



House of Commons
Northern Ireland Affairs
Committee

**The Compensation
Agency**

Fourth Report of Session 2003–04

*Report, together with formal minutes, oral and
written evidence*

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The Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

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Summary

The Compensation Agency was set up in April 1992 to administer compensation schemes that support the victims of terrorism and other violent crime, and those who suffer loss as a result of action under the emergency provisions legislation. Last year the Agency had a staff complement of around 140 and paid out nearly £36 million in compensation.

The introduction of the Tariff Scheme in 2002 (the new Criminal Injuries Compensation Scheme), which established set compensation award levels for various injury types, posed considerable challenges for the Agency. Initial teething problems have generally been resolved and the number of decisions taken by the Agency is now starting to exceed the number of claims being received. The Agency has also made considerable inroads into a backlog of claims outstanding under the old scheme.

Abuse of the scheme to pay compensation for damage to property caused by security forces in the course of their operations has probably cost the taxpayer in excess of £5 million over a two year period. We welcome the robust action by the Compensation Agency which has recently seen the average number of claims drop from 633 per month to 67 per month.

A number of factors will have a significant impact on the future work of the Agency. These include:

- the improving security situation in Northern Ireland and the welcome absence of large-scale town centre explosions;
- the resulting reduced number of claims for criminal injuries compensation under the Tariff Scheme and the greater use of IT to process claims faster;
- the greatly reduced operational deployment of the Army and the dramatic reduction in claims for compensation under the Terrorism Act 2000; and
- the levelling-off of claims for criminal damage.

The future role and structure of the Agency need to be kept under review. The planned review of the Criminal Damage Compensation Scheme and the current review of the staffing complement are steps in the right direction.

Introduction

1. For more than thirty years compensation has been payable in Northern Ireland to the victims of crimes of violence, including terrorism, where a number of conditions are met. The Compensation Agency was set up in April 1992 to administer compensation schemes that support the victims of terrorism and other violent crime, and those who suffer loss as a result of action under the emergency provisions legislation.

2. This report is an examination of the efficiency and effectiveness of the administration and expenditure of the Compensation Agency. We also looked at the role of the Compensation Agency in:

- supporting the victims of violent crime by providing compensation for serious injuries and financial loss;
- sustaining the confidence of the community by providing compensation for physical damage and consequential loss arising from criminal damage to property; and
- providing compensation to those who suffer loss from action taken under the Terrorism Act 2000.

3. We announced our inquiry into the Compensation Agency in July 2003 and took oral evidence in January 2004. We visited the offices of the Compensation Agency on 4 November 2003 to familiarise ourselves with the work of the Agency. We would like to thank Ms McCleary, the Chief Executive, and her staff for their time and effort in making this visit a success. We would also like to thank those who provided written or oral evidence for this inquiry.

4. The timing of the inquiry was particularly appropriate as the Agency had “embarked upon a major programme of change, both to its organisational structure and to the way it conducts its core business of processing claims for compensation”.¹

5. The compensation schemes administered by the Agency fall into three categories.

- Compensation for serious injury or financial loss for the victims of violent crime, including terrorist crime—the 1988 Order Criminal Injuries Compensation Scheme and the subsequent Criminal Injuries Compensation Scheme 2002 (known as the ‘Tariff Scheme’);
- Compensation for physical damage and consequential loss arising from criminal damage to property—the Criminal Damage Compensation Scheme; and
- Compensation to those who suffer loss as a result of action taken under the terrorism legislation, such as damage to property as a result of military patrolling—the Terrorism Act 2000 Compensation Scheme.

Last year the Agency paid out nearly £36 million in compensation under these schemes.²

6. The staff complement of the Agency has fluctuated between 127 and 146 over the past couple of years. The majority of these are administrative grade civil servants together with a number of in-house lawyers and an accountant.³ Additional staff were brought in to deal with the introduction of the Tariff Scheme in 2002 but numbers have subsequently dropped as the volume of claims reduces. The Agency is currently undertaking an internal review of its staffing needs.⁴

7. In the remainder of this report we consider separately each of the compensation schemes operated by the Agency.

Compensation for the Victims of Violent Crime

8. In theory, any victim of a violent crime is entitled to seek compensation directly from the perpetrator:

“...but this theoretical recourse is seldom useful in practice. It may be difficult to identify specific assailants, equally difficult (or even, in the circumstances of Northern Ireland, hazardous) to prove their involvement, and at the end of the day criminals will seldom have the means to pay substantial damages. It is for this very reason that special arrangements have been made for the payment of criminal injuries compensation by the State.”⁵

9. The Criminal Injuries (Compensation) (Northern Ireland) Order 1988 made provision for compensation which could include amounts for pain and suffering, loss of amenity and financial loss. Under the scheme around 12,000 claims per year were received with approximately 60% of applicants receiving compensation and 40% of claims refused as not meeting the eligibility criteria.⁶

The Tariff Scheme

10. In 1998 a Northern Ireland Victims Commission, chaired by Sir Kenneth Bloomfield, was established to look at ways to recognise the pain and suffering felt by the victims of the troubles. The Commission responded to criticisms of the criminal injuries compensation process by recommending “an objective, independent and wide-ranging review of the fitness for purpose of the compensation system as it is operated in Northern Ireland”.⁷

2 Ev 26 Annex E (amended)

3 Ev 13 para 6.4

4 QQ52-55

5 Report of the review of Criminal Injuries Compensation in Northern Ireland, Sir Kenneth Bloomfield KCB, June 1999. p27.

6 Ev 15 para 7.1.1

7 “*We will Remember Them*”, Report of the Northern Ireland Victims Commissioner, Sir Kenneth Bloomfield KCB, April 1998

11. Following that review of compensation arrangements, which reported in June 1999,⁸ a revised scheme was introduced from 1 May 2002 by the Criminal Injuries Compensation (Northern Ireland) Order 2002. This scheme, known as the ‘Tariff Scheme’, differed from the earlier one in that it provided for set compensation award levels for each kind of personal injury and for death. The legislation also provided for the removal of paid legal assistance from the scheme to be replaced by support and help from Victim Support (NI), and for time-barred past victims of child sex abuse to make a fresh claim.

12. During a debate on the proposed draft Criminal Injuries Compensation (Northern Ireland) Order in 2001 the then Parliamentary Under-Secretary of State for Northern Ireland, Mr Des Browne MP, described the new scheme as “straightforward, transparent and simple for victims to understand. It gives victims a good idea from the start of how much money they are likely to get and pays out more quickly than the present scheme.”⁹

13. In his evidence to us the Minister, Mr John Spellar MP, stated that the main Government aim in introducing the tariff-based scheme was “to reduce the cost both to government and indeed also to claimants”.¹⁰ Although early indications are that the number of claims under the new scheme have reduced by around 4,000 per year it is perhaps too early to judge whether this is a result of the introduction of the new scheme. It was suggested to us that the overall reduction in the level of crime might also be a factor.¹¹

14. The reduction in costs to the claimant was to be achieved through the simplification of the scheme thereby removing the need for complex and expensive legal assistance. Support and help in making a claim for compensation can be provided through Victim Support Northern Ireland (VSNI), a voluntary organisation set up to help people come to terms with the experience of a crime. However, we found that more than half of claimants are still using solicitors to make their claims and these legal costs inevitably came out of any award. Just over 20% of claims submitted are supported by VSNI.¹² The Minister told us:

“... I am slightly concerned that something like 55 per cent of claimants are still using solicitors in order to put in claims. ...I would hope that there would be a very clear message to claimants that they do not need to go that route.”¹³

15. The Association of Personal Injury Lawyers (APIL) reiterated its strong opposition to the use of a fixed tariff scheme and expressed concern “that the Compensation Agency does not allow for the recovery of any legal costs by legal representatives aiding in either the completion of claim forms or indeed in any aspect of the claim”. It suggested that “few victims are using the VSNI to help process their claims” and it questioned the capacity of VSNI “to adequately cope with additional work load produced by the scheme”.¹⁴

8 Report of the review of Criminal Injuries Compensation in Northern Ireland, Sir Kenneth Bloomfield KCB, June 1999.

9 Northern Ireland Grand Committee, Thursday 13 December 2001

10 Q66

11 QQ2-3

12 Ev 31

13 Q66

14 Ev 29

16. VSNI accepts that the introduction of the Tariff Scheme has been challenging and has major resource implications for the organisation. It states:

“At present we are awaiting a review of the service by Business Consultancy Service (NIO) who will look at staffing and other resource requirements, to ensure we are in a position to meet the needs of victims who wish to apply to the scheme.”¹⁵

VSNI also believes that further work is needed to promote its services and to raise public awareness of the Tariff Scheme.

17. We are concerned that, having withdrawn financial support for legal assistance in making a claim for criminal injuries compensation, steps were not taken to ensure that adequate alternative help and support is available for all potential applicants. We call on the Minister to undertake an urgent review of the capacity of Victim Support Northern Ireland to provide assistance to all applicants, and to take steps to ensure that applicants are fully aware of the options open to them.

Teething problems

18. A number of initial problems have made it somewhat difficult to assess the impact of the introduction of the Tariff Scheme on the performance of the Agency. The processing of claims is heavily reliant on IT systems intended to deliver faster decisions. Applications and supporting documentation are scanned onto a computer system removing the need to handle large heavy case files. Instant access is then available to electronic files enabling more efficient processing and administration of claims. We were assured that initial teething problems with the IT system have been largely overcome and we were also assured that adequate back-up procedures are in place to cope with any potential failure of the system.¹⁶

19. In processing a claim the Agency seeks a medical report from the appropriate accident and emergency department. When planning for the introduction of the Tariff Scheme the Agency had not anticipated any difficulties in obtaining these reports:

“However, when we reached a stage where we were starting to request medical reports and statements, it became clear to us that each of the hospitals and trusts was treating the requests differently, both in terms of how they responded to it and what they charged for it. When you take account of the fact that these variations extended across all of the hospitals and trusts in Northern Ireland, it became apparent that this was an extremely major problem and medical reports just stopped being received.”¹⁷

20. We were pleased to learn that following visits to each hospital by Agency staff and meetings with the British Medical Association this problem has been resolved. We have been reassured that the Agency is “now at a stage where the number of decisions being made is starting to exceed the number of new claims coming in.”¹⁸

15 Ev 32

16 Ev 15 para 7.1.2; QQ7-10

17 Q11

18 Q11

21. VSNI supports the view that initial teething problems have generally been resolved:

“It was our experience, in approximately the first 18 months of the scheme, that the Compensation Agency were taking longer than originally anticipated to make decisions... These matters appear to be resolved, in the main.”¹⁹

Key Performance Target

22. Under the old criminal injury compensation system the Agency had set and achieved a target of an average of 45 weeks to reach a decision on a claim. The initial target set by the Agency under the Tariff Scheme was to reach a decision on 45% of claims within twelve months and over the next few years to increase the target to 90% of claims decided within twelve months. **We appreciate that there have been some initial problems associated with the introduction of the new Tariff Scheme. However, we recommend that the Agency reviews its targets for processing claims and sets more challenging, while still achievable, targets year on year.**

23. As well as processing claims under the new Tariff Scheme the Agency has a considerable backlog of cases still outstanding under the old scheme (the 1988 Order). Unlike the Tariff Scheme, where the Agency will pursue the necessary medical and other documentation, claims under the 1988 Order were ‘applicant led’. This means that it was the responsibility of the applicants or their legal representatives to provide the necessary accountancy, medical or other reports to support their claim, and lengthy delays have occurred particularly in complex cases. Indeed the oldest outstanding case dating back some twelve years remains open because the applicant’s solicitors have lost contact with their client and the case cannot be closed without the applicant’s consent.²⁰

24. At 5 December 2003 there were 9,496 unresolved claims under the 1988 Order and a further 4,200 cases under appeal. Nearly 90% of these claims originated in the last four years with the remainder stretching back as far as 1991–92.²¹ Although this is a very large number of claims still requiring a decision, we recognise that it was much higher and the Agency has achieved considerable success over the last few years. The Minister told us that the number of outstanding cases had been about 27,000 in 2001 and this increased further to 29,000 in 2002 before being reduced to the present level of 13,696.²² The Agency also expressed optimism that the vast majority of the remaining cases would be cleared within a year.²³ **We commend the success of the Agency staff in reducing the outstanding claims under the 1988 Order, and we urge them to continue their efforts to deal with the remaining cases as quickly as possible.**

Recovery from Offenders

25. Where compensation is paid to the victim of a violent crime the legislation enables the Agency to recover all or some of that compensation from the person who has committed

19 Ev 31

20 QQ13-24

21 Ev 24 Annex A

22 Q68

23 Q13

the offence. We noted from the Agency's Annual Report for 2002–03 that there were 1,129 claims settled during the year where an offender was identified but no recovery was sought from that offender.

26. The Agency explained that the policy is to restrict the use of the recovery powers to cases where offenders themselves become entitled to compensation from public funds at a later date. It had proved difficult to recover directly from the offender's earnings or assets.²⁴ A formal court order was required and reliable information on the offender's financial status in support of a court order was difficult to obtain. Enforcement was also frequently ineffective. The present policy, which dates back to 1991, has been revisited on a number of occasions. The Agency argues that:

“the original arguments still apply and indeed are strengthened by the intervening powers of the court to award compensation to a victim from the offender as part of the original criminal action”.

Under the current policy the Agency has recovered almost £3 million from 1,150 offenders in the past five years.

27. We recommend that the Minister undertake a review of the current policy in relation to recovery of compensation, which restricts the use of recovery powers to cases where offenders themselves subsequently become entitled to compensation.

Child sexual abuse cases

28. The 2002 Order enabled past victims of child sexual abuse who were time-barrred from receiving compensation to make a fresh claim in accordance with the statutory provisions that prevailed at the time of the incident. This was a very welcome provision and it “meant that claims could be made by anyone who had been abused in their childhood, regardless of the time which had since elapsed”.²⁵ However, no changes were made to any other provisions of the earlier legislation and we believe this has resulted in a serious flaw in the legislation. In effect if a victim claims to have been abused before 1988, but lived in the same household as the perpetrator at the time of the abuse, he or she is barred from claiming compensation.²⁶

29. We recognise that many victims of child sexual abuse only come to terms with that abuse years later. It is, therefore, important that when they do come to terms with it they are not debarred from claiming compensation. In one such case the legislation has been challenged recently through a judicial review on the grounds that it contravenes human rights legislation. However, we understand that the judicial review has rejected the case and upheld the view that the legislation debars a claim. The Minister indicated that he wished to examine the reasons for the decision in the judicial review before considering the issue further.²⁷

24 Ev 27

25 Ev 19 para 10.4

26 Ev 19 para 10.4

27 QQ82-83

30. We are very concerned that flaws in the law governing compensation have resulted in some child sexual abuse victims being unintentionally debarred from claiming compensation. We urge the Minister to take steps as a matter of urgency to remove this barrier.

Scar viewing

31. It is the practice of lawyers to view scars resulting from physical injuries as part of the process of settling the level of compensation payable in criminal injury compensation cases. In 2002 this practice attracted considerable media attention following complaints by two female applicants who had been injured in the Omagh bomb²⁸. As a result of those complaints an independent review, set up by the then Parliamentary Under-Secretary of State, Des Browne MP, was carried out by Professor Desmond Greer, Faculty of Law, Queen’s University Belfast.

32. Professor Greer’s report, which was published on 21 January 2004, concluded that the viewing of scars in connection with claims under the 1988 Order should continue but he made a number of recommendations to refine the current practice. Commenting on the Report the Agency said that:

“one of the things which Professor Greer has identified is the fact that many applicants believe that it is in their interests to have their injuries viewed by the compensating organisation. Many want to go through that procedure.”²⁹

We recognise that the need for lawyers to view scars will be much reduced under the Tariff Scheme.³⁰

33. We welcome the commitment by the Minister to give detailed consideration to the recommendations in the Greer Report on scar viewing, in consultation with the legal profession.

Compensation for Criminal Damage

34. Compensation from public funds for criminal damage to property has been available in Northern Ireland for many decades.³¹ The current scheme is established under the Criminal Damage (Compensation) (Northern Ireland) Order 1977. The scheme provides a right to claim compensation for loss suffered as a result of malicious or wanton damage to agricultural property and, in the case of other property, as a result of damage caused by an unlawful assembly of three or more persons or by terrorist acts.

