

THE MAGISTRATES' ASSOCIATION
JUDICIAL POLICY AND PRACTICE COMMITTEE

Compensation Fund

Introduction

A Press Release from the Ministry of Justice on September 29th 2009 in announcing plans for the National Victims Service stated:

*“**Progress:** We have come a long way in improving the victim and witness experience of the Criminal Justice System.*

- a. ***Fifteen years ago:** victims and witnesses peripheral to the Criminal Justice System: focus is on catching and convicting perpetrators and a lack of coordinated follow up means little satisfaction for victims*
- b. ***Five years ago:** recognition that comprehensive justice must include successful prosecution and conviction. Victims and witnesses giving their best evidence now seen as pivotal to an effective CJS. Local Criminal Justice Boards and Witness Care Units are established to create links between Criminal Justice System agencies and improve support to victims and witnesses.*
- c. ***Present:** victims and witnesses now at the centre of the Criminal Justice System: all CJS agencies must provide them with support and assistance to go through the justice process. A standard level of service is agreed on and Local Criminal Justice Boards are developing local strategies to tailor services to the needs of victims and witnesses.”*

Compare this with two current examples of how victims of crime are treated in 2009. These are real cases where each victim has been interviewed¹.

Case 1

Alan is 38, married with two teenaged children. Alan's house was burgled one evening when everyone was away from home. There was little damage, but over £10,000 worth of goods were taken from the house.

Fortunately Sean left a calling card when he and an unnamed friend carried out the burglary. He left his fingerprints and his DNA.

Sean was arrested, brought to court and pleaded guilty. The Magistrates' Court decided that this was beyond their maximum punishment level and sent the case to Crown Court for sentencing.

The Judge said that because he was not heavily convicted, he would be sentenced to a 3 year community sentence with rehabilitation programmes and 200 hours of unpaid work. A Confiscation Order was asked for by the defence because Sean was still in possession of the goods. This was not given. Instead a Compensation Order was made for the goods that had been stolen and that were not insured.

As Sean was leaving the court he said (sotto voce) that Alan could “whistle for his money”, that he'd already packed his job in and any payment would be made at £5 per week now that he was on benefits.

¹ Both victims were content that their stories were told, but they both wished their identity to be kept private.

So far Alan has received £35.

Alan has engaged a private detective to investigate Sean. He has discovered that Sean has moved to another part of the country, is earning and is also receiving benefits. He lives comfortably, drives a nice car and in Alan's view is a real example of a situation where crime pays.

Alan is deeply unhappy with the criminal justice system, despite the fact that the person who burgled his house was caught and duly processed quickly through the court system.

Case 2

Sheila is 74. She was knocked over in the street coming out of her local Marks and Spencer store. The two young men who pushed her over had never intended to hurt her, but their boisterous and low level criminal behaviour which also caused others in the area to fear for their safety, led to Sheila being hurt.

She was awarded £100 compensation by her local magistrates' court for the injuries and distress caused and the two young men were also given a 12 month community order of 80 hours unpaid work and supervision.

Both young men are on Job Seekers Allowance and can only afford to pay Sheila £5 per week. Sheila has been so alarmed by this event she has not set foot outside her house since this event, instead asking her daughter to do any necessary shopping for her.

Every time Sheila receives the £5 compensation, which is intermittent she is reminded of the unfortunate event which led to her self imposed "house arrest". Sheila is "disgusted" with the way she has been treated by the criminal justice system and has said that she would rather not have the compensation as it reminds her of her unpleasant experience.

These two cases demonstrate the two main disadvantages of a compensation award. Whenever compensation is awarded as part or as the whole of a sentence in a criminal court two risks arise:

- a. That the victim will see only some or perhaps none of that compensation award.
- b. That the victim will receive some or all of that compensation award but will do so in regular or irregular instalments over a long period of time

Compensation is rarely paid in a single sum. In researching this paper it was admitted by HMCS that records are not kept of how often payments of compensation are made in one lump sum. Neither are records kept that can be effectively scrutinised to identify payment of the differing financial awards that are made (Compensation, Fine, Costs or Victim Surcharge). All estimates in the following are therefore exactly that – estimates. These facts alone suggest that the victim is the last person to be considered by those who manage the payment of compensation orders. This completely contradicts the statements from government that the victim is “at the centre of the Criminal Justice System”.

How much Compensation is awarded?

