon as possible but, except in circumstances determined by the Tribunal to justify exceptional treatment, not later than three months after the event giving rise to the injury. No applications may be accepted by the Tribunal where the event giving rise to the injury took place more than two years prior to the date of application.

20A. In the case of claimants criminally injured after 30 June 2005 and before 20 April 2021, no application may be accepted by the Tribunal after 30 January 2025.

21. Applications should be made on the Tribunal's application form. This will be obtainable from the Tribunal's website or from the Secretary to the Tribunal.

22. To qualify for compensation it will be necessary to indicate to the Tribunal that the offence giving rise to injury has been the subject of criminal proceedings or that it was reported without delay to the Gardaí or to the Garda Síochána Ombudsman Commission (GSOC) in any case where the crime is alleged to have been carried out by a member of An Garda Síochána. However, the Tribunal will have discretion to dispense with this requirement where they are satisfied that all reasonable efforts were made by or on behalf of the claimant to notify the Garda Síochána or the GSOC as the case may be, of the offence and to cooperate with them.

23. The Tribunal's staff will process applications in the first instance and may seek all relevant information as to the circumstances of the injury either from the applicant or otherwise.

24. A decision by the Tribunal on a claim may, in the first instance, be taken by a duly authorised officer of the Tribunal where the amount claimed does not exceed €3,000. Where the claim is for a greater sum than €3,000 or where the claimant is not satisfied with a decision by that officer, the decision will normally be taken by one member of the Tribunal. However where a decision involves an award of €75,000 or more, that decision will be taken by three Tribunal members. The Tribunal will have discretion to hear any claim at a hearing before three members of the Tribunal and a person who is dissatisfied with a decision of first instance given by one member or three members as the case may be, may also have his claim so heard. In the latter case the member or members who gave the initial decision will not be amongst the three members of the Tribunal present at the hearing. Apart from an appeal by an applicant against a decision of a duly

authorised officer or against a decision of first instance given by one member or three members as the case may be, there will be no appeal against a decision of the Tribunal.

25. The proceedings at the hearing of the Tribunal will be by way of a presentation of his case by the applicant who will be entitled to call, examine and cross examine witnesses. It will be for the claimant to establish his case. A member of the Tribunal's staff may make submission to the Tribunal on the case and will also be entitled to call, examine and cross examine witnesses. All information before the Tribunal will be available to the applicant.

26. An applicant may be accompanied by his legal adviser or another person but the Tribunal will not pay the costs of legal representation.

27. The Tribunal may, at its discretion, pay the necessary and reasonable expenses of witnesses.

28. Hearings will be in private.

29. The decisions of the Tribunal, appropriately redacted to remove personal data, may be made publicly available.

30. The standard of proof which the Tribunal will apply to a determination of any claim will be the balance of probabilities.

31. The Tribunal will be entitled to make any arrangements which it considers desirable for the administration of money it awards as compensation.

Annex

Payment of awards by the Tribunal

Applicants should note that the budgetary subhead under which the monies awarded under the Scheme are provided has been designated by Government as a “cash-limited grant scheme”.

This means that the Tribunal has no capacity or authority to pay out more funds in any one year than has been voted by the Dáil. Thus, if the Tribunal's funding becomes exhausted before the end of a financial year it has to wait until the next financial year, when it is again voted funds, before making any further payments to applicants.

Government Accounting Procedures and Practices provide the following explanation of cash-limited grant schemes:

Cash-limited Grant Schemes. C3 – Grants and Grants-in-Aid

The exercise of virement to create or increase a cash-limited grant Scheme is not permissible. The ambit of a Vote that contains a cash-limited grant scheme includes a reference to the fact that the individual subhead for the scheme is designated “cash-limited”.

The term “cash-limited” means that the funds available for a particular scheme for the year will be limited to the cash amount specified in the Estimates allocation and so entitlement to payment in the year under the scheme will be contingent on the availability of funds. In cases where a scheme is “cash-limited”, the government can decline to take a Supplementary Estimate to increase the subhead allocation. Departments administering such schemes should clarify in advance to applicants that the relevant scheme is cash limited.