35. From around the time of the paramilitary cease-fires there has been a very welcome drop in the number of major incidents—the last town centre explosion causing major

28 Ev 18 para 10.1

29 Q80

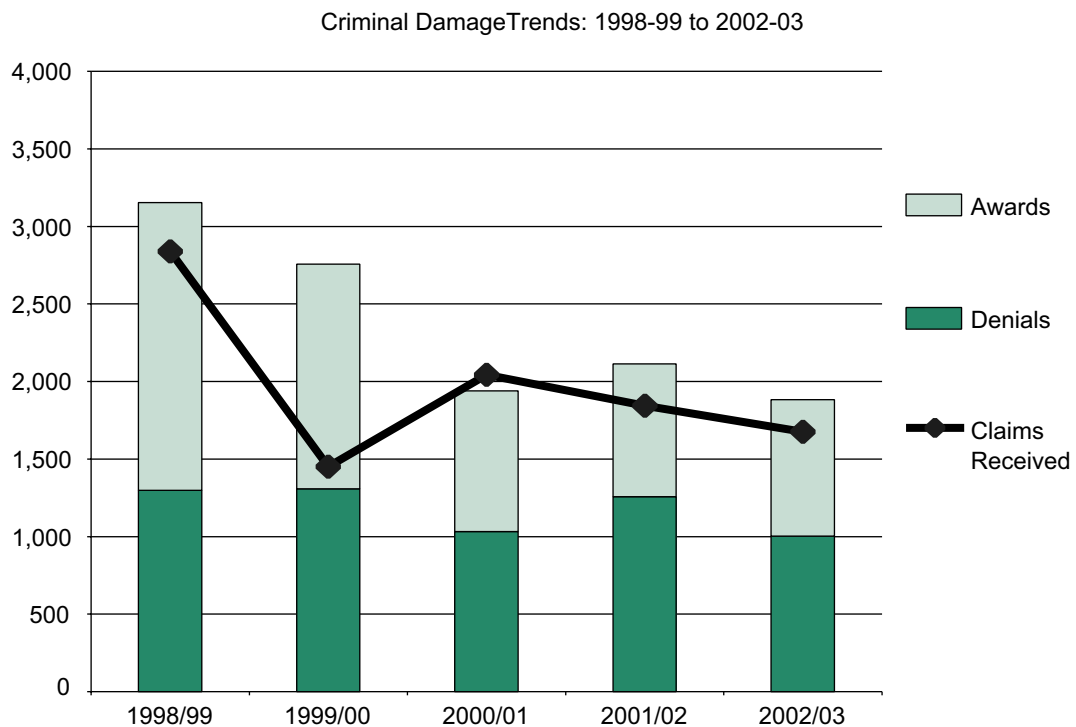
30 QQ79-81

31 Ev 16 8.1

widespread damage was the Omagh bomb in August 1998—and a corresponding reduction in the number of claims under this scheme. The Agency explained that:

“in the past those claims were largely generated by large events; we are talking really about explosions where you would have a considerable number of claims all made in relation to the same set of circumstances. We are now seeing claims coming in for criminal damage in relation to one-off events.”³²

The number of claims has now levelled off at between 1,500 and 2,000 per year and we note that more than half of these claims are disallowed.



Data Source: Compensation Agency

36. One of our concerns, in view of the changing nature of claims and the very welcome absence of major incidents, was whether the Agency, with its overall reduction in staff numbers, will be able to retain the capacity and the expertise to cope should a major incident occur.³³ **We were reassured both by the Agency and by the Minister that the Agency has the capacity and the expertise to cope with a major incident, through having a major incident team in place, and contingency plans to draft in additional staff from other agencies if necessary.**

Insurance Cover

37. The decision of the insurance industry in April 1978 that all insurance policies relating to property (other than private dwellings) in Northern Ireland would exclude cover for

32 Q28

33 QQ29, 78

terrorist related incidents, has had a significant impact on the scheme. The Agency has indicated that overall, approximately £1 billion has been spent throughout the period of the ‘Troubles’ with the highest annual spend of £75 million in 1992–93.³⁴ The Agency stated that, when asked in 2001, the insurance industry expressed some interest in returning to this business but that it was still too uncertain a risk.³⁵ The Minister indicated his belief that, in the wake of events such as the Al-Qaeda attacks on the US on 11 September 2001, the insurance industry tends to be risk averse and there are no indications that they might wish to re-enter this market at present.³⁶

38. We recognise the difficulties and uncertainties facing the insurance industry at the present time. However, in view of the improving security situation in Northern Ireland, we welcome the assurance from the Minister that, as part of the planned review of the Criminal Damage Compensation Scheme, the issue of providing cover for terrorist related incidents will again be explored with the insurance industry.

Terrorism Act 2000 Compensation Scheme

39. The Terrorism Act 2000, which came into operation in February 2001, is the latest in a series of emergency provisions measures. It provides a right to claim compensation for loss or damage suffered as a result of action taken under these provisions. Compensation is payable for property damaged, requisitioned or removed and this generally means damage caused by the security forces in the course of their operations, for example, to fences, agricultural produce, machinery, or buildings.

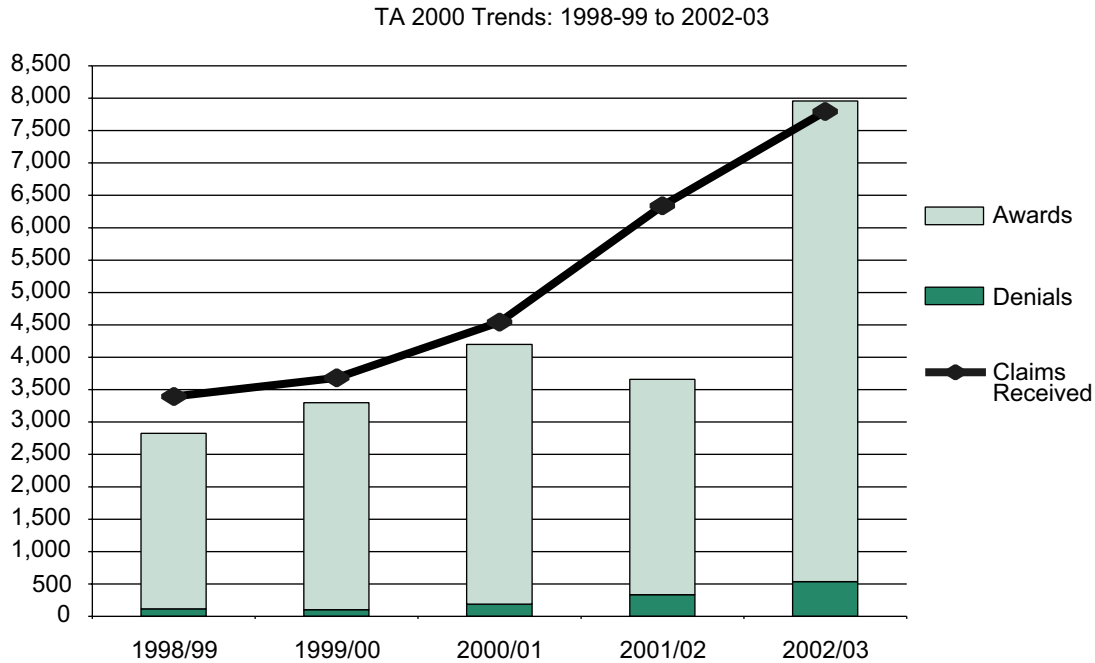
40. The Agency told us that “despite the greatly reduced operational deployment of the Army in Northern Ireland, the incidence of claims made under the scheme did not show a corresponding reduction; indeed an upward trend was seen.”³⁷ We were concerned to learn that in fact the number of claims under the Act, which had increased from under 3,500 in 1998–99 to around 4,500 in 2000–01, jumped dramatically following the introduction of the 2000 Act to nearly 8,000 by 2002–03.

34 Ev 16 para 8.3

35 Ev 16 para 8.2 & Ev 19 para 10.5

36 QQ76-77

37 Ev 17 para 9.1



Data Source: Compensation Agency

41. When asked about the reasons for this dramatic increase the Agency indicated that the change in legislation itself was a factor. The Chief Executive said:

“Prior to that the governing legislation had been the Emergency Provisions Legislation, which required that claims had to be submitted to the Agency within six months of damage being caused. When the Terrorism Act came in in 2001, it required that notification of a claim had to be made to us within 28 days. Typically what happened was that someone who was putting in a claim once every six months then started putting in a claim once every 28 days instead. That is a significant factor in the recent claims.”³⁸

42. The Agency became concerned about the pattern of claims and the possibility of fraud and carried out a review of its procedures for handling claims. A number of claims were also passed to the police who are currently undertaking a fraud investigation. Following the review new procedures, introduced by the Agency in May 2003, had an equally dramatic impact in reducing the number of claims. The average number of claims dropped from 633 per month to 67 per month with an estimated saving to the public purse of about £2.8 million in the financial year 2003–04.³⁹ The new procedures “involved the introduction of a new, more detailed, claim form; more focussed reports and inspection by the Agency’s loss adjusters and closer liaison with the army”⁴⁰.

43. **It seems clear to us that blatant exploitation and abuse of the Terrorism Act compensation schemes occurred on a large scale, particularly over the two-year period following the introduction of the Terrorism Act 2000. The Minister described this as a**

38 QQ35-36

39 Q37

40 Ev 17 para 9.3

“tendency towards something between fraud and opportunism”.⁴¹ That the abuse should have continued unchecked for a considerable period is a very great cause for concern, but we are pleased to note that it was eventually confronted head on and we congratulate the Compensation Agency on tackling the issue in a vigorous and effective manner. The introduction of a new robust claims procedure, and closer liaison with the army aided by an improving security situation on the ground, has had a dramatic impact.

44. We wanted to know the total actual loss to public funds over this period but the Minister, while acknowledging that “it must be quite considerable”,⁴² was unable to provide an estimate. Based on the estimated saving in the current year as a result of the introduction of the revised procedures, we calculate that the overall loss was probably in excess of £5 million over the two year period.

45. The priority must remain to pay compensation to those entitled to it but we recognise that schemes of this kind can and will continue to be susceptible to fraud and abuse. We urge the Minister to continue to review these schemes to ensure that funding goes to those who deserve it and that any irregularities are detected and dealt with at an early stage.

Other Issues

Budget

46. On reviewing the Agency’s budget we were concerned to find that the allocation for the current year was more than double the forecast outturn across a range of headings leaving the Agency with a potential surplus of just over £40 million. In particular, the allocation for criminal injuries under the 2002 Order (the Tariff Scheme) was £51.84 million while the Agency is now forecasting a spend of just £15.556 million. Also, the allocation for payments under the Terrorism Act was £5.402 million and the anticipated spend is £1.054 million.⁴³

47. The Agency explained that this was caused by a combination of factors.⁴⁴ In the past forecasts were made on the basis of the anticipated number of claims and the average award per claim. However, the Agency claimed that because of the change to resource accounting, the outturn for 2002–03 was based on the value of the new claims received during the year rather than the amount actually paid out during the year. The introduction of the Tariff Scheme with the subsequent reduction in the overall number of claims and the very successful measures introduced by the Agency to tackle the abuse of the Terrorism Act claims also had a major impact. We were advised that the Northern Ireland Audit Office is now working closely with the Agency.

41 Q70

42 QQ71-73

43 Ev 26 Annex E (amended)

44 Q49

48. We have been assured that the Department had been alerted to the underspend and that this money is being used to meet funding pressures elsewhere. However, we believe that with more accurate forecasting by the Agency this additional money could have been available for allocation at the outset of the year to other vital priority programmes in Northern Ireland. We urge the Minister to take steps to ensure much more realistic forecasting in the future.

Customer satisfaction

49. Customer satisfaction is an important performance measure for any organisation providing a service to the public. We commend the Agency for carrying out regular surveys of applicants and their representatives, and we recognise that the attitudes of applicants towards the service they have received may be coloured by whether their claim for compensation has been successful or has been rejected.⁴⁵

50. We note that the customer satisfaction level fell from 71% in 1999 to 65% in 2001. The Agency believes that this drop in satisfaction levels was probably due to the number of people who were unhappy in principle with the introduction of the new Tariff Scheme.⁴⁶ A further survey is currently underway and the Agency anticipates that the level of general unhappiness about the introduction of the Tariff Scheme may be further reflected in the outcome of that survey. For this reason the Agency appears to have omitted a user satisfaction target in its key performance targets for 2003–04.⁴⁷

51. In the past the Agency has identified ‘achieving an improvement in its level of user satisfaction’ as one of its key performance targets but dropped the target in 2003–04. We would urge the Agency to restore that target accompanied, if necessary, by a more robust methodology for distinguishing between ‘genuine’ dissatisfaction and irritation at refusal of a claim.

45 Q44

46 Q46

47 QQ47-48

Conclusions and recommendations

1. We are concerned that, having withdrawn financial support for legal assistance in making a claim for criminal injuries compensation, steps were not taken to ensure that adequate alternative help and support is available for all potential applicants. We call on the Minister to undertake an urgent review of the capacity of Victim Support Northern Ireland to provide assistance to all applicants, and to take steps to ensure that applicants are fully aware of the options open to them. (Paragraph 17)
2. We appreciate that there have been some initial problems associated with the introduction of the new Tariff Scheme. However, we recommend that the Agency reviews its targets for processing claims and sets more challenging, while still achievable, targets year on year. (Paragraph 22)
3. We commend the success of the Agency staff in reducing the outstanding claims under the 1988 Order, and we urge them to continue their efforts to deal with the remaining cases as quickly as possible. (Paragraph 24)
4. We recommend that the Minister undertake a review of the current policy in relation to recovery of compensation, which restricts the use of recovery powers to cases where offenders themselves subsequently become entitled to compensation. (Paragraph 27)
5. We are very concerned that flaws in the law governing compensation have resulted in some child sexual abuse victims being unintentionally debarred from claiming compensation. We urge the Minister to take steps as a matter of urgency to remove this barrier. (Paragraph 30)
6. We welcome the commitment by the Minister to give detailed consideration to the recommendations in the Greer Report on scar viewing, in consultation with the legal profession. (Paragraph 33)
7. We were reassured both by the Agency and by the Minister that the Agency has the capacity and the expertise to cope with a major incident, through having a major incident team in place, and contingency plans to draft in additional staff from other agencies if necessary. (Paragraph 36)
8. We recognise the difficulties and uncertainties facing the insurance industry at the present time. However, in view of the improving security situation in Northern Ireland, we welcome the assurance from the Minister that, as part of the planned review of the Criminal Damage Compensation Scheme, the issue of providing cover for terrorist related incidents will again be explored with the insurance industry. (Paragraph 38)
9. It seems clear to us that blatant exploitation and abuse of the Terrorism Act compensation schemes occurred on a large scale, particularly over the two-year period following the introduction of the Terrorism Act 2000. The Minister described this as a “tendency towards something between fraud and opportunism”. That the abuse should have continued unchecked for a considerable period is a very great

cause for concern, but we are pleased to note that it was eventually confronted head on and we congratulate the Compensation Agency on tackling the issue in a vigorous and effective manner. The introduction of a new robust claims procedure, and closer liaison with the Army aided by an improving security situation on the ground, has had a dramatic impact (Paragraph 43)

10. We wanted to know the total actual loss to public funds over this period but the Minister, while acknowledging that “it must be quite considerable”, was unable to provide an estimate. Based on the estimated saving in the current year as a result of the introduction of the revised procedures, we calculate that the overall loss was probably in excess of £5 million over the two year period. (Paragraph 44)
11. The priority must remain to pay compensation to those entitled to it but we recognise that schemes of this kind can and will continue to be susceptible to fraud and abuse. We urge the Minister to continue to review these schemes to ensure that funding goes to those who deserve it and that any irregularities are detected and dealt with at an early stage. (Paragraph 45)
12. On reviewing the Agency’s budget we were concerned to find that the allocation for the current year was more than double the forecast outturn across a range of headings leaving the Agency with a potential surplus of just over £40 million. (Paragraph 46)
13. We have been assured that the Department had been alerted to the underspend and that this money is being used to meet funding pressures elsewhere. However, we believe that with more accurate forecasting by the Agency this additional money could have been available for allocation at the outset of the year to other vital priority programmes in Northern Ireland. We urge the Minister to take steps to ensure much more realistic forecasting in the future. (Paragraph 48)
14. In the past the Agency has identified ‘achieving an improvement in its level of user satisfaction’ as one of its key performance targets but dropped the target in 2003–04. We would urge the Agency to restore that target accompanied, if necessary, by a more robust methodology for distinguishing between ‘genuine’ dissatisfaction and irritation at refusal of a claim. (Paragraph 51)

Formal minutes

Monday 26 April 2004

Members present:

Mr Michael Mates, in the Chair

Mr Adrian Bailey	Mr Stephen Pound
Mr Roy Beggs	Reverend Martin Smyth
Mr Tony Clarke	Mr Hugo Swire
Mr Stephen Hepburn	Mark Tami
Mr Iain Luke	Mr Bill Tynan

The Committee deliberated.