The following table shows the latest data from the 2008 Sentencing statistics from the MOJ site – www.justice.gov.uk. The table is an extraction from Chapter 4 Table 4.9

Total number of offenders ordered to pay compensation						Offenders given compensation orders as a percentage of all offenders sentenced	
Magistrates and Crown Courts	1998	2003	2008	% inc over 10 yrs	% inc over 5 yrs		Average comp (£)
Total	49,912	44,453	50,816	1.8%	14.3%	16.1	418
Summary offences	52,686	76,012	120,433	128.6%	58.4%	24.4	86
All offences	102,598	120,465	171,249	66.9%	42.2%	21.1	184
Sole / Main penalty - all offences	6,612	7,393	6,669	0.9%	-9.8%		322

The basis on which compensation can be awarded is laid out in Appendix 1 which is an extract from the Sentencing Guidelines.

How much Compensation is paid?

Unfortunately data are not published which distinguish between types of financial imposition, whether they be fine, costs, compensation or surcharge.

However the following was obtained from Ministry of Justice Resource Accounts 2008 – 2009.

	Compensation £ 000's
Outstanding at 1 April 2008	126,866
Imposed in year	74,264
Collected in year	(42,611)
Judicial Remissions	(6,751)
Cancellations	(1,802)
At 31 March 2009	150,266

This shows a shortfall of £23.2 m after cancellations and judicial remissions have been taken into consideration.

The above would indicate that just over 40% of current compensation is paid in the year in which it was imposed and that the amount of compensation outstanding is increasing by almost 20% per annum.

This means that compensatees are becoming increasingly unlikely to receive all or even part of the compensation that the court has awarded them either for loss of goods or for injury.

How might a Compensation Fund be allocated resource?

The argument that has been made against the setting up of a Compensation Fund has always concerned the financing rather than the principle of a Fund.

The following are suggestions as to how such a Fund could be financed, given the difficult financial circumstances we find ourselves in.

- **Victim Surcharge**

This raised £8 million in 2008 / 9 and is expected to raise a further similar amount in the current year. This is against the £14 million that it was expected to raise.

- **Further extension of the VS**

It has recently been announced that all fixed penalty notices are to carry a £15 VS. In 2008 there were 176,000 PNDs issued. If a £15 VS were to be levied on this, an amount of £2.6 million would be collectable. In addition there are approximately 2.5 million FPNs issued for motoring offences. Again at £15 per notice, a further £39 million would be collectable. This would also level out the discrimination that currently exists for a motorist who for many reasons may not be able to accept a Fixed Penalty and upon whom, when he is sentenced in court, a Victim Surcharge of £15 must be ordered. Finally, a further 7.5 million penalty charge notices are given by local authority parking attendants. If a surcharge were to be applied to everyone receiving a financial sentence, a further £112.5 million could be ordered.

- **Equal treatment for offenders who do not receive a financial penalty.**

In many cases, a financial imposition cannot be made when an offender is sentenced to a Community Order. In 2008 there were 190,000 such orders made. Currently these offenders do not contribute to a victim surcharge and yet their offence is seen to be at a higher level of seriousness than those who do contribute and their offence could be considered to affect victims more than those who are punished financially. If they were to contribute £15 (or more) to the Victim Surcharge a further £2.85 million would be collectable.

- **Rename the Victim Surcharge to become the Compensation Fund Surcharge.**

This would have a positive effect and would demonstrate that victims were really being looked after. This should only happen if funds were allocated towards a Compensation Fund.

- **Staged payments of Victim Surcharge**

Currently payments are all made or ordered at £15, no matter the seriousness of the offence. Payments could be ordered at different levels depending on the seriousness and therefore the sentence given. This would increase the flow into the fund.

- **Potential collections**

Without any increase in the amount of Compensation Fund Surcharge ordered the suggestions offered above would collectively add up to £165 million. Even allowing for the lower rate of payment where penalties are awarded out of court, it could be reasonably assumed that £100 million could be collected from a Compensation Fund Surcharge. This would have a further positive effect on sentencers many of whom who currently

object to, though comply with, the awarding of a Victim Surcharge. If all or some of this charge were to be fed into a Compensation Fund, both sentencers and victims would see a fairer system.

- **Fairer allocation**

If the amount raised was allocated say 75% towards a Victims Compensation Fund and 25% towards a Victim Services Fund, even allowing for a payment rate of 60% an amount each year of £100 million could be collected. £75 million would therefore be available to resource, or pump prime the Compensation Fund and still offer a larger amount to the valuable services that currently benefit from the VS.

The overall effect would be a combined resourcing of Compensation so that each compensatee would receive their compensation immediately and in a single payment as well as continued financial assistance towards victim services.

This is a practical way of ensuring that the victim really comes first.