Appendix B: Confirmation of Ethical Approval

Oliscoil Chathair Bhaile Átha Cliath
Dublin City University



Prof Yvonne Daly
School of Law and Government

19th April 2023

REC Reference: DCUREC/2023/034

Proposal Title: Criminal Injuries and the role of the state: A theoretical, comparative, and empirical analysis of state-funded compensation for victims of violent crime.

Applicant(s): Prof Yvonne Daly, Mr Liam O'Driscoll

Dear Colleagues,

Thank you for your application to DCU Research Ethics Committee (REC). Further to full committee review, DCU REC is pleased to issue approval for this research proposal.

DCU REC's consideration of all ethics applications is dependent upon the information supplied by the researcher. This information is expected to be truthful and accurate. Researchers are responsible for ensuring that their research is carried out in accordance with the information provided in their ethics application.

Materials used to recruit participants should note that ethical approval for this project has been obtained from the Dublin City University Research Ethics Committee. As part of DCU REC's ongoing monitoring process, during your research you may be asked to provide DCU REC with a progress report. Should substantial modifications to the research protocol be required at a later stage, a further amendment submission should be made to the REC.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dr. Melrona Kirrane'.

Dr. Melrona Kirrane
Chairperson
DCU Research Ethics Committee



Taighde & Nuálaiocht Tacaiocht
Ollscoil Chathair Bhaile Átha Cliath,
Báile Átha Cliath, Éire

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Note: Please retain this approval letter for future publication purposes (for research students, this includes incorporating the letter within their thesis appendices).

Appendix C: Plain Language Statement - CICT Applicants



Plain Language Statement

Criminal Injuries and the role of the state: A theoretical, comparative, and empirical analysis of state-funded compensation for victims of violent crime

My name is Liam O'Driscoll and I am conducting my PhD in the School of Law and Government at Dublin City University, under the supervision of Professor Yvonne Daly. My PhD study is called "Criminal Injuries and the role of the state: A theoretical, comparative, and empirical analysis of state-funded compensation for victims of violent crime" and is funded by the Irish Research Council. The aim of this study is to try and understand different perspectives on the operation of the Criminal Injuries Compensation Scheme in Ireland from different groups involved in the process.

I can be contacted at the following email address – liam.odriscoll9@mail.dcu.ie.

Professor Yvonne Daly, my PhD supervisor, can be contacted at the following email address - yvonne.daly@dcu.ie.

I would like to invite you to participate in an interview, lasting approximately 1 hour at a time and in a place that suits you. You will be asked to talk about your experience of submitting an application under the Criminal Injuries Compensation Scheme to the Criminal Injuries Compensation Tribunal.

I would like to audio-record the interview, but the recording is confidential. I need to use a professional transcription service to type up the audio-recording (if you consent to this) but the transcriber will have to sign a confidentiality agreement. The transcripts of what is said during the interviews will be kept securely on encrypted devices or on a secure, online data storage site hosted by Dublin City University. The audio recording of the interview, the signed informed consent form and any other personal data will be permanently deleted once I have generated the anonymous interview transcript. I anticipate that this will occur by September 2024 / December 2024.

Taking part in this study is completely voluntary and you can change your mind and withdraw your consent to take part in this research up until the point where the anonymous interview transcript has been generated.

I do plan to publish what I find out from this research, and I am happy to give details of where I will publish – just ask. This will involve using quotations, but I will try to make sure that no one is identifiable from the quotations I use. I anticipate that the sample size for this study will be small, owing to the small number of CICT applicants in proportion to the wider population of victims of violent crime. As a result, problems might arise in the anonymisation of the interview transcripts and used quotations. In order to address these problems, it may be necessary to change the specific words you used in the interview in order to protect your identity.