Draft Report (The Compensation Agency), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 51 read and agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (reports)) be applied to the Report.—(*The Chairman.*)

Several papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.—(*The Chairman.*)

[Adjourned till Wednesday 5 May at 3.30 pm]

Witnesses

Wednesday 21 January 2004

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Ms Anne McCleary, Mr Frank Brannigan, and Mr Richard Stewart, **The Compensation Agency** Ev 1

Rt Hon. John Spellar MP, **Minister of State**, and Mr Brian Grzymek, **Northern Ireland Office**, and Ms Anne McCleary, **The Compensation Agency** Ev 7

List of written evidence

1	Northern Ireland Office and the Compensation Agency	Ev 11
2	Compensation Agency, supplementary memorandum	Ev 23
3	Compensation Agency, further supplementary memorandum	Ev 26
4	Association of Personal Injury Lawyers	Ev 27
5	Victim Support Northern Ireland	Ev 30

List of unprinted written evidence

Additional papers have been received and have been reported to the House but to save printing costs they have not been printed. Copies have been placed in the House of Commons library where they may be inspected by members. Copies are also placed in the Record Office, House of Lords and are available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London SW1. (Tel 020 7219 3074) Hours of inspection are from 9:30am to 5:00pm on Mondays to Fridays.

Department of the Director of Public Prosecutions
 Criminal Injuries Compensation Appeals Panel
 The Compensation Agency

Reports from the Northern Ireland Affairs Committee since 2001

The following reports have been produced by the Committee since the start of the 2001 Parliament.

Session 2003–04

First Report	The Committee's work in 2003	HC 146
Second Report	The separation of paramilitary prisoners at HMP Maghaberry	HC 302
Third Report	Introduction of the Aggregates Levy in Northern Ireland: one year on	HC 395
Fourth Report	The Compensation Agency	HC 271
First Special Report	Government Response to the Committee's Eighth Report on The Illegal Drugs Trade and Drug Culture in Northern Ireland, Session 2002–2003	HC 180
Second Special Report	Government Response to the Committee's First Report on the Work of the Committee in 2003	HC 510

Session 2002–03

First Report	The Impact in Northern Ireland of Cross-Border Road Fuel Price Differentials: Three years on	HC 105–I
Second Report	Annual Report 2002	HC 271
Third Report	The Police (Northern Ireland) Bill	HC 233
Fourth Report	The Control of Firearms in Northern Ireland and the draft Firearms (Northern Ireland) Order 2002	HC 67–I
Fifth Report	Forensic Science Northern Ireland	HC 204
Sixth Report	The Illegal Drugs Trade and Drug Culture in Northern Ireland: Interim Report on Cannabis	HC 353–I
Seventh Report	Peace II	HC 653–I
Eighth Report	The Illegal Drugs Trade and Drug Culture in Northern Ireland	HC 1217–I
First Special Report	Government Response to the Committee's First Report: The Impact in Northern Ireland of Cross-Border Road Fuel Price Differentials: Three Years On	HC 412
Second Special Report	Government Response to the Committee's Third Report: The Police (Northern Ireland) Bill	HC 555
Third Special Report	Government Response to the Committee's Second Report: Annual Report 2002	HC 583
Fourth Special Report	Government Response to the Committee's Fourth Report on the Control of Firearms in Northern Ireland and the Proposed Draft Firearms (Northern Ireland) Order 2002, HC 67–I, Session 2002–03	HC 677
Fifth Special Report	Government Response to the Committee's Fifth Report on Forensic Science Northern Ireland	HC 722

Sixth Special Report	Government Response to the Committee's Sixth Report on the Illegal Drugs Trade and Drug Culture in Northern Ireland: Interim Report on Cannabis	HC 935
Seventh Special Report	Government Response to the Committee's Seventh Report on Peace II	HC 1077

Session 2001–02

First Report	Introduction of the Aggregates Levy in Northern Ireland	HC 333
Second Report	The Financing of Terrorism in Northern Ireland: Interim Report on the Proceeds of Crime Bill	HC 628
Third Report	Introduction of the Aggregates Levy in Northern Ireland: The Government's Response	HC 713
Fourth Report	The Financing of Terrorism in Northern Ireland. Volume II of this Report (HC 987–II) includes the Government Response to the Second Report, Session 2001–02, The Financing of Terrorism in Northern Ireland: Interim Report on the Proceeds of Crime Bill, HC 628	HC 978–I
First Special Report	Government Response to the Committee's Fifth Report, Miscellaneous Financial Matters, Session 2000–01, and the Government Response to the Committee's Third Report, The Northern Ireland Office 2000 Departmental Report, Session 1999–2000	HC 332
Second Special Report	Government Response to the Committee's Fourth Report, Legal Aid In Northern Ireland, Session 2000–01	HC 400
Third Special Report	Government Response to the Committee's Second Report, The Parades Commission, Session 2000–01	HC 401
Fourth Special Report	Government Response to the Committee's Third Report, Relocation Following Paramilitary Intimidation, Session 2000–01	HC 461
Fifth Special Report	Government Response to the Committee's Third Report, Introduction of the Aggregates Levy in Northern Ireland, Session 2001–02	HC 1118

Oral evidence

Taken before the Northern Ireland Affairs Committee

on Wednesday 21 January 2004

Members present

Mr Michael Mates, in the Chair

Mr Adrian Bailey
Mr Harry Barnes
Mr Roy Beggs
Mr Tony Clarke

Mr Iain Luke
The Reverend Martin Smyth
Mr Hugo Swire
Mark Tami

Witnesses: **Ms Anne McCleary**, Chief Executive, **Mr Frank Brannigan**, Director of Operations and **Mr Richard Stewart** Resource Accountant, Compensation Agency, examined.

Q1 Chairman: Good afternoon; I am very sorry we have delayed you. I am afraid sometimes the wheels of democracy grind rather slow. Thank you for coming to help us with our inquiry into the work of the Compensation Agency. We want to talk to you about the Criminal Injuries Compensation Scheme. This follows on from the Committee's visit to you, where we were briefed very well and got some idea of what was going on. What has been the overall reaction to and impact of the introduction of the new Tariff Scheme?

Ms McCleary: May I begin by introducing my two colleagues? I am Anne McCleary, I am the Chief Executive of the Compensation Agency. To my right is Frank Brannigan who is the Director of Operations. To my left is Richard Stewart, who is our accountant. Your question was about the impact of the new scheme. The impact of the new scheme would appear to be that the number of new claims coming in has reduced and we are now operating two schemes simultaneously. We are working on the remainder of the old scheme cases and we are now introducing the new scheme. Since the new scheme came in, we have seen a reduction in the number of criminal injury claims coming to us as compared with the old 1988 scheme. There have also been teething problems with bringing the new scheme in, which we have largely overcome.

Q2 Chairman: The combined number of claims seems to be quite a lot down, about 4,000 down. Do you think this trend will continue?

Ms McCleary: We do not actually know what caused the number of claims to go down, therefore it is impossible to say whether or not the trend will continue. We do not see any reason why it should not continue.

Q3 Chairman: You have no idea why the number of claims has reduced?

Ms McCleary: We have some information from the police that the overall level of crime has reduced by about 30%, which is roughly the percentage by which the number of claims has dropped. That is likely to be a factor, but to say any more would be speculation.

Q4 Chairman: What target have you set yourselves for an average time to reach a decision on claims under the tariff system?

Ms McCleary: The target which we have set ourselves is to take decisions in claims and 45% of those decisions will initially be taken within a year and then over the next few years that percentage will increase to 90%.

Q5 Chairman: Forty-five per cent within a year. What about the other 55%?

Ms McCleary: Those cases will be dealt with as speedily as possible.

Q6 Chairman: They will take more than a year.

Ms McCleary: Yes.

Q7 Mr Swire: The processing of new claims is more heavily reliant on IT. Do you have any evidence that this will significantly contribute towards processing some of these claims any faster?

Ms McCleary: The whole idea of bringing in the new scheme and using a new IT system was that it would speed things up. We are starting to see that happen. In the initial period we had some teething problems with IT, but those have been largely overcome. We are now starting to see a greater number of decisions being taken than there are new claims coming in. We are now starting to see a greater number of decisions being taken than there are new claims coming in, so we are eating into that backlog.

Q8 Mr Swire: You say you have had some teething problems with the IT. What contingency and back-up plans do you have for the IT system, given that so much more data is going to be on computer?

Ms McCleary: In line with best practice, we have a system whereby backups are done on a daily basis; back-up tapes are located off site in a secure site and if there were to be a problem with the system, we would be able to acquire further hardware if necessary and start using the back-up tapes.

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Q9 Mr Swire: How often are those back-up tapes physically removed from the building and stored in this other secure location?

Ms McCleary: I personally am not sure about that.

Q10 Mr Swire: Regularly? Whatever that is.

Ms McCleary: Yes.

Q11 Mr Beggs: The Agency had experienced problems initially in obtaining medical reports, required to process claims under the Tariff Scheme, from accident and emergency departments. What was the nature of those problems and have they now been resolved?

Ms McCleary: The problems which initially happened emerged unexpectedly. When the scheme was set up, the Criminal Injuries Tariff Scheme Implementation Project Team (usually known as CITSIP) did preparatory work to create the procedures for tariffs. They did not expect that there would be difficulty getting medical reports from the A&E departments of the various hospitals; there were similar arrangements which worked very well in the GB scheme. However, when we reached a stage where we were starting to request medical reports and statements, it became clear to us that each of the hospitals and trusts was treating the requests differently, both in terms of how they responded to it and what they charged for it. When you take account of the fact that these variations extended across all of the hospitals and trusts in Northern Ireland, it became apparent that this was an extremely major problem and medical reports just stopped being received. What we then did was to send out a team to talk to the hospitals and trusts personally, we established what the problem was, we agreed a new procedure with them and that procedure is now operating and operating well. We are now getting medical reports in and we are now at a stage where the number of decisions being made is starting to exceed the number of new claims coming in.

Q12 Mr Beggs: What action is being taken to address outstanding claims under the old scheme and what is the estimate of how long it will take to clear these?

Ms McCleary: The first thing is that we have to make sure that we have the correct staffing levels within the organisation and that is the first thing we do. The other thing is that we are targeting the older cases. The staff who are involved in handling these cases have key objectives which include having structured reviews on a regular basis. That is built into the staff's appraisal. The other thing is that we are actively looking at how we deal with the old scheme cases and we shall continue to look at that to ensure that we process them as quickly as possible.

Q13 Mr Beggs: Approximately how long have the oldest claims been awaiting resolution?

Ms McCleary: The oldest cases that we have go back, I believe, to 1991–92; we have one case going back as long as that. While we cannot predict

precisely when all these cases will have cleared, we are optimistic that we will have dealt with the remaining cases within the next year.

Q14 Chairman: Do you have any idea why a case would take 13 or 14 years and still not be resolved? Try to illustrate to us some of the complexities, would you? Let us take this case. Without mentioning names, tell us about this case and why it has taken 13 years.

Mr Brannigan: In this particular case, what has happened is that the applicant's solicitors have lost contact with their client and they are reluctant to bring the case to a close. Even though we are anxious to close and they are anxious to close it, the applicant has just disappeared. For that reason we have to keep it open because the applicant's solicitor does not have the authority to clear the claim on his client's behalf.

Q15 Chairman: So you are not working on this case.

Mr Brannigan: Not on those very old cases. I think we have about 24 cases which go back to 1994–95 and in all of those the Agency is not actively doing anything other than going back to the applicant's solicitor and asking whether they have heard any more.

Q16 Chairman: So they have to remain a statistic.

Mr Brannigan: They have to remain a statistic. We cannot bring them to an end until the applicant appears.

Q17 Chairman: They are not cases which are being delayed through any form of bureaucracy or anything; the applicant has disappeared.

Mr Brannigan: There may be some outstanding documentation, believe it or not, still awaited on one or two of them. I know one of them is still awaiting an accountant's report because the applicant's injuries are such that he has not been able to go back to his previous employment and there is some debate as to the extent of his financial loss as a result of not being able to return to his employment.

Q18 Chairman: In none of these cases is the delay anything you can do anything about.

Ms McCleary: That is correct.

Q19 Chairman: None of them.

Ms McCleary: I should like to think so.

Q20 Chairman: I should like you to "say" so, not that you "think" so.

Mr Brannigan: It is part of our strategy that we do actively look at these cases on a regular basis and that is what we are anxious to do. It is an embarrassment to us as you can imagine.

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Q21 Chairman: It ruins all your figures, does it not?
Mr Brannigan: Absolutely.

Q22 Mr Swire: I do not want to add to your embarrassment, but there are significant differences between the two cases you gave. One is that the applicant's lawyer has lost contact with their client. The second case is that the accountants have been unable to resolve the question of compensation due to the loss of a job and that is presumably one of the cases going back to ten or eleven years ago.

Mr Brannigan: Yes.

Q23 Mr Swire: There is a difference in those two. Are you saying that these cases have to remain open ended for ever? What are the implications for the tax payer if you have to resolve these cases years later in terms of uprating the amounts of money you will then have to pay them?

Mr Brannigan: In the circumstances I described, where the applicant is no longer available, it really can only be brought to an end by direction of the court and we are unlikely to get a direction of the court.

Q24 Mr Swire: There is no automatic mechanism.

Mr Brannigan: No. When someone makes an application under the old scheme, it has ultimately to be determined by the court one way or the other, either that they accept our offer in the early stages or it goes to appeal and there is an appeal hearing. It is part of the system that it actually has to be brought to a legal end.

Q25 Mr Beggs: What is the rate of appeal under the old Criminal Injury Scheme and how many of these are successful?

Ms McCleary: The percentage of decisions we take which are appealed is in the region of 20 to 25%. You also asked me how many are successful: 75% of the appeals which are made result in an award in the end.

Q26 Mr Beggs: Has the pattern of appeals changed with the introduction of the Tariff Scheme?

Ms McCleary: Since the Tariff Scheme came in, we now see about 40% of the first decisions which we make result in a request for a review of that decision; that is an in-house appeal mechanism. Then a number would result in appeals. To date we have turned down 281 cases. Forty per cent of those cases have applied for review. Eight-five per cent have appealed to the Criminal Injuries Appeal Panel and 11 cases have been heard by the Appeal Panel and have been decided.

Q27 Mr Beggs: How long would those making the appeal have to wait to get their appeal heard after receiving your decision?

Ms McCleary: The system has been quite slow in starting up; it has undoubtedly taken some time to get the new Tariff Scheme up and running. Our first appeal hearings were in November/December last year, so since the scheme started in May of the year before that we are talking about 18 months,

something like that. The appeal dates are now being fixed, things are now being arranged and it will be quicker.

Q28 Mr Luke: Following the drop in major incidents in recent years the number of claims under the Criminal Damage Compensation Scheme, which fell quite dramatically around 1999, has levelled off now to about 1,500 to 2,000 cases per year. Has the nature of the claims changed over the last few years?

Ms McCleary: Yes. One of the significant factors in relation to the Criminal Damage Compensation Scheme is that in the past those claims were largely generated by large events; we are talking really about explosions where you would have a considerable number of claims all made in relation to the same set of circumstances. We are now seeing claims coming in for criminal damage in relation to one-off events.

Q29 Mr Luke: Heaven forbid that we have to face a major explosion again, but do you have the capacity to deal with that kind of contingency if it does arise?

Ms McCleary: The short answer is yes. We have a major incident team who will go out and do whatever needs to be done. Whether it means going out to the location or providing advice and assistance to those who have been affected by the damage, we have that capability within the organisation at the minute. If there were to be a need for further individuals to become involved, we could pull them in from other parts of our organisation and if necessary go beyond that to those with this type of experience who are currently working within the Northern Ireland Office itself.

Q30 Mr Luke: The Criminal Damage Compensation Scheme is going to be reviewed shortly. Could you outline for us what you see as the major issues to be considered in this review?

Ms McCleary: The review is something which is the responsibility of the department; it is not something we will be carrying out. It is really for the department to decide what it needs to look at. There are all sorts of issues coming out. I am not really in a position to comment.

Q31 Reverend Smyth: I understand when you say the department will be reviewing it, but from your experience you will have some understanding of some of the problems. Can you tell us how many claims are still outstanding, awaiting the Chief Constable's certificate?

Ms McCleary: No, I am not in a position to answer that at the moment. I can provide you with that information at a later date.

Q32 Reverend Smyth: It would be helpful if it were possible to have that, because I understand that recently one which has been delayed for some years has been paid and I wanted to find out the reasons for the delay. On the question of the

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implementation of the old legislation it was held against a person if they had been involved in terrorism.

Ms McCleary: That is correct.

Q33 Reverend Smyth: Are you aware how many claims were turned down affecting businesses where one person may have been involved in terrorism but the other folk were innocent parties and therefore lost their claims as well?

Ms McCleary: The legislation specifically provides that someone who has a conviction for a terrorist offence is excluded from receiving compensation. Therefore there have been cases where there are multiple applicants and only one of those applicants has a terrorist conviction and the claims have been turned down.

Q34 Reverend Smyth: Could you let us know how many?

Ms McCleary: We could let you know; I do not have the figures here.