Conclusion

Proposal 2 of the Casey Review of 2008 stated that:

“Proceeds from the Victims Surcharge should be used to directly support victims and witnesses of crime:

- *to finance projects that support victims that currently struggle for funding; and*
- ***To establish a Victims’ Compensation Fund, allowing victims to receive compensation ordered by a court in full at the time the court order is made, stopping the current prolonged contact a victim has to have with the offender.”***

The second element of this proposal was previously suggested by the Magistrates’ Association in 1995 when their paper on a Compensation Fund was presented. This has never been implemented, whereas the first element of proposal 2 of the Casey Review has.

The two cases quoted at the beginning of this paper clearly support the case for such a fund and the MA believes that it is now time to act on what everyone seems to agree is a most sensible and fair proposal.

We have also demonstrated above how this might be funded without putting pressure on government finances in difficult financial circumstances

Appendix 1

The following are extracts from the Sentencing Guidelines relevant to compensation and appropriate to this paper

1. The court must consider making a compensation order in any case where personal injury, loss or damage has resulted from the offence. It can either be a sentence in its own right or an ancillary order. The court must give reasons if it decides not to order compensation.

4. Subject to consideration of the victim's views (see paragraph 6 below), the court must order compensation wherever possible and should not have regard to the availability of other sources such as civil litigation or the Criminal Injuries Compensation Scheme. Any amount paid by an offender under a compensation order will generally be deducted from a subsequent civil award or payment under the Scheme to avoid double compensation

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6. Compensation should benefit, not inflict further harm on, the victim. Any financial recompense from the offender may cause distress. A victim may or may not want compensation from the offender and assumptions should not be made either way. The victim's views are properly obtained through sensitive discussion by the police or witness care unit, when it can be explained that the offender's ability to pay will ultimately determine whether, and how much, compensation is ordered and whether the compensation will be paid in one lump sum or by instalments. If the victim does not want compensation, this should be made known to the court and respected.

.....

11. Once the court has formed a preliminary view of the appropriate level of compensation, it must have regard to the means of the offender so far as they are known. Where the offender has little money, the order may have to be scaled down or additional time allowed to pay; the court may allow compensation to be paid over a period of up to three years in appropriate cases.

12. The fact that a custodial sentence is imposed does not, in itself, make it inappropriate to order compensation; however, it may be relevant to whether the offender has the means to satisfy the order. This should be assessed in light of all factors that appear to the court to be relevant, including any medical evidence, the victim's age and personal circumstances

13. Where the court considers that it would be appropriate to impose a fine and a compensation order but the offender has insufficient means to pay both, priority should be given to compensation. Compensation also takes priority over the victim surcharge where the offender's means are an issue

Appendix 2

The following is a recent exchange in parliament regarding the payment that had arisen from the Victim Surcharge.

Question

[Baroness Scott of Needham Market](#) (Liberal Democrat)

To ask [Her Majesty's Government](#) how much money raised from victims' surcharges levied by magistrates' courts has been allocated to organisations providing non-financial support to victims and witnesses of crime.

To ask Her Majesty's Government to which organisations funds from victims' surcharges levied by magistrates' courts have been allocated; and how much has been allocated to each organisation.

To ask Her Majesty's Government whether they will use money raised from victims' surcharges levied by magistrates' courts to refurbish witness waiting areas in magistrates' courts.

To ask Her Majesty's Government whether they will use money raised from victims' surcharges levied by magistrates' courts to provide enhanced expenses for witnesses.

To ask Her Majesty's Government whether they will use money raised from victims' surcharges levied by magistrates' courts to pay compensation immediately at the end of court proceedings to the victims of crime rather than after the money has been collected from those convicted.

Answer

[Lord Bach](#) (Government Whip (technically a Lord in Waiting, HM Household); Labour)

The Victims Surcharge raised £3.8 million in 2007-08, the year of introduction, and £8 million in 2008-09.

All of the money raised from the surcharge contributed to direct non-financial support for victims and witnesses of crime. Funding was committed as follows:

2007-08/2008-09/2009-10

£3 million/£2.6 million/£2.6 million to fund Independent [Domestic Violence](#) Adviser Services.

£3 million/£2.6 million/£2.6 million to the [Crown Prosecution Service](#) as a contribution to the cost of providing Witness Care Units under the No Witness No Justice initiative.

£5.6 million/£7 million/£6.2 million to the [Victim Support](#) National Centre to fund enhanced services to victims and witnesses under the Victim Support Plus initiative.

Additionally, £1.75 million was allocated to the Victims Fund each year, which has contributed to the funding of the organisations shown in the table below.

Money raised from the surcharge has not been used to refurbish witness waiting areas in magistrates' courts nor has it been used to pay witness expenses, and there are no present plans for it to be used in this way.

There are currently no plans to pay compensation to victims of crime from surcharge funds. The explanatory memorandum accompanying the enabling legislation for the victims surcharge makes it clear that surcharge money should be used to fund services helping victims of crime and witnesses.