I must inform you that in certain circumstances I cannot guarantee confidentiality, such as if the data is subject to subpoena, freedom of information claims or mandated reporting by some professions. If you tell me that you or another person is at risk of harm, I may have to report this to the relevant authority and cannot guarantee confidentiality or anonymity in these situations.

As a victim of a violent criminal offence, I anticipate that there are a number of risks to you from taking part in the interview. You will be asked about your experience of applying for compensation under the Criminal Injuries Compensation Scheme. Due to the particular eligibility rules which applicants must meet in order to be considered under the Scheme, you may also be asked about the event which led to you becoming a victim of crime. Furthermore, you may be asked if you have previous criminal convictions, about your own actions in relation to the offence and other information of a highly personal nature.

In answering these questions, you might become distressed and upset and should such a situation arise, please note that you can stop the interview at any time, you are free to re-commence the interview thereafter should you wish, and you can terminate the interview completely also, should you wish to do so. Should you wish to do so, feel free to bring a family member, friend or other support person along with you to the interview.

If you do get distressed and upset, and wish to seek further support, you can contact the Crime Victims Helpline on Freephone 116 006.

By taking part in the interview and telling me your experience of applying under the Criminal Injuries Compensation Scheme, you are contributing to an evaluation of the Criminal Injuries Compensation Tribunal and potential reform of the process for future victims of crime and their families.

If participants have concerns about this study and wish to contact an independent person, please contact:

The Secretary, Dublin City University Research Ethics Committee, c/o Research and Innovation Support, Dublin City University, Dublin 9. Tel 01-7008000, e-mail rec@dcu.ie.

Privacy Notice

The intention of the following Privacy Notice is to inform you, as the data subject, about the use of your data as part of this research project. As personal data is being collected as part of this research project, you are referred to Dublin City University's [Data Protection Unit](#) website for further information beyond which is included below.

- This research project's Data Controller is Dublin City University.
- An external transcription service yet to be employed will be a data processor. This is the only third-party data processor involved in this research project with whom the data will be shared or transferred. The reason for this is that it is necessary to transcribe the audio recordings of the interviews.
- This study will be conducted in compliance with the General Data Protection Regulation (GDPR), and if you have any concerns regarding how your data in this study has been handled, you can contact Dublin City University's Data Protection Officer, Martin Ward, who can be contacted at data.protection@dcu.ie / Tel: 01-7005118/01- 7008257.
- The purpose of the data processing is that of academic research and the data is being requested for this purpose and will be applied for this purpose.
- The reason for which the data will be processed and held is that of academic research.
- The categories of personal data to be processed include:
 - Data concerning individuals' victimisation experience.
 - Data concerning individuals' experience of applying for compensation at the Criminal Injuries Compensation Tribunal.
 - Data concerning individuals' health.
 - Data concerning individuals' criminal convictions and / or offences.

- Data subjects should be aware of their rights to lodge a complaint with the [Irish Data Protection Commission](#).
- Data subjects should be aware of their right of access to their personal data. Please contact the researcher, Liam O'Driscoll, at the following email address, should you wish to access your data – liam.odriscoll9@mail.dcu.ie. Data subjects can also contact the Dublin City University's [Data Protection Unit](#) in order to request access to their data.
- Data subjects should be aware that their personal data will be anonymised once the interview transcripts have been produced. Data cleaning of interview transcripts will take place, whereby all names and identifiable details from the transcripts will be removed to ensure anonymity. Once the anonymous interview transcripts have been produced, audio recording, signed informed consent forms and any other personal data will be permanently deleted. I anticipate that this will occur by September 2024 / December 2024.
- Data subjects should be aware of their right to withdraw their consent up until the point where the anonymous interview transcripts have been generated. Should a data subject wish to do so, please contact the researcher, Liam O'Driscoll, at the following email address – liam.odriscoll9@mail.dcu.ie.