Q35 Mr Bailey: Could we turn to compensation under the Terrorism Act of 2000? The Agency memorandum shows that “despite the greatly reduced operational deployment of the Army in Northern Ireland” the number of claims under the Terrorism Act had more than doubled from just under 3,500 in 1998–99 to nearly 8,000 by 2002–03. Why do you think this happened?

Ms McCleary: Again it would be very dangerous for me to speculate as to why someone decides to put in a claim. However, what I can say is that one of the factors which led to that increase is the change in legislation when the Terrorism Act came in in 2001. Prior to that the governing legislation had been the Emergency Provisions Legislation, which required that claims had to be submitted to the Agency within six months of damage being caused. When the Terrorism Act came in in 2001, it required that notification of a claim had to be made to us within 28 days. Typically what happened was that someone who was putting in a claim once every six months then started putting in a claim once every 28 days instead. That is a significant factor in the recent claims.

Q36 Mr Bailey: That is very interesting. It implies that somebody was putting in claims more or less on a rota basis.

Ms McCleary: There certainly have been claims which come in on a very frequent basis.

Q37 Mr Bailey: Can you explain the changes which the Agency has introduced as a result of a review of the procedures for handling the claims and what impact this has had?

Ms McCleary: The changes which we brought in were in a strategy and the strategy included a number of different strands. One was that we changed the claim form itself and a far more robust claim now has to be completed. The second was that we changed the requirements on our loss adjusters. We required them to do a few more

things which they had not been doing before that. The other changes which were brought in, were brought in not by us but by the military. After I visited Bessbrook and spoke to the senior officers down there, there was a change in the nature of the information they were able to give us which then enabled us to take better decisions. The impact of those changes has been that we now see on average about 67 claims per month, whereas before we brought in these changes the average number of claims per month was 633. If it is of any interest, the figure for December, which is traditionally a slow month in terms of this kind of claim, was 32. In terms of money, we estimate that there has been a saving to the public purse for this financial year of about £2.8 million.

Q38 Mr Bailey: Very interesting. It would seem that with the initial changes in procedure claims rocketed and then with the tightening up of procedures they plummeted.

Ms McCleary: Yes.

Q39 Mr Bailey: What has been the impact on the average compensation payment?

Ms McCleary: The average compensation payment has gone down very slightly because of the extra work being done by the loss adjusters.

Q40 Mr Bailey: The nature of the claims and the numbers of the claims is certainly highly suspicious. How big an issue is fraud in relation to claims under the Act and what measures has the Agency in place to counteract fraud?

Ms McCleary: Fraud is something which is obviously a criminal matter and therefore we are talking about the criminal standard of proof. We are talking about something being proven beyond all reasonable doubt, whereas we would be operating to a civil standard of proof, which is on the balance of probabilities. There is currently a fraud investigation ongoing in relation to these claims. As you may or may not know, there had also been a fraud investigation ongoing in relation to claims against the Ministry of Defence in connection with helicopters. If you put those two figures together, there has to be a conclusion that fraud is a factor here. In terms of fraud counter measures, the changes which we brought in have been at least partially to do with that kind of issue.

Q41 Mr Bailey: I appreciate that you cannot comment in detail on the investigation.

Ms McCleary: No; unfortunately.

Q42 Mr Bailey: Could you just give some idea what procedures are in place to ensure good liaison with the army in processing the claims under the Act?

Ms McCleary: Yes. We have a procedure whereby whenever a new battalion moves into Northern Ireland, we immediately make contact with them and I go down to visit them and to talk about the issue of claims and the importance of the military role in the defence of these claims. Other members of our staff have also come down with me and

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spoken to the officers on the ground. We found that particularly helpful at the beginning when we were carrying out research in relation to establishing why the number of claims had gone up, because we discovered that there was no great degree of mutual understanding as to what the military did, what we did and how we could best work together. We now have a standard procedure whereby every time there is a new battalion moving into Northern Ireland, we go down and visit them to establish that personal relationship.

Q43 Mr Swire: There is clearly an element of the population in Northern Ireland who regard your Agency as a potential source of a secondary income. Are those people who are proven to be repeatedly submitting fraudulent claims and are known to be doing so treated harshly? Have you ever as an Agency had any counter claims or launched any court proceedings at all against these people?

Ms McCleary: The significant phrase there is "fraud". While there may be a significant number of repeat claimants, just because someone is making repeat claims does not mean that person is being fraudulent. There is a fraud investigation ongoing at the minute and we have been assisting the police as far as possible in relation to that. We will take whatever action we think is appropriate once those police proceedings have concluded.

Q44 Mr Clarke: We use the term customer satisfaction and it may seem a clumsy use of the lexicon in terms of some of the people who may contact the Agency, because nobody would want to be in a position where they have to put in a claim. We are aware that the Agency does carry out surveys as to how people feel they have been dealt with, the last one being in 2001. Could you tell us a little bit about how and who carried out that last customer satisfaction survey and what were the main areas of concern raised by those who responded to it?

Mr Brannigan: One of the targets the minister sets for us is to maintain the level of satisfaction. In the last survey carried out in 1999–2000 we had a level of satisfaction of 75%. Typically the areas of satisfaction we are looking at are: courtesy of staff; speed of our reply; all the things you could imagine would lead to the service we are providing. One of the difficulties we encountered is that we are serving people who have both received compensation under one of the schemes and also those who have been refused. Sometimes an applicant's attitude as to the service provided can be coloured by whether they did or did not receive compensation. To come back to the methodology, a selection of applicants, approximately 10% of those whose claims have been cleared within the year previous to when we were conducting the survey, together with another number of applicants' solicitors, are actually sent a questionnaire and in the case of solicitors and a very small number of applicants, they are also visited by this independent survey company which carries out the survey on our behalf.

Q45 Mr Clarke: May I just check those dates? The information I have is that the survey is carried out on a biennial basis, every two years and that the last such survey was 2001.

Mr Brannigan: I beg your pardon, the last survey was 2001–02 and we are in the process of carrying out a survey again; prior to that it was 1999.

Q46 Mr Clarke: I am not trying to discredit the work which is done in any way but the reason I use those dates, and having visited we know how difficult the work can be and sometimes how fractious the relationship can be between those who may think they have a claim and those who do not, but the overall satisfaction level in 2001 was 65%, down from 71% in 1999 and the lowest since 1993. Could you give us an indication as to why, during that period, satisfaction dropped and whether or not you think that will turn around because of the introduction of the Tariff Scheme?

Ms McCleary: The first answer is that satisfaction dropped probably because of the introduction of the new Tariff Scheme. There is a significant number of those who are being asked for their views who were unhappy with the whole principle of the Tariff Scheme being introduced. In terms of whether or not we expect it to improve, we are in the throes of carrying out the next survey at the minute and undoubtedly, as we have accepted, there has been a slow start to the Tariff Scheme. The likelihood is that things will not improve this time round, but the time afterwards we would be optimistic that the satisfaction levels would improve.

Q47 Mr Clarke: Given that explanation, is that the reason why improvements in user satisfaction are not included in the Agency's key performance targets for 2003–04? Is that because you are expecting the improvement not to be there?

Mr Brannigan: It would be a fair assumption that we did expect that. Since we had not got the scheme up and running to its optimum level, we would not expect there to be an increase, but we could be surprised.

Q48 Mr Clarke: Would it be awful of me to suggest that it may be a good idea in your next target setting round to include user satisfaction as it has been omitted this time?

Mr Brannigan: Yes; yes. As an organisation which has an interest in maintaining its charter mark, that type of survey is an important element of that. Clearly we would want to maintain and get the results from that and indeed see the pick-out from that where we may be going wrong.

Q49 Reverend Smyth: When we visited you we questioned the figures for the outturn for 2002–03 and the forecast for 2003–04. We now have amended copies. Would you agree that the budget allocation for the current year is more than double the forecast outturn across a range of headings? As I look at it, it is £40-odd million more. If the

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allocation is based on inflated Agency bids, does this not deny vital funding to priority programmes in other areas? How is this underspend managed?

Ms McCleary: The simple answer to the question of money being allocated here and then not being used elsewhere is that the department has been alerted about the underspend and has taken that money and it is being used elsewhere in the usual way. In relation to how the underspend came to be there in the first place, it really is a combination of factors. What happened the year before, 2002–03, was that the allocation had been based on a cash allocation but the outturn was on a resource basis. So in 2002–03 we were allocated initially £93 million, then that amount was reduced, because we knew we were not going to spend as much as that, to £70 million. Effectively what we were saying was that we believed we were going to spend £93 million and then later on in the year we said no, we believed we were actually going to spend £70 million. During that financial year resource budgeting came in and the resource budgeting is effectively looking at the value of the claims which come in during that year. That was the same year the Tariff Scheme came in and there was a considerable reduction in the number of claims which came in. This meant that the outturn was on a resource base, that is the value of the new claims which came in during the year, as opposed to the amount we actually spent during the year. The significance in relation to 2003–04 is that the 2003–04 papers are both on a resource basis; they are both based on what we thought would be the value of the new claims coming in and the value of the new claims which did in fact come in. Since there was still a reduction in the number of claims coming in and since the £71 million had been estimated prior to the 2002–03 outturn, it just means that you are really comparing £71 million allocation in 2003–04 with the £70 million allocation in 2002–03. So in fact it is something which will be resolved in the next financial year hopefully.

Q50 Reverend Smyth: It is a bit like weather forecasting. What steps is the Agency taking to be more accurate in the future, because sometime we may have to look into the question of where the underspend went to and whether vital areas of Northern Ireland's needs were not met because this money was wrongly allocated at that particular time. The one you managed to get very close to was criminal damage, where your forecast was £3,996 and it is turning out at the moment to be £3,900. There is a great distortion between a forecast of £15,556 and the allocation of £51,840 and that is in millions, is it not?

Ms McCleary: Yes. One of the problems with this is the way the estimates were based. In the past it had been done by looking at the number of claims which we expected to receive and looking at the average award per claim. However, the Audit Office would not allow us to do that during 2003–04 and that is the reason why the figures are different but the estimation will be closer this year.

Q51 Mr Clarke: Is the Audit Office helping you to take steps to improve the accuracy.

Ms McCleary: We are working very closely with them.

Q52 Mark Tami: How do you see the new Tariff Scheme with its increased reliance on IT affecting the overall staff numbers? Will it have an effect on those, do you think?

Ms McCleary: The total staff numbers which we have had over the last 18 months or so were: in April 2002 132 staff, just before the new scheme came in; in May 2002, when the new scheme came in, the number went up to 146; in March 2003 it was roughly the same at 141; as of December 2003, the number is down to 127. A number of those staff will have been re-allocated within the organisation and we are putting the staff where they need to be.

Q53 Mark Tami: With the reduced number of claims under the Terrorism Act, if that stays the same—obviously we cannot predict how it will go—that presumably will also have an impact.

Ms McCleary: At this very minute we are bringing in experts to look at that and to see what the appropriate complement would be.

Q54 Mark Tami: That was what I was going to move onto. How are you managing that process? Is that through bringing in experts?

Ms McCleary: We are bringing in internal experts in the field. We are carrying out a review to make sure we are doing the right things, the right way with the right people.

Q55 Mark Tami: You do not have an end number in sight.

Ms McCleary: No.

Q56 Chairman: Back to compensation before we finish. Your annual report shows that there were more than 1,100 cases where offenders were identified because you have the power to recover compensation and costs from offenders, do you not?

Ms McCleary: Yes.

Q57 Chairman: You decided not to pursue recovery. Why is that number so high? What steps do you take to recover compensation?

Ms McCleary: As you rightly say, we have the power to recover from an offender in relation to compensation which we have had to pay to that offender's victim. Our experience in the past has been that it is uneconomic to attempt to recover from every offender because you have to go to court to get court awards to recover that money. There is a considerable risk that the offender can resist it on the basis that he has no money. Alternatively you can get involved in a very long drawn out recovery plan. We have found from experience that it is uneconomic. There is another issue in relation to it which is the question of equality. Our policy is that we will recover from those whenever they are making further

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compensation claims and whenever they make a compensation claim we recover from that offender the amount we have paid out because of actions they took.

Q58 Chairman: It is all very well to say that if they have no money you do not pursue them. That would bring an end to all fines in magistrates' courts, would it not? We have a law which says you recover from the offender what you have had to pay to the victim.

Ms McCleary: Yes.

Q59 Chairman: Why does economy come into it? What you are actually doing is not carrying out the law which Parliament has passed saying the offender will recompense the victim. You are saying that may be the law but as far as you are concerned it is not worth it.

Ms McCleary: It is not quite as straightforward as that. The law does not provide us with a duty to recover; the law gives us a power to recover. Whenever we are considering whether or not to exercise that power, we would have to take all

factors into account. We have to keep an eye on the public purse as a whole and it has been found from bitter experience that it is uneconomic.

Q60 Chairman: Have you consulted ministers about that policy?

Ms McCleary: Yes.

Q61 Chairman: You have. And ministers approve of you not chasing offenders on grounds of economy rather than on grounds of principle. That is the question I am asking. What I am trying to say is that is a decision which ministers should probably make, is it not?

Ms McCleary: It is a decision which is made in the exercise of a power and the power is given to the organisation and certainly it is something we could consult ministers about.

Q62 Chairman: My question was: did you consult ministers before you evolved a policy not to seek compensation from offenders to make up for the compensation you had had to pay to their victims?

Ms McCleary: Certainly a minister would have known that was what we were doing. I am not sure "consult" is the correct word for it.

Chairman: Thank you very much indeed Ms McCleary and your team.

Witnesses: **Mr John Spellar**, a Member of the House, Minister of State, Northern Ireland Office and **Mr Brian Grzymek**, Head of Criminal Justice Services Division, Northern Ireland Office, examined.

Ms Anne McCleary, Chief Executive, Compensation Agency, further examined.

Q63 Chairman: Welcome Minister, thank you for coming to help us with our inquiry. The first question I want to put to you is: have you been consulted about this policy of not chasing offenders to pay for the compensation you have paid out to victims?

Mr Spellar: I have not, but it may well have been a practice which had been agreed by previous ministers. I understand that it has been an established practice dating back some 10 years or so. What I would say in addition is that it is not unknown in both central and local government to make a risk evaluation as to the cost of recovering monies as opposed to the likelihood of recovering those monies. That always has to be balanced out against whether that discourages anti-social or indeed illegal behaviour. Those sorts of balances have to be struck. All departments look at monies which are owed to them and make an estimate as to whether it is worth recovering that on the criteria I just outlined. In response to your specific question, it has not been raised with me since I had the portfolio in June, but it may well have been a matter which had been raised with my predecessors.

Q64 Chairman: Given that the report tells us that in more than 1,100 cases recovery has not been pursued and the cost is £9,600, which is a relatively

small sum, perhaps that needs looking at. If people feel they can get away with it, that is something which goes into the culture, is it not?

Mr Spellar: I am not aware, I would have to check and send you a note on this, of the extent to which those are cumulative cases, therefore over some considerable period of time and the likelihood of recovering the monies may be even less.

Q65 Chairman: Perhaps we could have a note in greater detail on that.

Mr Spellar: Indeed.

Q66 Chairman: The new Tariff Scheme. What were the main government aims in introducing a tariff-based scheme under the Criminal Injuries Compensation (Northern Ireland) Order 2002 and how far have these been achieved?

Mr Spellar: Very much to reduce the cost both to government and indeed also to claimants, although I am slightly concerned that something like 55% of claimants are still using solicitors in order to put in claims. Those costs then come out of their awards. I would hope that there would be a very clear message to claimants that they do not need to go that route. Only about 20% of them claim directly and therefore we would hope that more of them would be claiming directly. There is a lot of assistance available to them in making their claims and they would then get the full amount of the award. That is the first part of it all, from the point

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of view of the claimants. Equally, with ourselves, it was in order to get a degree of clarity and also to expedite the handling of cases and to cut down on the backlog. In all of those, I have to say, we have been fairly successful, but from the example I quoted, I think there is still some way to go in public education on this.

Q67 Chairman: Are you satisfied enough is being done to raise general awareness and to let people know that you are there to help?

Mr Spellar: There has been some improvement, but the figures indicate that traditional and existing practice and general folk mores are still leading people to go the more expensive route. We are going to have to look at ways in which we can get that across. I hope your hearing may help to facilitate that process.

Q68 Mr Barnes: There is a very large number of outstanding claims under the old scheme, 6,500 we understand. Some 4,200 cases are awaiting appeal. Are you satisfied that enough is being done to tackle this considerable backlog?

Mr Spellar: I was actually regarding this as one of the successes of the Agency. If you went back to the number of claims in hand at 31 March 2001 it was 27,000 or so; by 1 May 2002 it had gone up to 29,000 and since then we have seen a drop to 19,000 in March last year and 11,305 in December. As you rightly identify, some 4,000 of those are appeals. What I am very pleased about is the way in which the backlog of cases has been cleared up because that builds greater confidence in the system. I recognise there is still some way to go, but that is a considerable improvement and one in which a staff whose numbers have been declining can take some pride.