Victims Fund—annual grants made towards support for victims of sexual violence and abuse (in 2007-08, 2008-09 and 2009-10)

Government Office Region	£
London	
Respond	50,000
One-in-Four	48,510
Lilith Project Eaves Housing	30,104
Step Forward	32,190
Galop	35,122
National Coverage	
CIS'ters	37,088
Voice UK	28,000
Survivors UK	30,000
North East	
Women's Support Network	28,038
Redcar and Cleveland Women's Aid	41,724
East	
South Essex Rape and Crisis Centre (SERICC)	49,291
HEAL (Helping Everyone Abused Live)	38,038
Colchester Rape Crisis Line	21,931
North West	
Rape and Sexual Abuse Support Centre Cheshire and Merseyside (Previously Warrington Rape Crisis)	35,370
Manchester Rape Crisis	25,635
South East	
RASAC- Rape and Sexual Abuse Counselling Service (Winchester)	26,000
Survivors Network	10,406
Southampton Rape Crisis and Sexual Abuse Centre	47,804
No Limits	26,000
Yorkshire and Humberside	
Bradford Rape Crisis and Sexual Abuse Survivors Service	45,106
Doncaster Rape and Sexual Abuse Counselling Centre	44,607
Grimsby and Scunthorpe Rape Crisis	49,146
Sheffield Women's Counselling and Therapy Service	18,672
South West	
Woman Kind (Bristol Women's Therapy Centre)	41,202
Survivors Swindon	35,900
Plymouth Rape and Sexual Abuse Line	12,450
Twelve's Company	35,827
Women's Rape and Sexual Abuse Centre Cornwall (WRASAC)	32,416
West Midlands	
Sexual and Domestic Abuse and Rape Advice Centre (SARAC)	15,250
Worcestershire Rape and Sexual Abuse Support Centre	28,445
Coventry Rape Crisis	35,424
The Rape and Sexual Abuse Violence Project (Birmingham)	21,090
South Wales	
New Pathways	23,660
North Wales	
Rape and Sexual Abuse Centre (North Wales)	25,525
East Midlands	
Derbyshire Rape Crisis	19,450
Nottingham Rape Crisis	41,108

Sexual Abuse and Incest Line (SAIL)	17,767
Northamptonshire Rape and Incest Crisis	20,000
Crisis Point	15,368
Walsall Street Teams (The Jigsaw Project)	30,000
Total:	1,249,664

Grants for 2009-10 from the Victims Fund to support victims of hate crime and homicide have not yet been allocated. We expect to be able to make an announcement about the allocations in June.

Victims fund — grants made towards support for victims of homicide 2007-08	£ 2008-09	£
Government Office Region		
London		
Victims of Crime Trust	17,724	17,700
Victim Support London	25,620	
North East		
National Victims Association	25,000	30,985
Victim Support and Witness Service	3,980	
East		
Barnardos	27,455	
Victim Support Bedfordshire	7,313	19,954.08
North West		
Greater Manchester Police	40,000	
SAMM Merseyside	18,950	20,450
South East		
The Child Bereavement Trust	18,710	20,887
Yorkshire and Humberside		
SAMM South Yorkshire	2,868	
West Yorkshire Police	13,000	
South West		
Winston's Wish	49,380	
Total:	250,000	109,976.08
	2007-08	2008-09

Victims fund—grants made towards support for victims of hate crime

Government Office Region	£	£
London		
Greenwich Action Committee Against Racial Attacks	29,515	19,920
Stonewall	26,900	
Hounslow Community Safety Partnership	15,000	
East		
North Herts People First	24,475	53,180
Bedfordshire Hate Crime Partnership	15,000	
North East		
Victim Support Teesside		4,130
North West		
Liverpool Culture Company	25,000	
Rochdale Borough Council	7,515	
Victim Support Greater Manchester	20,000	
Greater Manchester Police — Bury Division		15,762

South East		
Partnership Community Safety Team	20,000	
Victim Support Kent	3,640	
Gender Identity Research and Education Society	2,750	4,750
BMEYPP	9,190	
Yorkshire and Humberside		
Kirklees Safer Communities Partnership	15,000	
Kirklees Metropolitan Council		15,000
Inclusion North	27,200	
Bradford Hate Crime Allowance	15,000	
West Yorkshire Police		20,000
South West		
The Intercom Trust	28,920	
East Midlands		
Northamptonshire Hate Crime Forum	15,000	
Voice UK		34,900
Total:	300,105 ⁽¹⁾	167,642

⁽¹⁾Excess over £250,000 added from [Home Office](#) budget.