Appendix D: Plain Language Statement - Persons who have Assisted



Plain Language Statement

Criminal Injuries and the role of the state: A theoretical, comparative, and empirical analysis of state-funded compensation for victims of violent crime

My name is Liam O'Driscoll and I am conducting my PhD in the School of Law and Government at Dublin City University, under the supervision of Professor Yvonne Daly. My PhD study is called "Criminal Injuries and the role of the state: A theoretical, comparative, and empirical analysis of state-funded compensation for victims of violent crime" and is funded by the Irish Research Council. The aim of this study is to try and understand different perspectives on the operation of the Criminal Injuries Compensation Scheme in Ireland from different groups involved in the process.

I can be contacted at the following email address – liam.odriscoll9@mail.dcu.ie.

Professor Yvonne Daly, my PhD supervisor, can be contacted at the following email address - yvonne.daly@dcu.ie.

I would like to invite you to participate in an interview, lasting approximately 1 hour at a time and in a place that suits you. You will be asked to talk about your experience of assisting victims of violent crime in submitting an application under the Criminal Injuries Compensation Scheme to the Criminal Injuries Compensation Tribunal (CICT).

I would like to audio-record the interview, but the recording is confidential. I need to use a professional transcription service to type up the audio-recording (if you consent to this) but the transcriber will have to sign a confidentiality agreement. The transcripts of what is said during the interviews will be kept securely on encrypted devices or on a secure, online data storage site hosted by Dublin City University. The audio recording of the interview, the signed informed consent form and any other personal data will be permanently deleted once I have generated the anonymous interview transcript. I anticipate that this will occur by September 2024 / December 2024.

Taking part in this study is completely voluntary and you can change your mind and withdraw your consent to take part in this research up until the point where the anonymous interview transcript has been generated.

I do plan to publish what I find out from this research, and I am happy to give details of where I will publish – just ask. This will involve using quotations, but I will try to make sure that no one is identifiable from the quotations I use. I anticipate that the sample size for this study will be small, owing to the small number of people who have assisted CICT applicants. As a result, problems might arise in the anonymisation of the interview transcripts and used quotations. In order to address these problems, it may be necessary to change the specific words you used in the interview in order to protect your identity.

I must inform you that in certain circumstances I cannot guarantee confidentiality, such as if the data is subject to subpoena, freedom of information claims or mandated reporting by some professions. If you tell me that you or another person is at risk of harm, I may have to report this to the relevant authority and cannot guarantee confidentiality or anonymity in these situations.

I don't see any risks to you from taking part in the interview. I won't be asking you any confidential information about the CICT applicants you have assisted.

By taking part in the interview and telling me your experience of assisting CICT applicants, you are contributing to an evaluation of the Criminal Injuries Compensation Tribunal and potential reform of the process for future victims of crime and their families.

If participants have concerns about this study and wish to contact an independent person, please contact:

The Secretary, Dublin City University Research Ethics Committee, c/o Research and Innovation Support, Dublin City University, Dublin 9. Tel 01-7008000, e-mail rec@dcu.ie.

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- The purpose of the data processing is that of academic research and the data is being requested for this purpose and will be applied for this purpose.
- The reason for which the data will be processed and held is that of academic research.
- The categories of personal data to be processed include:
 - Data concerning participants' experiences of assisting individuals in applying for compensation at the Criminal Injuries Compensation Tribunal.
- Data subjects should be aware of their rights to lodge a complaint with the [Irish Data Protection Commission](#).
- Data subjects should be aware of their right of access to their personal data. Please contact the researcher, Liam O'Driscoll, at the following email address, should you wish to access your data – liam.odriscoll9@mail.dcu.ie. Data subjects can also contact the Dublin City University's [Data Protection Unit](#) in order to request access to their data.
- Data subjects should be aware that their personal data will be anonymised once the interview transcripts have been produced. Data cleaning of interview transcripts will take place, whereby all names and identifiable details from the transcripts will be removed to ensure anonymity. Once the anonymous interview transcripts have been produced, audio recording, signed informed consent forms and any other personal data will be permanently deleted. I anticipate that this will occur by September 2024 / December 2024.
- Data subjects should be aware of their right to withdraw their consent up until the point where the anonymous interview transcripts have been generated. Should a data subject wish to do so, please contact the researcher, Liam O'Driscoll, at the following email address – liam.odriscoll9@mail.dcu.ie.