Q69 Mr Barnes: There are still large numbers, even if there is a great improvement. When do you feel you will be in a position of being really on top of it?

Mr Spellar: I would have to refer that to the Chief Executive. There will always be a number of claims in process, otherwise you would have very considerable peaks and troughs in the workload. If you look at those figures, you have seen a very considerable improvement and that should give the Committee confidence that the Agency is heading at a fairly rapid speed in the right direction.

Q70 Mr Barnes: The Agency's revised procedures for handling claims for damage have had a dramatic impact on the number of claims so there is a reduction in current claims which should make it easier to cover the backlog. We are told it is quite a dramatic change from 633 in the final year to 67. Do you agree therefore that the previous procedures left the system open to fraudulent expectation?

Mr Spellar: You are referring there to the Terrorism Act cases which are the ones which are primarily rural damage. A lot of that is due to engagement with the army in Northern Ireland and having a much better system of record-keeping and

therefore a much easier way of checking on the validity of claims. We would accept that there had been some tendency towards something between fraud and opportunism on that. We were very keen to cut that back. The figures have shown that we have had a degree of success, particularly because we have a much more solid evidence-base in order to refute claims. Word has got out on that and this is now no longer seen as such an attractive proposition.

Q71 Mr Barnes: What went on in the past is of great concern. How long were those procedures in place and what is your estimate of the extent of the loss to public funds through the abuse of the procedures which you had in place?

Mr Spellar: It must be quite considerable because our estimate of the savings as a result of the reduction is something like £2.8 million a year. I would have to refer to the officials for any period of time and the aggregate loss.

Ms McCleary: We do not know how long this reduction is going to continue, but we would expect to continue to save £2.8 million per year.

Q72 Mr Barnes: So the problem is the position in the past and how long this problem went on. Do we multiply that particular number of years by £2.8 million, or is it something which grew over time?

Mr Grzymek: It would be difficult. It would not be safe for you to assume that £2.8 million saving this year could be aggregated backwards. The reason for that is that the position on the ground now is quite different from when the security situation was more difficult. The army are doing less patrolling and also, because of the work of the Agency, they have been very much sensitised to the issue of damage. The army's actual practices and procedures have changed. Although there is clearly an element of fraud here, there are also other factors. It is not possible to aggregate back from that £2.8 million.

Q73 Mr Barnes: Is it not possible to work figures out and provide them to us as to what the total has been?

Mr Spellar: It would be fairly rough; only on the basis that has just been described, because of a lowering of activity on the ground. We might be able to give you a broad brush as long as you accept that it is broad brush rather than accurate to the last decimal place.

Q74 Mr Barnes: Why was no action taken earlier? Are you satisfied that sufficient is in place now?

Mr Grzymek: Clearly the position has changed quite considerably because in some of these areas the army had operational concerns about the safety of their patrols and their focus was much more on maintaining a safe environment for their personnel and some of the damage issues were secondary. Equally, given that in that sort of situation their ability to record accurately precisely where patrols had been, which part of a field they had gone through, was clearly secondary to their prime

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concern of maintaining safety. With the change in activity, the army clearly are much better able to provide detailed records which Anne needs and that allows the Agency to be much more robust in testing its systems, plus it has put new systems in place in support of that better information. In the past that was not the case and to go back, even if we could provide crude information, it would be very much speculative and we would not be able to stand over it.

Q75 Chairman: Far be it for me to bend over backwards to help the Northern Ireland Office, but there has been a dramatic improvement, partly of course because the army is not now patrolling against an active terrorist organisation out in the field and therefore the damage has been reduced and they have had more time to record things. From the days when the costs were spiralling hugely out of control, the Agency is to be congratulated on bringing it back. At the same time, there is a lot of, shall we say, fraud still going on because people in the past felt they could get away with it and they will continue to do so until they are robustly shown they cannot; that is the nature of the beast. Well done, but keep at it. There is a lot more to do. I am perfectly certain that there are still many claims which are not properly justifiable. That is speaking from experience.

Mr Spellar: I think you can see from the actions which have been taken that the Agency is being robust in pursuing these but will then look at other avenues in order to make sure that money is going to those who deserve it.

Q76 Mr Luke: We heard earlier about the Agency's plans to review the Criminal Damage Compensation Scheme. Does the government have any plans to encourage the insurance industry to reconsider its exclusion of cover for terrorist related activities and incidents in Northern Ireland in view of the improving security situation there?

Mr Spellar: My concern there would be that we have seen in a number of other areas that at the moment the insurance industry is tending to be risk averse. We have seen, for example, on employees' compensation insurance, that many insurance companies are exiting from that particular area of the market. By the way, that is not just a phenomenon in the United Kingdom, that is an international phenomenon. I have not detected any indications as yet from the insurance companies of them wishing to re-enter markets which they had previously exited. However, we are concerned that we should, as the situation returns to normal, look at a more normal situation. Indeed part of our argument for that would be the sort of figures which have been presented to you today, indicating much lower levels of compensation because of much lower levels of activity, quite apart from any action we are taking in order to reduce the fraudulent element. Our ability to deal with the fraudulent element is against a backdrop of a substantial reduction in the actual compensation for activity.

Mr Grzymek: Our formal understanding is that the insurance industry is still very nervous about anything which has the potential to be linked to terrorism, particularly after the events in America a couple of years ago. To some degree this is an area where the market has to carry risk and that may impede their re-entry. The other thing, though clearly our hope is that we are moving back to normalisation and we will not have any major incidents, is that the insurance industry will also be conscious of the fact that in the past there have been major incidents which could have had very serious ramifications for the insurance industry if they had taken the risk on. There is the possibility that there is a wait-and-see mentality in the insurance industry but we shall look at that as part of any review.

Q77 Mr Luke: We were led to believe that there was some discussion in 2001 between the Agency and the insurance industry and although they expressed an interest, at that stage the time was not right given their policy of an aversion to risk. Maybe now, given that the normalisation process has gone on so fast, this is an appropriate time to re-approach the industry to see whether there is more interest.

Mr Spellar: I am certainly happy to do that, but it is against the backdrop of the current cycle in the insurance industry which has been fairly risk averse over the last couple of years and we have seen that in a number of other areas, particularly following the experience of 11 September. Remembering how many of the major players in the insurance industry are not just domestic players but are part of international conglomerates, they are probably even more sensitised to those issues than the domestic insurers.

Q78 Mr Beggs: With the introduction of the Tariff Scheme and the reduction in claims for loss or damage under the Terrorism Act 2000 the size of the Agency may have to be slimmed down. Are you satisfied that adequate contingency provision has been made to ensure that it retains the capacity to deal with a major incident?

Mr Spellar: Yes, we are aware of that; you are absolutely right about the reduction and it has gone down from 146 when the new Tariff Scheme was introduced in May 2002 to 127. Obviously, as we are looking at a declining workload, that will be kept under review. Government is aware, although fortunately we have not had a major incident now for a few years, that in the event of a major incident they would need to draft in staff from other agencies to reinforce their work.

Ms McCleary: I have already explained to the Committee, that that is exactly what we would plan to do in such an unfortunate event.

Q79 Mr Beggs: I understand that Professor Greer's report of his review of the practice of "scar viewing" is due to be published today. Have you

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had an opportunity to note what his recommendations are and where you intend to implement them?

Mr Spellar: It has been published today and also I have announced that I shall be engaged in discussions with the relevant professional associations. I am very pleased that the report has indicated the high standard of professionalism by the legal profession in Northern Ireland. We will be engaging with them on the details of recommendations and then making announcements following that.

Q80 Mr Beggs: How significant an issue is “scar viewing” in relation to the awards for the varying degrees of disfigurement under the new Tariff Scheme? Is it understood how difficult it is for claimants to provide ongoing viewing of the scars?

Mr Spellar: The actual report which was commissioned from Professor Greer was not so much of those with what I would describe as visible scarring, but the questions of privacy and modesty and who was engaged in that. That is why I am pleased the report has really endorsed the professionalism of the legal profession in that regard. With regard to disfigurement, I will refer to the Agency for the details on that.

Ms McCleary: The first thing I should perhaps point out is that Professor Greer was looking at the old scheme, he was not looking at the new Tariff Scheme. The new Tariff Scheme provides for a hierarchy of tariffs in connection with physical disfigurement scarring based on fairly broad-brush approaches. We do not envisage that we are going to need to view scars as often as we would have under the old scheme, but one of the things which Professor Greer has identified is the fact that many applicants believe that it is in their interests to have their injuries viewed by the compensating organisation. Many want to go through that procedure. What we are hoping to do under the Tariff Scheme, if somebody approaches us and asks us to view their scar, is to consider it, but we will have to ensure that the circumstances for doing so are suitable, it is carried out in a professional, sympathetic and understanding fashion and that the people concerned feel that it is what they want to do and they know what they are going to go through whenever it actually happens. They know what they are doing and they decide that is what they want to do.

Q81 Mr Beggs: Does the Minister plan consultation on the outcome of the review and how wide would that consultation be?

Mr Spellar: Most of the work which has been undertaken is of a relatively limited application. It is very much an issue of looking at practices with the legal profession. Given the broad scope of the review, the broad conclusions, I think this was likely to be relatively narrow, but if others have views we will take those into account.

Q82 Mr Clarke: Parliament is not infallible, we make mistakes. Sometimes in our rush to introduce new legislation we forget to take the requirements out of the old and that certainly was the case in respect of the legislation for the Tariff Scheme and the impact on child sexual abuse cases. We know that those who were unfortunate enough to have been abused before 1988, where the perpetrator lived in the same household, are debarred from compensation. There has been a judicial review. We could not have taken much pleasure from the fact that the law protected us from continuing to disbar those very few cases, but taking into account that most victims of child sexual abuse only come to terms with that abuse in their late teens and early twenties, there will be more cases. Can we have some sort of undertaking from the government that they will review the impact that the legislation has on those cases, make sure that we are fairer and that the legislation is all-encompassing?

Mr Spellar: As you and the Committee may well be aware, one such case has resulted in a judicial review of the legislation. The applicants allege that it contravenes human rights legislation and the outcome of that judicial review will therefore inform our future policy in this area. We await that before moving away from the legislation that we have taken.

Q83 Mr Clarke: My understanding was that the judicial review rejected the applicant’s case and upheld the view that such cases are debarred.

Mr Spellar: Even then I do want to look at the reasons which were given, whether they were purely on legal grounds, and then to look at how we review that. We are awaiting the outcome of that judicial review and then we will need to examine the case. Following that, when we know the outcome of the judicial review, we will then look at the details, including the reasons given in that case.

Mr Clarke: I am very grateful for that undertaking.

Chairman: We have no more questions about the Compensation Agency.

Written evidence

Submitted to the Northern Ireland Affairs Committee

APPENDIX 1

Memorandum submitted by the Northern Ireland Office and the Compensation Agency

1. INTRODUCTION

1.1 The Compensation Agency, which operates from a single site, Royston House in Belfast City Centre, was established as an executive agency within the Northern Ireland Office (the Department) on 1 April 1992. Its functions were previously carried out by the Department's Criminal Compensation Division. The Agency carries out the Secretary of State's functions covering the provision of compensation under criminal injuries, criminal damage and Terrorism Act 2000 legislation. In doing so, it supports the delivery of Objective V of the Northern Ireland Office's Public Service Agreement:

“To lessen the impact of crime by working in partnership with other criminal justice agencies to maintain and develop policies aimed at preventing or reducing the threat of crime, the fear of crime and the incidence of crime and to provide support for the victims of crime.”

1.2 The Agency operates under the terms of a Framework Document, which deals with the responsibilities of and the relationship between the Agency, Parliament, Ministers and the Department; financial and personnel arrangements; and planning, monitoring and accounting arrangements.

RESPONSIBILITY FOR THE ORGANISATION

1.3 The Agency's Chief Executive, Anne McCleary heads the 140 staff members and is directly accountable to the appropriate Northern Ireland Office Minister (currently Mr John Spellar) on behalf of the Secretary of State. She is responsible for the effective day to day operation of the Agency and for managing its financial and manpower resources. The Chief Executive is also the Agency's Accounting Officer. The Agency's formal point of contact with the Department is Criminal Justice Services Division, which provides support to Stephen Leach, the Director of Criminal Justice in his role as the Agency's “Fraser Figure”. The Division is also responsible for taking forward matters pertaining to compensation policy.

OVERVIEW OF THE COMPENSATION SCHEMES

1.4 The Agency is responsible for the administration of four statutory compensation schemes on behalf of the Secretary of State.

- The 1988 Order Criminal Injuries Compensation Scheme.
- The Criminal Injuries Compensation Scheme 2002—The Tariff Scheme.
- The Criminal Damage Compensation Scheme.
- The Terrorism Act 2000 Compensation Scheme.

An overview of each of the Schemes, together with a note about how the Agency's decision in individual cases may be reviewed or appealed, is attached at Annex A. Copies of the Information Guides on each of the Schemes are attached at Annex B.

1.5 In the course of processing applications under the four schemes, the Agency may be provided with reports from the Police Service for Northern Ireland, the Army, Medical Personnel, Accountants, Loss Assessors and Loss Adjusters.

2. AIM, KEY OBJECTIVES AND KEY PERFORMANCE INDICATORS

2.1 Following the 2002 Quinquennial Review the Agency's Aim and Objectives were revised and they are set below together with the Key Performance Indicators used to assess the degree to which the Agency meets these imperatives.

<i>Aim</i>	<i>Objectives</i>	<i>Key Performance Indicators</i>
To support the victims of crime and people who have suffered loss from action taken under the Terrorism Act 2000, by ensuring that they are appropriately compensated in accordance with the relevant statutory schemes.	Provide a responsive and effective service to all applicants in which claims are dealt with speedily, consistently and in accordance with the relevant legislation.	<ul style="list-style-type: none"> — Time taken to notify applicant of a decision/decide claim. — Compliance with legislation. — Number of justified complaints/compliments received. — Applicant satisfaction levels (including responses from legal representatives for non-Tariff claims).
	To deliver the compensation schemes efficiently and cost effectively while seeking continuous improvements to the standards of service within the limits of the resources available.	<ul style="list-style-type: none"> — Average unit cost of deciding a claim. — Time taken to notify applicant of a decision/decide claim. — Time taken to notify applicant of a decision/decide claim. — Achievement of recognised management awards.

2.2 For the above key performance indicators the Minister annually sets performance targets for the Agency. The targets for 2003–04 are shown at Annex C. Each year the Agency sets subsidiary targets which contribute to the achievement of the ministerial targets and facilitate the cascading down of the higher level performance targets into the annual forward job plans and personal development plans of all Agency staff.

3. SERVICE DELIVERY

3.1 The Agency strives continually to improve the quality of service it provides. The nature of the service means that the main links are with individual applicants, their solicitors and loss assessors. The Agency commissions biennial surveys of a randomly selected sample of some 3000 recent applicants and of the 300 solicitors who are most frequently in contact with it. The results of these surveys are used to gauge the extent to which the level of satisfaction with the Agency’s service has improved over the preceding two years.

Table 1 shows the trend in overall satisfaction rates from 1993 through to the last competed survey in 2001.



The surveys carried out in 1993, 1995, 1997 and 1999 indicated increased overall satisfaction rates, respectively, of 51%, 67%, 70% and 71%. The satisfaction level of 65%, seen in the 2001 survey, indicated a levelling off of the overall satisfaction rate, a matter that would be difficult to address without significant new initiatives. As well as assessing the overall level of user satisfaction, the surveys have been used to get a broader picture of the levels of satisfaction attaching to the different aspects of the service provided. The Agency has responded to specific areas of concern by:

- Maintaining sustained downward pressure on processing times;
- Appointing a Customer Information Officer; and
- Sending out compensation scheme information leaflets to each applicant at the commencement of the claim.

The next survey will take place at the end of 2003.

Performance Achievements 1990–2000 to 2002–03

3.2 A summary of key performance targets, outturns and achievements since 1999–2000 to 2002–03 is attached at Annex D.

4. FINANCIAL MANAGEMENT

4.1 The budgetary flexibilities and financial delegation accorded to the Agency are detailed in the Framework Document. The Agency's expenditure is divided for budgetary purposes into the following:

- Demand-led payments (compensation payments and applicants' costs);
- Running costs (for example, salaries and current expenses);
- Other programme costs (Agency's fees, costs and expenses);
- Interdepartmental charges; and
- Capital

4.2 Details of actual expenditure in 2002–03 and planned expenditure for 2003–04 are given at Annex E. These figures are expressed in resource terms in keeping with the move to a full resource accounting and budgeting regime. Annex F gives details of amounts of compensation payments on a cash basis from 1968–69 to 2002–03.

