

## Compensating victims of sexual assault – a missed opportunity.

**By Richard Scorer, Partner, Pannone & Partners**

In August 2004 Iorwath Hoare, a serial rapist, won £7 million on the National Lottery. Hoare is serving a lengthy prison sentence for a string of rapes committed in the 1970s and early 1980s. The media speculated on whether his victims would now try to claim damages from him and quoted a lawyer as advising that the victims would normally have “to bring their claims within 3 years of the rape but the court has discretion to allow a later claim in some circumstances”.

This is wrong of course. The time limit for a claim for assault is six years from the date of the assault (or the date of the claimant’s majority). The court has no discretion to allow a later claim, however justified the victim’s delay. Hoare’s crimes were committed in the 1970s and early 1980s, therefore claims by his victims would now be conclusively statute barred. This archaic rule ignores the acknowledged fact that many victims do not have the psychological status to commence litigation within 6 years. The rule also takes no account of the situation in the Hoare case, i.e., the perpetrator does not have the means to pay the claim whilst the limitation period is current, but acquires those means subsequently, by which time it is too late for the victim to claim because the limitation period has expired.

As a result, the only financial redress for many victims is a claim to the Criminal Injuries Compensation Authority (CICA), i.e., the taxpayer. The CICA has been very willing to waive its normal two year time limit in cases of sex crimes. However, what is happening here is that the taxpayer picks up the bill and the offender gets off scot free. Where is the logic in a situation where the taxpayer may be liable to pay damages to the victim 10 or 15 years after the event, yet the offender enjoys the protection of a strict 6-year time bar as an absolute defence to a damages claim?

In July 2004 The Domestic Violence, Crime and Victims Bill received Royal assent. At the heart of the new Act is the proposition that the perpetrators of crime should pay the costs arising from it. Introducing the Bill, the Government said: *“We want compensation to victims to be targeted in the right way, and to come from the most appropriate sources. With these proposals we look to perpetrators.....we believe that the payment towards victims from offenders should form an important part of their reparation”*. One would think that the obvious way to achieve this outcome is to reform the limitation rules that extinguish the victim’s claim after 6 years. However, rather than take the simple approach, the Act opts for a circuitous route by including a provision for *the CICA* to recoup its outlay from the offender. S 57 of the Act, not yet in force, inserts s7 A-D into the Criminal Injuries Compensation Act 1995. This confers power on the CICA to recover sums equal to all, or part of, the amount of an award paid out by the CICA from an ‘appropriate person,’ defined as the “person convicted of an offence in respect of the criminal injury.” This is to be done by serving a recovery notice on the offender in prescribed form and can be reviewed only on limited grounds. The details of the recovery mechanism have not yet been clarified but it is expected to operate through civil action in the courts. Under s7 D the money will be recoverable as a debt to the Crown, and will thus be governed by s9 of the Limitation Act, i.e. a limit of six years, but which accrues, under s 7D, from the later of either the date on which compensation is paid by the CICA, or the date of conviction for the offence. As it is possible to receive a CICA award, or prosecute an offence many years after the crime took place, the offender will remain liable to pay out to the CICA long after the direct cause of action against him by the victim has been extinguished.

Clearly, this situation is totally illogical. Maintaining the 6 year rule deprives the victim of the vindication and accountability that comes with a successful claim directly against the perpetrator. It adds to the administrative burden on the CICA. It means that the taxpayer, rather than the offender, remains the compensator of first resort – contrary to the government’s declared intention. There is nothing wrong in principle with the CICA having the right to recover its outlay from the offender, but why not cut out the middleman and remove the unjust limitation laws that so often prevent the victim claiming damages directly from the

offender? In some jurisdictions, e.g., in some areas of Canada, no limitation applies to a direct claim by the victim against the perpetrator of a sexual crime, it is believed that any such limitation period could reward the perpetrator who is most successful at terrifying and silencing his victim. Whether one agrees with this view, the law could easily be reformed to allow the courts to have the discretion to permit claims in appropriate circumstances after the expiry of the 6 year limitation period – for example in the Hoare case where an offender who previously had no assets suddenly becomes creditworthy. In this country, reform has been mooted ever since the decision in *Stubbings*. In 1998 the Law Commission recommended the abolition of the six year rule in assault cases and in 2001 it drafted a new Limitation Act. However, the draft Act has simply gathered dust and victims have continued to be denied justice.

With the new provisions the arguments for preserving the law on limitation in its current form become weaker than ever. With a new Limitation Act ready and waiting, allowing the law to remain in such an unjust and inconsistent state is indefensible. In ACAL we are leading the campaign for change. We need to ensure that cases of the kind involving the rapist are publicised as much as possible.

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