Appendix E: Plain Language Statement - Former CICT Members



Plain Language Statement

Criminal Injuries and the role of the state: A theoretical, comparative, and empirical analysis of state-funded compensation for victims of violent crime

My name is Liam O'Driscoll and I am conducting my PhD in the School of Law and Government at Dublin City University, under the supervision of Professor Yvonne Daly. My PhD study is called “Criminal Injuries and the role of the state: A theoretical, comparative, and empirical analysis of state-funded compensation for victims of violent crime” and is funded by the Irish Research Council. The aim of this study is to try and understand different perspectives on the operation of the Criminal Injuries Compensation Scheme in Ireland from different groups involved in the process.

I can be contacted at the following email address – liam.odriscoll9@mail.dcu.ie.

Professor Yvonne Daly, my PhD supervisor, can be contacted at the following email address - yvonne.daly@dcu.ie.

I would like to invite you to participate in an interview, lasting approximately 1 hour at a time and in a place that suits you. You will be asked to talk about your experience of being a member of the Criminal Injuries Compensation Tribunal (CICT).

I would like to audio-record the interview, but the recording is confidential. I need to use a professional transcription service to type up the audio-recording (if you consent to this) but the transcriber will have to sign a confidentiality agreement. The transcripts of what is said during the interviews will be kept securely on encrypted devices or on a secure, online data storage site hosted by Dublin City University. The audio recording of the interview, the signed informed consent form and any other personal data will be permanently deleted once I have generated the anonymous interview transcript. I anticipate that this will occur by September 2024 / December 2024.

Taking part in this study is completely voluntary and you can change your mind and withdraw your consent to take part in this research up until the point where the anonymous interview transcript has been generated.

I do plan to publish what I find out from this research, and I am happy to give details of where I will publish – just ask. This will involve using quotations, but I will try to make sure that no one is identifiable from the quotations I use. I anticipate that the sample size for this study will be small, owing to the small number of people who have been members of the Criminal Injuries Compensation Tribunal. As a result, problems might arise in the anonymisation of the interview transcripts and used quotations. In order to address these problems, it may be necessary to change the specific words you used in the interview in order to protect your identity.

I must inform you that in certain circumstances I cannot guarantee confidentiality, such as if the data is subject to subpoena, freedom of information claims or mandated reporting by some professions. If you tell

me that you or another person is at risk of harm, I may have to report this to the relevant authority and cannot guarantee confidentiality or anonymity in these situations.

I don't see any risks to you from taking part in the interview. I won't be asking you any confidential information about your work as a CICT member.

By taking part in the interview and telling me your experience as a member of the CICT, you are contributing to an evaluation of the Criminal Injuries Compensation Scheme and potential reform of the process for future victims of crime and their families.

If participants have concerns about this study and wish to contact an independent person, please contact:

The Secretary, Dublin City University Research Ethics Committee, c/o Research and Innovation Support, Dublin City University, Dublin 9. Tel 01-7008000, e-mail rec@dcu.ie.

Privacy Notice

The intention of the following Privacy Notice is to inform you, as the data subject, about the use of your data as part of this research project. As personal data is being collected as part of this research project, you are referred to Dublin City University's [Data Protection Unit](#) website for further information beyond which is included below.