5. BEST BUSINESS PRACTICES

The Agency considers that to best meet the needs of applicants and its staff it needs to ensure that it keeps up to date with best business practices. The following measures help to indicate how the Agency pursues this goal:

- The achievement and retention of Investors in People accreditation.
- The award and re-award of the Chartermark.
- The use being made of the EFQM Business Excellence Model
- The deployment of a Major Incident Team in the immediate aftermath of major bombing incidents to provide immediate guidance on compensation and advice on immediate repairs.
- The biennial Applicants' Opinion Surveys
- The robust mechanisms put in place by the Chief Executive to ensure that complaints are dealt with speedily.
- The Agency's commitment to team-working and having properly trained staff.
- The strong customer focus engendered throughout the Agency.

6. COMPENSATION AGENCY STAFF

6.1 The Agency's staff are one of its key strengths and must be supported and developed through good personnel management and training. With the object of sustaining a flexible, skilled and motivated workforce capable of meeting targets, in the most cost effective manner, the Agency has successfully pursued the national standard set by Investors in People and has achieved accreditation under the scheme in 1997, 2000 and most recently in 2003. The IIP framework has ensured that the training and development of all staff is focused on the goals and targets of the Agency. It also requires that everyone is clear about the tasks that have to be carried out by individuals, teams and branches to achieve the performance targets.

6.2 The Agency aims to provide a professional and objective service under the law to all applicants who have suffered from violent crime in Northern Ireland. Staff are committed to processing claims to the highest standards of integrity, impartiality and fairness. They also recognise the trauma and difficulties suffered by victims and treat every case sensitively and confidentially on its individual merits. This focus on "Users" needs has enabled the Agency to retain its accreditation under the Chartermark Award Scheme since 1995.

Internal Communications

6.3 Good communication processes are firmly embedded within the culture of the Agency. These include monthly team meetings which provide an effective platform for two-way discussion about ways by which procedures might be improved. These meetings are supported with memos, updates and quarterly reviews presented by the Chief Executive to each section.

Staff Complement

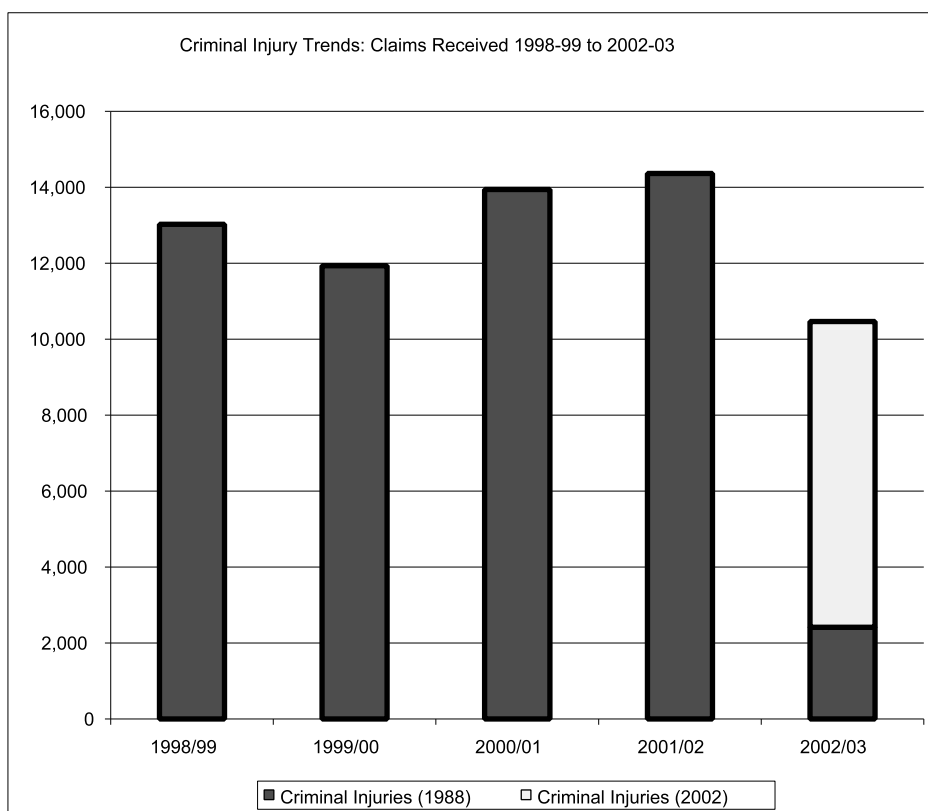
6.4 The current staffing level of the Agency is 140 of whom the majority are administrative grade Civil Servants who perform clerical and casework duties. The Agency's ten in-house lawyers and one accountant are employed in the more complex cases. Extensive use is also made of firms of loss adjusters who contract to do work for the Agency on a fee basis. The introduction, in May 2002, of the Northern Ireland Criminal Injuries

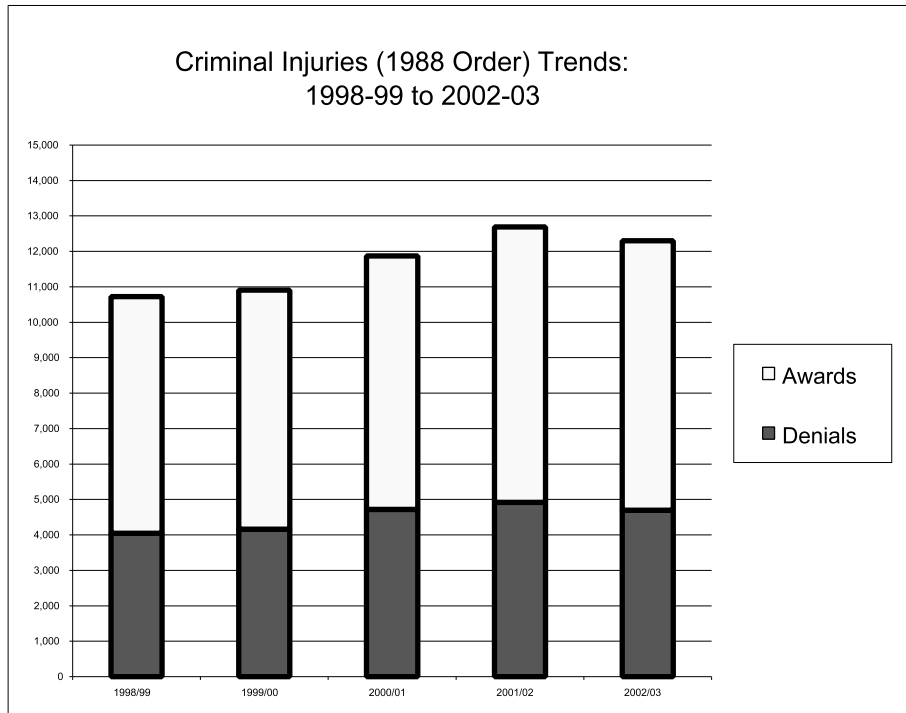
Compensation Scheme meant that the Agency now operates four main compensation schemes as opposed to the three schemes of previous years. This resulted in a short term increase in staff numbers which is now reducing as the claims under the previous legislation runs down.

7. SUPPORTING THE VICTIMS OF VIOLENT CRIME

Criminal Injuries Compensation—General

7.1 Any person who is the victim of a violent crime is, in law, entitled to seek compensation directly from the offender personally; indeed, it is the offender, and only the offender, who is legally liable to compensate the victim. Many offenders are not arrested and convicted, and most of those who are convicted are not in a position to pay compensation to their victims. As a result, few victims receive compensation from offenders. It is for this reason that the State comes to the aid of the victim through the statutory criminal injuries compensation schemes. Compensation has been payable by the State to victims of terrorism and other crimes of violence in Northern Ireland for many decades but only if a number of conditions are satisfied. When paid, compensation may include amounts for pain and suffering, loss of amenity and financial loss.





7.1.1 Criminal Injuries (Compensation) (Northern Ireland) Order 1988

Most of the claims currently in hand (approximately 15,000; of which 4000 are under appeal) are those brought under the 1988 legislation. This legislation came into operation in July 1988 and covered incidents occurring up to May 2002 when the new Tariff scheme was introduced.

Around 12,000 claims per annum were received under the 1988 Scheme with some 11,000 claims cleared each year. Under the scheme approximately 60% of applicants obtained compensation with 40% of cases refused because the applicants did not satisfy the eligibility criteria of the scheme. The average award is £7,000 but this average can be skewed by the payment of very substantial awards to a small number of applicants. For example, compensation amounting to £1m was paid to a very severely injured applicant in 2000. The assessment of injuries is on the same basis as the assessment of injuries in civil litigation cases. Medico/legal reports are obtained on the applicant's behalf by his/her legal representatives and forwarded to the Agency.

7.1.2 The Criminal Injuries Compensation (Northern Ireland) Order 2002—The Tariff Scheme

During 2002–03, the Agency embarked upon a major programme of change, both to its organisational structure and to the way it conducts its core business of processing claims for compensation. The catalyst for this change was the introduction, on 1 May 2002, of the Northern Ireland Criminal Injuries Compensation Scheme 2002. From that date, the Compensation Agency assumed responsibility for the administration of the new scheme. This revised scheme was introduced following a review of compensation arrangements in Northern Ireland by Sir Kenneth Bloomfield (as recommended by Sir Kenneth in his earlier report on the victims of the Troubles “We Will Remember Them”, 1998.) The 2002 Scheme differs from earlier criminal injury compensation schemes in that it establishes set compensation award levels for various injury types. For this reason the scheme is generally known as a “Tariff” scheme. By publishing the award value for a particular injury, it is intended to make the likely award of compensation more transparent to the victims of violent crime.

The procedures used by the Agency to process claims for compensation under the Tariff scheme rely more heavily on IT than those used to process claims under previous compensation schemes. All claim-related documentation is captured electronically and the claim processing software issues standard correspondence and controls workflow throughout the system. As these revised working practices become fully embedded, the victims of violent crime will benefit through quicker decisions on their possible entitlement to compensation.

Prior to the new scheme coming into force on 1 May 2002, the Criminal Injuries Tariff Scheme Implementation Project (CITSIP) team was established by the Department to work in conjunction with Agency staff in order to develop and install the new systems (and associated works) that were needed to enable the Agency to administer the scheme. Since 1 May 2002, the Agency has invested considerable time and effort to ensuring that the IT solution proposed by the CITSIP team successfully evolved from its original specification to more fully meet the expectations of its end-users, that is, the Agency staff who use it to process claims for compensation.

Most of the Tariff IT systems have now been put on a firm footing but, as would be expected in a system costing approximately £1m, there continues to be some further technical development work to be done. A further difficulty with the implementation of the Tariff scheme has been a problem relating to obtaining medical reports (see paragraph 10.4.1). These medical report difficulties have been partially resolved. Once the

remaining difficulties with medical reports have been overcome, and the new working practices become fully embedded, the Agency expects that the victims of violent crime in Tariff cases will benefit from decisions in their claims being made much quicker than under the previous scheme.

8. SUSTAINING THE CONFIDENCE OF THE COMMUNITY

The Criminal Damage (Compensation) (Northern Ireland) Order 1977

8.1 Statutory provisions for the payment of compensation from public funds to victims of criminal damage to property have existed in Northern Ireland for many decades.

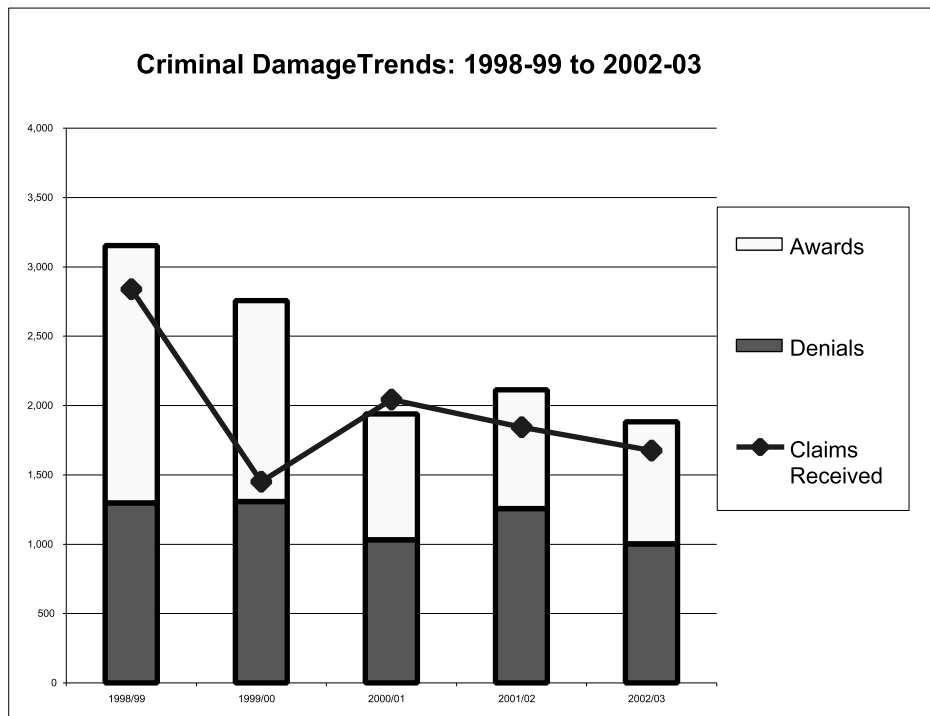
The current legislation, “the 1977 Order”, came into operation in April 1978. (There is no equivalent statutory scheme operating in the rest of the United Kingdom.) In Northern Ireland compensation is payable for loss arising from any one of the following categories of criminal damage to property:

- (a) Damage to any property unlawfully, maliciously or wantonly caused by three or more persons unlawfully, riotously or tumultuously assembled together.
- (b) Damage to any property unlawfully, maliciously or wantonly caused as a result of an act committed maliciously by a person acting on behalf of or in connection with an unlawful association.
- (c) Unlawful removal in the course of the riot of any property from a building unlawfully, maliciously or wantonly damaged (to a value exceeding £200) by three or more persons who are tumultuously and riotously assembled.
- (d) Damage caused maliciously or wantonly to agricultural buildings and certain agricultural property.

8.2 The primary object of the Scheme is to maintain the social, commercial and industrial activity of Northern Ireland. This was particularly the case when, in April 1978, the insurance industry announced all insurance policies relating to property (other than private dwellings) in Northern Ireland would be subject to a new “overriding exclusion”. In broad terms, such policies no longer covered loss or damage caused by or happening through or in consequence of civil commotion or unlawful association.

8.3 Over the period of the “Troubles” the amount of public money spent under the criminal damage scheme has been considerable. Approximately £1 billion has been spent since 1968–69 with the highest annual spend of £75 million seen in 1992–93. An indication of the cost of various major incidents is attached at Annex G.

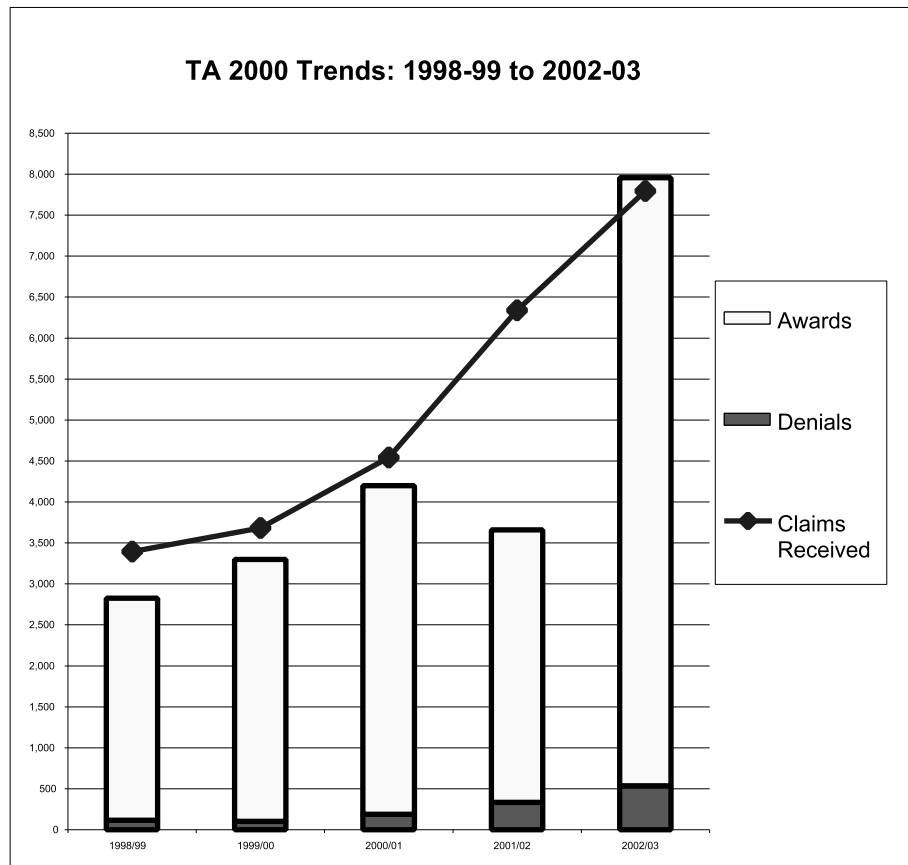
8.4 From 1999–2000, claims under the criminal damage legislation appear to have stabilised and have reached something of a “steady-state”. A major factor in this phenomenon has been the very welcome absence of large-scale, town centre bombing atrocities since the tragic events in Omagh in 1988. This has also had an impact on the profile of criminal damage claims with comparatively more claims now arising from incidents where personal property (including motor vehicles) is damaged. That is not to say that the business community is no longer adversely affected by the consequences of criminal damage but, thankfully, the impact of terrorism-related incidents has abated. It is to be hoped that this will continue.



