

# VICTIMS AND PRISONERS BILL

## KEY POINTS

- We propose an amendment that would establish a central victims fund for compensation.
- The fund would ensure that victims of crime are compensated but not retraumatised as a result of incremental payments.
- Instead, the fund will ensure payments can be made in a lump sum but paid into by offenders incrementally.

## SUMMARY

This briefing cover's the Magistrates' Association's views for the House of Commons committee stage of the Victims and Prisoners Bill.

The briefing proposes a new fund for victims compensation to better address victims' needs.



# BACKGROUND

## About the Magistrates' Association

The Magistrates' Association is an independent charity and the membership body for the magistracy. We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With 12,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy.

## Proposed amendment

The Magistrates' Association is proposing an amendment to establish a central victims fund for compensation.

## OUR PROPOSED AMENDMENT

[section number]

### (a) Central Victims Fund for Compensation

- i. In cases where compensation is awarded to victims, such compensation shall be paid out in full from a Central Victims Fund, established for the purpose of providing support and redress to victims of crime.
- ii. The Central Victims Fund shall be responsible for administering and disbursing compensation to victims, ensuring a streamlined and efficient process.
- iii. The aim of the Central Victims Fund is to prevent prolonged distress or retraumatisation of victims by eliminating the requirement of receiving compensation directly in instalments from the offender.
- iv. The Secretary of State shall make appropriate provisions for the establishment, funding, and governance of the Central Victims Fund.

This proposal has been a long-standing policy of the Magistrates' Association, based upon our members' first-hand experience of handing down court-ordered compensation to offenders as part of their sentences.

Magistrates occupy a central role in the courts process in relation to victims, with more than 90 per cent of criminal cases beginning and ending in magistrates courts. They sentence according to the five purposes of sentencing, which includes making the offender give something back. Magistrates' training emphasises the need for magistrates to be aware of the complex needs of victims and their role contributing to a sense of victims' satisfaction. By providing a platform for the victim through the Victim Personal Statement and building their needs into sentencing, courts are a part of the criminal justice system at which victims are most closely involved.

## THE PURPOSE OF OUR AMENDMENT

- We propose this amendment to reform the current system of court-ordered compensation. Whilst the Bill already includes measures to enhance the victim experience, it overlooks the specific issue of court-ordered compensation.
- We are concerned that piecemeal payments, directly from the offender to the victim, and made over several months or even years, can sometimes lead to prolonged distress or even re-traumatisation of the victim through repeated and prolonged exposure to the offender
- Our proposed amendment would establish a Central Victims Fund, from which victims would be paid the entire sum of their court-ordered compensation upfront and in one go, ensuring that victims receive timely and meaningful compensation and can then move on with their lives.

- Instead of an offender's payments going to the victim in small instalments, these instalments would instead be paid into the Fund to replenish it.

## **Court-ordered compensation: background**

- The Criminal Justice Act 1972 first established the principle of court-ordered compensation in England and Wales. The Ministry of Justice (MOJ) recognises compensation orders as a vital mechanism for offenders to rectify the harm they have caused to their victims.
- Court-ordered compensation is one way that victims can get financial redress for the harm done to them. This is handed down by a sentencer in court as part of the offender's sentence.
- Sentencing guidelines state that "court must consider making a compensation order in any case where personal injury, loss or damage has resulted from the offence."
- Latest available statistics show that, in 2022, 181,426 defendants were ordered to pay compensation to their victim – this represents over 17% of sentenced offenders (1,052,271 defendants were sentenced in 2022).

## **Justification for our amendment**

### **A: Prolonged trauma of ongoing instalment payments**

Currently, when a court orders an offender to compensate their victim, the money must first be collected by HMCTS from the offender before it is given to the victim. The offender can request to pay in instalments.

When offenders pay in instalments it can result in victims receiving regular but insignificant amounts that have little impact on improving their lives.

Moreover, because the process is drawn out, victims are compelled to maintain prolonged indirect contact with the person who committed a crime against them. This can hamper their ability to move on with their lives. The fragmented nature of these payments constantly reminds the victim of the crime, and the financial losses they suffered may not be adequately restored. Consequently, victims' trust in the justice system can be undermined.

### **B: The offender's ability to pay**

Sentencing guidelines state that an order should reflect both the harm caused and the offender's ability to pay. The latter has a particularly important role in this decision. The guideline on compensation states 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."

Where the offender has low income, the court may decide to allow additional time to pay; the court may allow compensation to be paid over a period of up to three years in appropriate cases, paid in instalments.

Recent figures show that most compensation orders go unpaid for at least a year. Court statistics from July to September (Q3) 2021 reveal that:

- 25 per cent of compensation orders are paid within three months
- Just over a third (34 per cent) are paid off within six months, and
- 45 per cent of orders are paid off within 12 months.

This means that – at the end of 12 months – 55 per cent of orders are still being paid off by the offender subject to it.

The Sentencing Council guideline on compensation also points to the purpose of compensation, and that the purpose of compensation should “benefit, not inflict further harm on, the victim. Any financial recompense from the offender may cause distress.” It is difficult to see how the current regime is compatible with this aim.

### **C: Short- to medium-term impact assessment**

We wish to make two points to help assess the impact of this amendment, including its fit with the Bill:

- For the proposal to be accepted as a New Clause, Members of Parliament must show it fits organically with the content of the Bill.
- The Government envisages the Bill to be the landmark piece of legislation governing the rights of victims. As such, it is unlikely an opportunity to reform court-ordered compensation in the way this amendment does will be available again for the foreseeable future.
- The payment of compensation to victims immediately would prove revenue-neutral over the long-term, as the fund would be continually replenished by offenders. Thus, there ought be no impact upon public finances other than one of cashflow timing: the public purse would pay the compensation up-front and reclaim the cost over time from the offender.