- This research project's Data Controller is Dublin City University.
- An external transcription service yet to be employed will be a data processor. This is the only third-party data processor involved in this research project with whom the data will be shared or transferred. The reason for this is that it is necessary to transcribe the audio recordings of the interviews.
- This study will be conducted in compliance with the General Data Protection Regulation (GDPR), and if you have any concerns regarding how your data in this study has been handled, you can contact Dublin City University's Data Protection Officer, Martin Ward, who can be contacted at data.protection@dcu.ie / Tel: 01-7005118/01- 7008257.
- The purpose of the data processing is that of academic research and the data is being requested for this purpose and will be applied for this purpose.
- The reason for which the data will be processed and held is that of academic research.
- The categories of personal data to be processed include:
 - Data concerning participants' experiences of being a member of the Criminal Injuries Compensation Tribunal.
- Data subjects should be aware of their rights to lodge a complaint with the [Irish Data Protection Commission](#).
- Data subjects should be aware of their right of access to their personal data. Please contact the researcher, Liam O'Driscoll, at the following email address, should you wish to access your data – liam.odriscoll9@mail.dcu.ie. Data subjects can also contact the Dublin City University's [Data Protection Unit](#) in order to request access to their data.
- Data subjects should be aware that their personal data will be anonymised once the interview transcripts have been produced. Data cleaning of interview transcripts will take place, whereby all names and identifiable details from the transcripts will be removed to ensure anonymity. Once the anonymous interview transcripts have been produced, audio recording, signed informed consent forms and any other personal data will be permanently deleted. I anticipate that this will occur by September 2024 / December 2024.
- Data subjects should be aware of their right to withdraw their consent up until the point where the anonymous interview transcripts have been generated. Should a data subject wish to do so, please

contact the researcher, Liam O'Driscoll, at the following email address – liam.odriscoll9@mail.dcu.ie.

Appendix F: Informed Consent Form



Informed Consent Form

Criminal Injuries and the role of the state: A theoretical, comparative, and empirical analysis of state-funded compensation for victims of violent crime

Liam O'Driscoll is conducting this PhD research project in the School of Law and Government at Dublin City University, under the supervision of Professor Yvonne Daly. The PhD study is called "Criminal Injuries and the role of the state: A theoretical, comparative, and empirical analysis of state-funded compensation for victims of violent crime" and is funded by the Irish Research Council. The aim of this study is to try and understand different perspectives on the operation of the Criminal Injuries Compensation Scheme in Ireland from different groups involved in the process.

Liam O'Driscoll can be contacted at the following email address – liam.odriscoll9@mail.dcu.ie.

Professor Yvonne Daly, my PhD supervisor, can be contacted at the following email address - yvonne.daly@dcu.ie.

Participant – please complete the following (tick the box as appropriate):

I acknowledge that this research study is voluntary and that I may withdraw my consent to have my personal data used as part of this research up until September 2024 / December 2024, the point at which my personal data is will not identifiable.

I acknowledge the arrangements to be made to protect confidentiality of data, including that confidentiality of information provided is subject to legal limitations. I know that if I say something that suggests I might hurt myself or someone else, then the researchers may have to pass this on to the relevant authority and confidentiality cannot be guaranteed. It also cannot be guaranteed if the data is subject to subpoena, freedom of information claim or mandated reporting by some professions.

I acknowledge the arrangements regarding the retention / disposal of data.

I acknowledge that my data will be kept confidential; this means that the researchers will not reveal my name to anyone, but they will also not reveal identifying factors about me or what I have told them.

Participant – please complete the following (Circle Yes or No for each question)

I have read the Plain Language Statement (or had it read to me). Yes / No

I understand the information provided. Yes / No

I understand the information provided in relation to data protection.	Yes / No
I have had an opportunity to ask questions and discuss this study.	Yes / No
I have received satisfactory answers to all my questions.	Yes / No
I am aware that my interview will be audiotaped.	Yes / No

Signature:

I have read and understood the information in this form. My questions and concerns have been answered by the researchers, and I have a copy of this consent form. Therefore, I consent to take part in this research project.

Participants Signature: _____

Name in Block Capitals: _____

Witness: _____

Date: _____

Appendix G: Transcription Confidentiality Agreement



CONFIDENTIALITY AGREEMENT RELATING TO TRANSCRIPTION SERVICES

I, _____, agree to maintain full confidentiality in respect of any and all recordings and other documentation received from Liam O'Driscoll relating to his PhD research study entitled "Criminal Injuries and the role of the state: A theoretical, comparative, and empirical analysis of state-funded compensation for victims of violent crime."