9. PROVIDING COMPENSATION TO THOSE WHO SUFFER LOSS FROM ACTION TAKEN UNDER THE TERRORISM ACT 2000

Context

9.1 Compensation provisions have been re-enacted in successive Northern Ireland (Emergency Provisions) Acts and most recently in the Terrorism Act 2000 which came into force on 19 February 2001. Despite the greatly reduced operational deployment of the Army in Northern Ireland, the incidence of claims made under the scheme did not show a corresponding reduction; indeed an upward trend was seen.



* The outbreak of Foot and Mouth Disease in 2001–02 led to a delay in the processing of claims made during that year, and the creation of a backlog which was cleared during 2002–03. Nevertheless, the general trend is a steep increase, until April 2003.

Purpose of the Scheme

9.2 The Scheme provides compensation to those whose property has been damaged as a result of military patrolling: typically, the damage consists of strained fencing, and/or loss of silage as well as requisitions. While claims for damage to fencing generally occur in localities which are also affected by claims for damage/loss occasioned by helicopter activity, it should be noted that “helicopter” claims are the responsibility of the Ministry of Defence. Claims under the Terrorism Act 2000 are founded on the fact that damage has been caused by proper military patrolling (ie no negligence is alleged). A requirement of the Terrorism Act 2000 was that claims should be submitted within 28 days of the damage (to enable better checks to be made on the incidence of military patrolling). In practice, claims were made every 28 days, contributing to a sharp increase in the number of new claims.

Fraud Countermeasures

9.3 The Agency had concerns about the veracity of a number of Terrorism Act claims. The detail of these concerns was communicated to the then RUC which commenced a fraud investigation. That investigation continues, and indeed a further case has been referred to the PSNI. The Agency is unable to comment further on that investigation lest the investigation be prejudiced.

Concern about the pattern of claiming and the potential for fraud led to a review of the Agency’s procedures for handling claims made under the Terrorism Act. The new Chief Executive led a team which took the views of Agency staff, military personnel, loss adjusters (who were employed by the Agency in relation to these claims) and colleagues in the MoD’s Area Claims Office. As a result, a strategy was drawn up which was

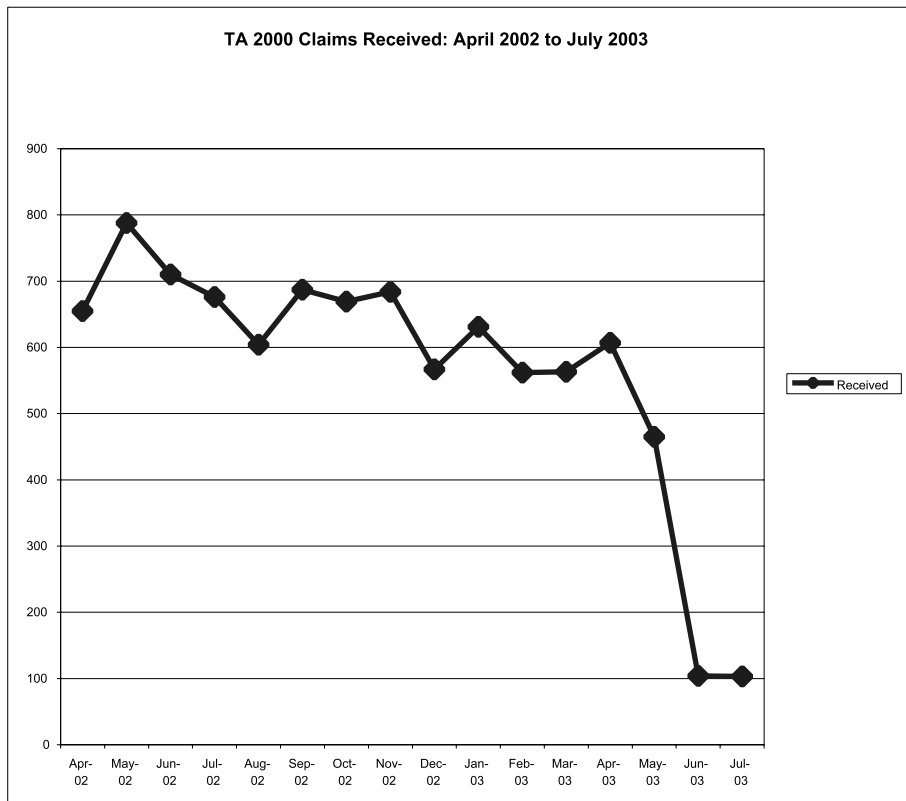
directed at making the claims procedure more robust. The strategy involved the introduction of a new, more detailed, claim form; more focussed reports and inspection by the Agency’s loss adjusters and closer liaison with the Army.

New Procedures

9.4 By mid-November 2002, improved liaison with the Army made it possible to challenge allegations that “damage” was due to military activity. A significant number of claims were turned down and, while a few claimants challenged those decisions, the vast majority of denials were not challenged.

The new claims form was introduced in May 2003, following the publication of notices in local press, and a mail-shot to anyone who had made a claim in the previous year. Significant changes included the requirement for the provision of specific dates upon which the damage had been caused and more robust proof of title. Simultaneously, the loss adjusters instructed by the Agency followed new procedures in the content of their inspections: photographs are now required to be taken of each area of damage and farm maps, with the damaged areas marked on them, must be produced at the inspection. These changes were deemed necessary to make the procedure more robust but were also considered proportionate. It was appreciated that many claimants would not have title deeds readily accessible so it was made clear that if the applicant provided the Folio number of the land in question, the Agency would obtain a copy of the Land Certificate.

The statistics for claims received since the new procedures were introduced show a marked reduction in claims.



10. CHALLENGES FACING THE AGENCY

Scar Viewing

10.1 The Agency currently awaits the publication of Professor Greer’s Review of the Practice of Scar Viewing. The issue arose when two female applicants who had been injured in the explosion in Omagh in 1998 voiced their concerns about the practice of lawyers viewing injuries as part of the settlement process. As a result of these concerns, the Agency immediately adopted a new practice of only viewing injuries (commonly scars) when the injury was visible without the removal of clothing, and only when the victim provided a written consent.

The legal profession has argued against the new practice, insisting that injuries need to be seen to be fully assessed.

The Agency is content that, at all times, its lawyers viewed injuries with sympathy, treating the matter with discretion, and in accordance with the highest professional standards.

Staffing Issues

10.2 The fact that the 1988 Scheme (the “old Scheme”) is coming to an end has inevitable consequences for the Agency and its staff. The Agency is endeavouring to keep an adequate number of staff working with the old Scheme cases to ensure that these claims are resolved as quickly as possible. However, the speed with which the Agency can process these claims is influenced by the speed with which the applicant’s legal representative provides the necessary supporting documentation in respect of the claim (typically medical and financial reports). This is particularly the case with claims which are under appeal.

At the same time the Agency is managing the gradual increase in claims received under the new Tariff Scheme. It is thought likely that some redeployment may be necessary and that any surplus staff will be transferred to other parts of the NIO or the Northern Ireland Civil Service.

Tariff

Medical Reports

10.3 When the Implementation Project Team carried out the preparatory work to create the procedures for Tariff, it was not envisaged that there would be a problem with obtaining medical reports from Accident and Emergency Departments. However, when the Agency reached the stage of requesting medical reports/statements from those Departments, it became apparent that each hospital Trust treated the request differently, both in the range of charges and in the procedures used to respond to the request. Thus charges varied between Trusts and there was a lack of a common methodology for requesting and obtaining reports from Trusts. With the potential involvement of all Trusts in Northern Ireland, this has escalated into a major problem. Currently the Agency is in discussion with colleagues in the health service in order to resolve the problem but it has already contributed to an on-going delay in the decision-making process.

Child sexual abuse cases

10.4 The Tariff legislation specifically addressed this type of claim by allowing anyone who had been the victim of sexual abuse in their childhood to make a claim, according to the statutory provisions which prevailed at the time of the incident. In advance of this change to the legislation, the Agency kept a record of any claims which were being turned down, but would be affected by the change in legislation, and notified those applicants when the legislation changed. This meant that claims could be made by anyone who had been abused in their childhood, regardless of the time which had since elapsed. However, the legislation did not remove any other requirements of the earlier legislation. In practice this means that if the victim claimed to have been abused before 1988, and lived in the same household as the perpetrator, they were barred from receiving compensation. The position has been queried by various commentators, but the Agency has no option but to turn down these claims. Recently, however, one such case has resulted in a Judicial Review of the legislation with the Applicant alleging that it contravenes Human Rights legislation. The outcome of this Review will inform future policy in this area for the Department and the Agency.

Review of the Criminal Damage Scheme

10.5 The rationale behind the Scheme has been outlined at Section 7. However, as the number of claims reduces the possibility arises of the insurance industry providing cover in place of the Scheme. This is an issue which is to be addressed as part of a forthcoming review arising as part of the Agency’s Quinquennial Review. When asked in 2001, the insurance industry expressed some interest in returning to such business but it was still considered too uncertain a risk.

Fortunately there have been no major incidents (such as bomb explosions) since then and the general atmosphere may be a little more certain. However, at least one major bomb has been intercepted and made safe by the PSNI in the last six months so the possibility of further incidents cannot be ruled out. In addition, the interest of the insurance industry is likely to have been diluted by the events of September 11, especially since the industry has strengthened its terrorist exclusion clauses in the wake of this atrocity.

The review, however, will consider all these factors, and feed into the subsequent discussions about the Agency’s future.

Terrorism Act 2000

Continued Vigilance

11.1 While early returns show that the number of claims has dramatically reduced following the introduction of the new procedures in May 2003, it is too early to predict the future level of claims with any degree of confidence. It is crucial that the situation is monitored over the next 12 months to ensure that the claims are handled fairly, consistently and robustly. To assist in this approach, a Barrister has been identified

who will handle any claims which reach court: this will facilitate consistency and develop expertise. As with the Criminal Damage Scheme, the Terrorism Act Scheme will be addressed as part of a forthcoming review in accordance with the requirements of the Quinquennial Review.

12. CONCLUSION

Since its formation at a time of widespread violence and commercial disruption throughout Northern Ireland, the Agency has been rightly proud of its strong customer focus. The result of that strength has been the Agency's success in achieving its performance targets, set against a background of the "Troubles". However, as the degree of violence and damage diminishes, the Agency has entered a "Transition phase" during which the new Tariff scheme has been introduced and new procedures developed for handling claims made under the Terrorism Act 2000.

These changes have raised considerable challenges which the Agency is confident that it will meet with the support of its staff and colleagues elsewhere in the wider NIO and public sector. The prospects remain uncertain, but the Agency continues to look to the future, while continuing to adopt a pro-active, professional approach to the delivery of a high quality service to its customers.

15 September 2003

Annex A

OVERVIEW OF THE COMPENSATION SCHEMES

The Agency is responsible for the administration of four statutory compensation schemes on behalf of the Secretary of State.

- (a) The criminal injuries compensation scheme which provided compensation for pain, suffering, financial loss and loss of amenity by the victims of violent crime, including terrorist crime, in Northern Ireland for injuries suffered before 1 May 2002. The governing legislation was the Criminal Injuries (Compensation) (Northern Ireland) Order 1988.
- (b) The criminal injuries compensation scheme (Tariff) which provides compensation for the innocent victims of violent crime, including terrorist crime for injuries suffered from 1 May 2002. The governing legislation is the Criminal Injuries Compensation (Northern Ireland) Order 2002.
- (c) The criminal damage compensation scheme which provides compensation for malicious damage to property in Northern Ireland caused by terrorism or unlawful assemblies of three or more people; and for malicious damage to agricultural property. The governing legislation is the Criminal Damage (Compensation) (Northern Ireland) Order 1977.
- (d) Compensation to those who suffer loss or damage resulting from action taken under the Terrorism Act 2000.

Review/Appeals against the Agency's Decisions

In respect of criminal damage claims, Terrorism Act 2000 claims or criminal injury claims submitted under the 1988 Order, applicants have a statutory right of appeal to the Courts if they are dissatisfied with decisions reached on their claims.

In respect of criminal injury claims submitted under the Criminal Injuries Compensation (Northern Ireland) Order 2002, a decision in a case may be reviewed by the Agency. A decision taken after review may be appealed to the independent Criminal Injuries Appeals Panel for Northern Ireland.

Annex C

SUMMARY OF KEY PERFORMANCE TARGETS FOR 2003-04

CLAIMS UNDER THE CRIMINAL DAMAGE (COMPENSATION) (NORTHERN IRELAND) ORDER 1977

1. Maintain average time taken to reach decisions at 19 weeks for claims received from 1 April 2003;
2. Reduce by 85% the number of claims in hand at 31 March 2003 on which no decision has been reached; and
- 3.* Process claims under the Criminal Damage and Terrorism Act schemes at a combined average unit cost of £140.

CLAIMS UNDER THE TERRORISM ACT 2000

4. Reach decisions on claims in 53 days for claims received from 1 April 2003;
5. Reduce by 85% the number of claims in hand at 31 March 2003 on which no decision has been reached; and
- 3.* Process claims under the Criminal Damage and Terrorism Act Schemes at the combined average unit cost of £140.

*This Unit Cost target relates to claims under the Criminal Damage and Terrorism Act schemes. The work involved in processing these claims is carried out in a single organisational unit within the Agency so the efficiency of this element of the Agency's operations is measured by reference to a combined Unit Cost target.

CLAIMS UNDER CRIMINAL INJURIES (COMPENSATION) (NORTHERN IRELAND) ORDER 1988

6. Reduce by 45% the number of claims in hand at 31 March 2003; and
 7. Reach a decision on 50% of undecided criminal injuries claims in hand at 31 March 2003.
- Claims under the Criminal Injuries Compensation (Northern Ireland) Order 2002 (Tariff)
8. To decide 45% of all applications within twelve months of receiving the application.
 9. To reach decisions on applications at an average Unit Cost of £290.

COMPLIANCE WITH LEGISLATION/STANDARDS OF ADJUDICATION—ALL SCHEMES

10. That the Agency's standards of adjudication are appropriate which will be confirmed by the Department's Internal Audit Branch through random sampling of claims.

VALUE FOR MONEY—ALL SCHEMES

11. Manage the workload in 2003–04 within a running costs budget (to cover salaries and administrative expenditure) to financial limits agreed with the Department (including in-year adjustments.)

Annex D

SUMMARY OF KEY PERFORMANCE TARGETS 1999–2000 to 2002–03

Key Performance Targets	Targets, Outturns and Achievements				
		1999–2000	2000–01	2001–02	2002–03
To process Criminal Injury claims at an average cost of £x	Target	£299	£295	£290	#
	Outturn	£298	£291	£290	#
To reach a decision in Criminal Injury claims in an average time of x weeks	Target	45	45	45	#
	Outturn	45	45	45	#
To reduce the number of Criminal Injury claims in hand at due date by x%	Target	85%	85%	85%	85%
	Outturn	90%	85%	86%	86%
To reach a decision in x% of Criminal Injury claims received after due date	Target	N/A	N/A	N/A	40%
	Outturn	N/A	N/A	N/A	52%
To reach a decision in Criminal Damage claims in an average time of x weeks	Target	19	19	19	19
	Outturn	18	19	18	18
To reduce the number of Criminal Damage claims in hand at due date by x%	Target	85%	85%	85%	85%
	Outturn	89%	88%	86%	86%
To process Criminal Damage and Terrorism Act 2000 claims at an average cost of £x	Target	£150	£147	£140	£140
	Outturn	£146	£130	£157	£104
To reach a decision in Terrorism Act 2000 claims in an average time of x days	Target	40	35	35	35
	Outturn	28	30	38	32
To reduce the number of Terrorism Act 2000 claims in hand at due date by x%	Target	90%	95%	95%	95%
	Outturn	97%	97%	97%	97%
To ensure that the standards of assessment are fair, objective and in accordance with the legislation	Target	Yes	Yes	Yes	Yes
	Outturn	Achieved	Achieved	Achieved	Achieved
To manage the workload within the running costs budget allocated for salaries and administrative costs (including in-year adjustments)	Target	£3,238k	£3,354k	£3,477k	£3,966
	Outturn	£3,197k	£3,326k	£3,412k	£3,913

<i>Key Performance Targets</i>	<i>Targets, Outturns and Achievements</i>				
	1999–2000	2000–01	2001–02	2002–03	
To achieve an improvement in the level of user satisfaction with services provided by the Agency (as reported biennially through independent survey)	Outturn	Achieved 71%	N/A	Not Achieved (65%)	N/A

These Targets were discontinued in 2002–03.