Furthermore, I agree:

1. To hold in strictest confidence, the identity of any individual that may be revealed during the process of transcribing recordings of interviews relating to this study;
2. To not make copies of any recordings or electronic files of the transcriptions;
3. To store all recordings and other documentation relating to this study on a password protected device;
4. To return all audio-recordings and study-related materials to Liam O'Driscoll in adherence to the data-sharing protocol that he has outlined to me;
5. To delete all electronic files relating to this research project from my computer hard drive and any back-up storage after I have returned the materials to Liam O'Driscoll and he has confirmed receipt of same.

I am aware that I can be held legally responsible for a breach of this confidentiality agreement, and for any harm incurred by individuals if I disclose identifiable information contained in the audio-recordings and/or files to which I will have access.

Transcriber's name (printed):

Transcriber's signature:

Date:

Appendix H: Codebook for Interviews

Name	Files	References
Capped awards	2	3
Changes since 2021	8	31
CICT case management system	8	12
CICT funding cost to state	10	18
CICT independence	8	18
CICT member payments	3	7
CICT member recruitment	3	15
CICT member workload	1	2
CICT members and staff interaction	4	11
CICT membership	11	38
CICT Process	0	0
Appeal process	12	64
Cash limited	2	5
Decision to apply	11	28
Finding out about the CICT	10	23
Application form	11	25
Interim payments	4	10
Processing claims	15	52
Satisfaction with end of process	11	26
CICT statutory basis	3	5
Communication with CICT	12	55
Comparative jurisdictions	2	2
Conduct, character, and way of life / Part-responsibility	17	55
Criminal process	10	26
Crime of violence	8	16
Delays	12	31
Role of EU law	10	37
Experience as professional	12	24
Impact of CICS	9	44
Impact of injuries / death	10	33
Judicial reviews CICS	9	32
Knowledge about the CICS / publicity	11	18
Legal assistance	18	93

Name	Files	References
Media	2	4
Offender compensation	11	43
Prison officer / Garda compensation schemes	3	5
Providing assistance to CICT	20	77
Reforming the CICS	13	29
Role of Gardai	15	45
Same roof rule	6	16
Time limit	19	77
Training	6	9
Transparency	7	18
Type of compensation	18	70
Vicarious trauma	1	2
Victim fighting back	5	13
Victim talking about their experience	2	4
Victim support	17	71
Weighing contradictory evidence	4	10
Who can be compensated?	7	19
Aims / Why compensate victims?	17	56

Appendix I: Codebook for CICT Decisions

All available CICT decisions are available here:

<https://www.gov.ie/en/criminal-injuries-compensation-scheme/collections/decisions-by-the-criminal-injuries-compensation-tribunal/>

Name	Files	References
Aim of compensation	3	3
Breakdown in communication	1	1
Conduct character way of life	2	2
Aim of the rule	4	5
Applicants submissions re prior convictions	6	6
CICT taking account of prior convictions	47	72
Criminal feud gangland crime	12	16
Evidence moved on from criminality	2	2
Expressions of sympathy	4	5
Mixing up with provocation / part responsible rule	7	7
Oral evidence on appeal	3	3
Reduction not refusal	5	5
Role of Gardai	14	16
Crime of violence	0	0
CICT balancing of evidence	6	6
Contracting HIV	1	1
Coroner's inquest	2	3
Criminal process	21	23
Definition of violence	1	2
Denying applicants the victim label	5	6
Fire services	1	1
Heart attack caused by verbal assault	1	1
Independent witness statements	2	2
Injury at concert	1	1
Medical reports	21	27
No personal injury	1	1
Obvious that crime of violence took place	2	2
Offender unknown	2	2
Outside the jurisdiction	1	1
Partly responsible so no crime of violence	3	3
Role of Gardai	33	55

Name	Files	References
Routine childhood injury	1	2
Definition of dependent	4	6
Definition of victim	5	5
Funeral grant	2	2
Holding award until dependent reaches 18	1	1
Informing about appeals	4	6
Informing victims about their rights	1	1
Interim award	2	2
Demonstrating the need for interim relief	3	3
Minimum award	4	4
Nature of compensation	2	2
Assessing cost of care	2	3
CICT impression of reports	1	9
Assessment of physiological support	4	8
Benefit of oral hearing	1	1
CICT directly applying EU law	1	1
CICT independence	2	2
Criminal trial expenses	1	1
Funeral clothes	1	1
Legal costs	3	4
Loss of earnings	23	27
Loss of holiday	1	1
Pain and suffering	16	17
Proving medical expenses	3	3
Need for legal assistance	5	5
Offender compensation	2	2
Amount redacted	6	6
Civil proceedings	2	2
Criminal proceedings	17	18
Informal handing over of money	2	2
Original receipts	1	1
Other compensation received	0	0
Provocation	3	3
Best evidence rule no submissions made by applicant	1	1
Criminal process self-defence	1	2
Deciding whether to apply the rule	17	18

Name	Files	References
Enforcing drugs debts	2	2
Excessive force	1	1
Independent witnesses	2	2
Mix up with conduct character way of life	6	6
Offender statement re incident	2	2
Ongoing feud	1	2
Oral evidence on appeal	1	1
Reduction or denial of award	4	4
Substance misuse as part responsibility	3	4
The role of Gardai	11	12
Reasonable assistance	8	8
Aim of rule	12	14
An Post returned letter	1	1
Documents not submitted pain and suffering	91	91
Hasn't contacted CICT in many years	13	13
If not refused under another para refused under RA	4	4
Mention of signed authority	1	1
No medical report	2	3
No reply re previous criminal convictions	3	3
Outline of frequency of written requests but inconsistent	242	255
Reasons to extend time not good enough for RA	3	4
Recognising trauma	3	3
Request from single member for more information	1	1
Request per telephone	1	1
Solicitor no instructions	8	8
Tribunal commissioning their own reports	2	3
Refunding health insurance	1	1
Reporting to guards	16	17
Delay in reporting	3	4
Fearful of a criminal gang so no report	6	7
Garda report no cooperation	2	2
If can go to counselling then can report make claim	1	1
No sufficient details	2	3
Not wishing to proceed with crim proceeding	9	9
Unhappy with garda investigation	1	1
Same roof rule	0	0

Name	Files	References
Definition of household	2	4
Retrospective application of rule	3	4
Seeking submissions from applicant	4	4
Self-defence	2	2
Sexual violence	25	25
Social welfare	2	2
Application to loss of earnings or other losses	2	2
Sympathies commending a victim	11	13
Time limit	1	1
Aim	8	9
Awaiting outcome of Gardai investigation / crim proceedings	30	34
Awaiting the gathering of documents	16	17
Bowes and Brophy	7	7
Campaign of harassment	1	1
Child at time	4	4
CICT not asking for explanation	1	1
Circumstance not outlined by CICT	16	16
Date of incident not given	1	1
Error re time limit	2	2
If counsel, if work, if report, if make PI claim then can report make claim	15	16
Incorrect advice	11	11
Independent TD making submissions	1	1
Lack of knowledge re CICT	47	54
Medical circumstances	77	79
Missing application	2	2
Mother of murder victim	2	2
Multiple stresses in life	4	4
No reason supplied by applicant	63	76
Notified CICT but late application	5	6
Oral evidence on appeal	7	9
Possible provocation issues	1	7
Preliminary determination	2	5
Returning home from abroad	6	6
Role of Gardai	12	14
Saying they should go to lawyer	2	2
Trauma as a result of incident	48	54

Name	Files	References
Waiting see how injuries were	3	3
Why ask for docs if refusal under TL	4	4
Traffic offences	0	0
Proving deliberate attempt to run down	1	1
Trauma informed	3	3
Workload of CICT members	4	4
Would have refused anyway based on another para	3	3