Annex E

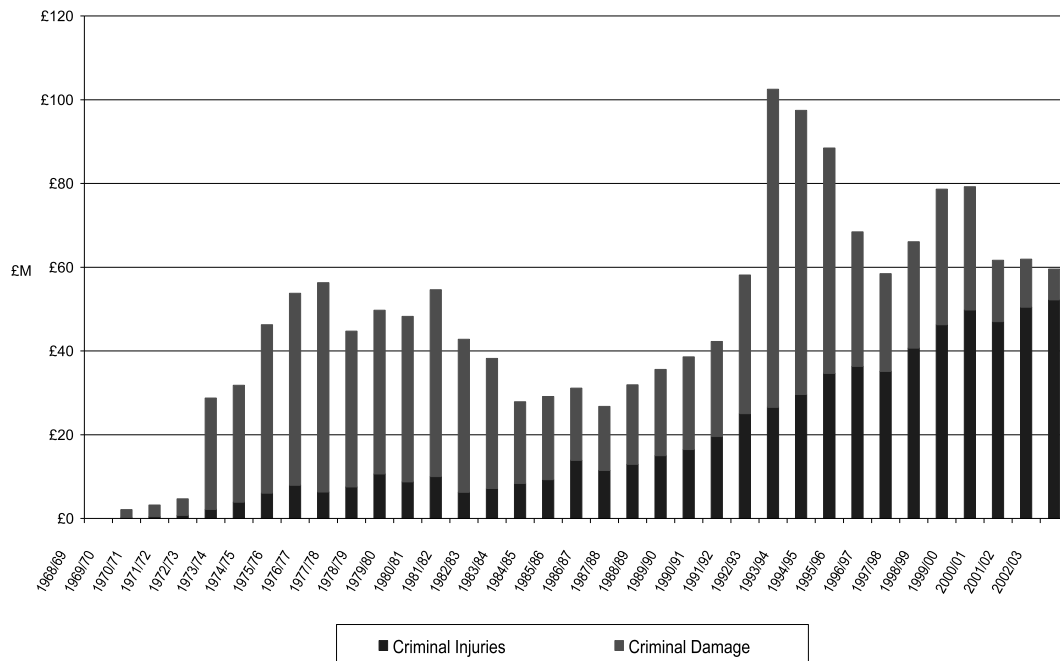
	<i>2002–03 Outturn £000</i>	<i>2003–04 Forecast £000</i>
Demand Led Payments		
Criminal Injuries (1988 Order)	10,353	4,260
Criminal Injuries (2002 Order)	14,894	51,840
Criminal Damage	8,773	3,900
Terrorism Act	1,686	5,402
Demand Led Sub-Total	35,706	65,402
Running Costs	4,628	3,899
Programme Costs	– 6,051	2,450
Inter Departmental Charges	3	11
Recoveries from Offenders	– 561	– 180
TOTAL RESOURCES	33,725	71,582
CAPITAL	45	22

Annex F

<i>Year</i>	<i>Criminal Injuries</i>		<i>Criminal Damage</i>		<i>Both Schemes</i>	
	<i>In-Year Total</i>	<i>Total to Date</i>	<i>In-Year Total</i>	<i>Total To Date</i>	<i>In-Year Total</i>	<i>Total to Date</i>
1968–69	£2,356	£2,356	£12,036	£12,036	£14,392	£14,392
1969–70	£131,876	£134,232	£1,976,760	£1,988,796	£2,108,636	£2,123,028
1970–71	£443,474	£577,706	£2,780,604	£4,769,400	£3,224,078	£5,347,106
1971–72	£724,470	£1,302,176	£3,966,680	£8,736,080	£4,691,150	£10,038,256
1972–73	£2,173,524	£3,475,700	£26,592,312	£35,328,392	£28,765,836	£38,804,092
1973–74	£3,886,426	£7,362,126	£27,901,114	£63,229,506	£31,787,540	£70,591,632
1974–75	£6,022,556	£13,384,682	£40,209,285	£103,438,791	£46,231,841	£116,823,473
1975–76	£7,937,751	£21,322,433	£45,844,522	£149,283,313	£53,782,273	£170,605,746
1976–77	£6,300,336	£27,622,769	£49,975,314	£199,258,627	£56,275,650	£226,881,396
1977–78	£7,491,533	£35,114,302	£37,217,730	£236,476,357	£44,709,263	£271,590,659
1978–79	£10,612,634	£45,726,936	£39,098,648	£275,575,005	£49,711,282	£321,301,941
1979–80	£8,737,357	£54,464,293	£39,526,039	£315,101,044	£48,263,396	£369,565,337
1980–81	£10,009,283	£64,473,576	£44,627,341	£359,728,385	£54,636,624	£424,201,961
1981–82	£6,251,314	£70,724,890	£36,523,503	£396,251,888	£42,774,817	£466,976,778
1982–83	£7,132,522	£77,857,412	£31,058,498	£427,310,386	£38,191,020	£505,167,798
1983–84	£8,377,447	£86,234,859	£19,472,529	£446,782,915	£27,849,976	£533,017,774
1984–85	£9,246,219	£95,481,078	£19,871,723	£466,654,638	£29,117,942	£562,135,716
1985–86	£13,887,904	£109,368,982	£17,218,357	£483,872,995	£31,106,261	£593,241,977
1986–87	£11,466,532	£120,835,514	£15,265,899	£499,138,894	£26,732,431	£619,974,408
1987–88	£12,925,016	£133,760,530	£19,004,436	£518,143,330	£31,929,452	£651,903,860
1988–89	£14,968,319	£148,728,849	£20,606,265	£538,749,595	£35,574,584	£687,478,444
1989–90	£16,449,745	£165,178,594	£22,124,107	£560,873,702	£38,573,852	£726,052,296
1990–91	£19,547,358	£184,725,952	£22,711,159	£583,584,861	£42,258,517	£768,310,813
1991–92	£25,019,951	£209,745,903	£33,096,467	£616,681,328	£58,116,418	£826,427,231
1992–93	£26,569,813	£236,315,716	£75,927,801	£692,609,129	£102,497,614	£928,924,845
1993–94	£29,601,804	£265,917,520	£67,870,586	£760,479,715	£97,472,390	£1,026,397,235
1994–95	£34,634,993	£300,552,513	£53,811,825	£814,291,540	£88,446,818	£1,114,844,053
1995–96	£36,345,097	£336,897,610	£32,102,156	£846,393,696	£68,447,253	£1,183,291,306
1996–97	£35,116,634	£372,014,244	£23,329,783	£869,723,479	£58,446,417	£1,241,737,723
1997–98	£40,660,108	£412,674,352	£25,417,865	£895,141,344	£66,077,973	£1,307,815,696
1998–99	£46,240,512	£458,914,864	£32,384,750	£927,526,094	£78,625,262	£1,386,440,958
1999–2000	£49,775,565	£508,690,429	£29,435,764	£956,961,858	£79,211,329	£1,465,652,287
2000–01	£47,013,823	£555,704,252	£14,645,572	£971,607,430	£61,659,395	£1,527,311,682
2001–02	£50,469,842	£606,174,094	£11,427,217	£983,034,647	£61,897,059	£1,589,208,741
2002–03	£52,188,863	£658,362,957	£7,337,666	£990,372,313	£59,526,529	£1,648,735,270

Annex G

Criminal Injuries & Criminal Damage Expenditure (Awards & Costs): 1968-69 to 2002-03



APPENDIX 2

Supplementary memorandum submitted by the Compensation Agency

Your colleague Hugh Farren was in touch with us after the Committee's visit here on 4 November 2003 to request information about a number of areas touched on during the visit. The areas included:

- A breakdown by age of claims under the old 1988 criminal injuries compensation scheme, which are currently unresolved.

The table at Annex A, shows the spread of unresolved claims by age and also shows that there are currently around 6,500 claims pre-appeal on which we still have to make decisions, together with some 4,200 cases, which are under appeal. Our latest projection is that by the end of 2003–04 the breakdown of unresolved claims under the 1988 Order scheme will be 5,500 undecided and 3,800 under appeal. The Agency is endeavouring to target for attention the older claims but can proceed only at the rate at which applicants' representatives provide the documentation in support of the claims, ie medicals, pecuniary loss details etc.

- The Committee were also interested in seeing an analysis of the percentage of appeals and the outcome of these appeals under the 1988 criminal injuries scheme.

The table at Annex B shows that during 2000–01 to 2003–04, approximately 75% of cases were resolved without an appeal. From Annex C you will see that between 68% and 72% of appeals were settled by negotiation prior to hearing. The Committee may be interested to see the note at Annex D, which sets out some of the factors, which on the day of the appeal hearing can influence the decision to negotiate settlement.

- With reference to the reduction in the number of claims submitted under the Terrorism Act 2000 the Committee were interested to know what savings would be achieved as a consequence of the new claims procedures, which were introduced in April 2003.

The table at Annex F shows that on present trends the projected savings are likely to be of the order of £2.8 million per annum.

- Finally, the Committee also asked for the financial table, which was at Annex E of the Memorandum, to be re-cast to show the Agency's latest forecast expenditure for 2003–04.

An amended version of the table is attached— Annex E amended.

15 December 2003

UNRESOLVED CLAIMS UNDER THE 1988 ORDER CRIMINAL INJURIES SCHEME AS AT 5 DECEMBER 2003

<i>Financial Year</i>	<i>Claims Registered</i>	<i>Live by Database</i>	<i>Pending Closure</i>	<i>Civil Case Pending</i>	<i>Unresolved Claims</i>
(a)	(b)	(c)	(d)	(e)	(f)
1991-92		1			1
1992-93	9,689	2			2
1993-94	9,444	4			4
1994-95	8,970	17			17
1995-96	9,563	16	2		14
1996-97	11,870	47	7	8	32
1997-98	12,278	138	7	26	105
1998-99	13,029	292	50	28	214
1999-2000	11,938	476	51	66	359
2000-01	13,939	1,374	190	1,132	1,052
2001-02	14,363	3,894	366	15	3,513
2002-03	2,416	1,126	133	6	987
2003-04	207	199	3		196
	117,706	7,586	809	281	6,496*

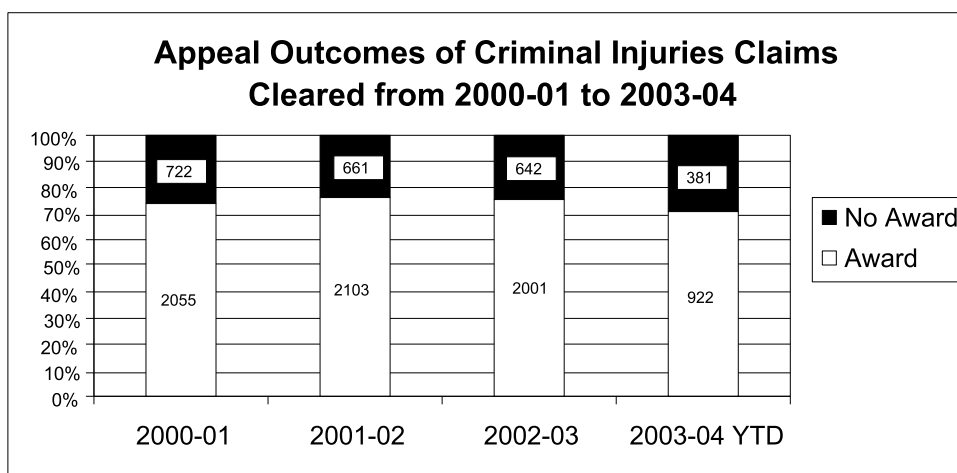
Notes:

1. Column (c) shows the number of unresolved claims on the computerised database. This figure should be adjusted by column (d) to allow for claims which have been concluded but cannot be cleared on the system because of outstanding costs etc.

2. Column (e) shows numbers of live claims in which we have been notified that parallel civil proceedings have been instigated and that the criminal injury claim has been lodged as a

protective claim only. In reality these files are held in abeyance until the civil claim resolves and are not aggressively administered. They have been discounted from the live figure.

*In addition to the unresolved total of 6,496 there are approximately 4,200 cases, which are under appeal.



Annex C

ANALYSIS OF AGENCY CRIMINAL INJURIES DECISIONS AND APPEAL OUTCOMES
FROM 2001–01 TO 2003–04

Year	AGENCY DECISION			APPEAL OUTCOME*						
	Liability Denials	Quantum Denials	Total	Settled	Award made by court	Sub-total awards	Dismissed on merits	Nil award (withdrawn, out of time, Etc)	Sub-total non- awards	Total
2000–01	2,562 92.3%	215 7.7%	2,777 100.0%	1,949 70.2%	106 3.8%	2,055 74%	241 8.7%	481 17.3%	722 26.0%	2,777 100.0%
2001–02	2,558 92.5%	206 7.5%	2,764 100.0%	2,013 72.8%	90 3.3%	2,103 76.1%	235 8.5%	426 15.4%	661 23.9%	2,764 100.0%
2002–03	2,453 92.8%	190 7.2%	2,643 100.0%	1,914 72.4%	87 3.3%	2,001 75.7%	241 9.1%	401 15.2%	642 24.3%	2,643 100.0%
2003–04	1,209	94	1,303	887	35	922	129	252	381	1,303
YTD	92.8%	7.2%	100.0%	68.1%	2.7%	70.8%	9.9%	19.3%	29.2%	100.9%

*Every appeal must be mentioned in Court even where agreement has been reached prior to Hearing.

Annex D

FACTORS WHICH MAY INFLUENCE THE OUTCOME OF AN APPEAL

NOTES:

A number of factors can influence the outcome of an appeal. The following notes summarise the most common.

Burden of Proof

The burden of proof in a criminal injury claim is the civil burden of proof. An applicant does not have to prove **beyond reasonable doubt** that he sustained a criminal injury. The test is that **on the balance of probabilities** he sustained a criminal injury. In effect this widens the scope for persuasive argument as to whether or not a criminal injury has been sustained.

Witnesses

Witness attendance can only be secured by summons at Appeal/Court proceeding stage.

If a witness attends court the credibility and veracity of that witness's evidence is considered during a pre hearing interview with the Agency solicitor and Counsel. It is at this stage, after examination by Counsel, that a final decision regarding durability and integrity of the evidence and credibility of the witness is made.

Quite simply if there is no real prospect that the witness will follow through on an earlier witness statement, which may have been the reason for denial of the claim initially, then settlement of the appeal may be warranted. Equally the strength and durability of some witness evidence leads to the successful defence of an appeal. It should also be remembered that often the civilian witnesses on whom we rely are in fact "assailants" or persons with no interest in assisting in the defence of a claim.

Evidence

Further evidence may come to light after an appeal has been submitted. This may add credence to an applicant's claim or it may lead the Agency to reconsider its view of liability or quantum.

Quantum

Whilst on face value a claim may be accepted as a criminal injury, the level of quantum may be disputed. If resolution cannot be achieved during pre appeal negotiations then an appeal hearing, usually on all issues, may be necessary.

Other Factors

Criminal Injury legislation allows for “all relevant circumstances” to be considered when determining a claim. It specifically allows for criminal convictions and provocative or negligent behaviour to be taken into account. In cases of assault, the degree of negligence or provocation may become clearer after the Agency’s legal team have had an opportunity to talk to police and civilian witnesses. Witness statements made to the police can be misleading.

Late reporting is an other relevant circumstance and can contribute significantly to the credibility of a claim. It is therefore necessary to take all of these factors into account and seek a compromise settlement. The majority of settlements on appeal are arrived at on a compromise basis.

Annex E (Amended)

	2002–03 <i>Outturn</i>	2003–04 <i>Allocation From Dept</i>	2003–04 <i>Forecast</i>
	£000	£000	£000
Demand Led Payments			
Criminal Injuries (1988 Order)	10,353	4,260	9,141
Criminal Injuries (2002 Order)	14,894	51,840	15,556
Criminal Damage	8,773	3,900	3,996
Terrorism Act	1,686	5,402	1,054
Demand Led Sub-Total	35,706	65,402	29,747
Running Costs	4,628	3,899	4,298
Programme Costs	– 6,051	2,450	– 2,167
Inter Departmental Charges	3	11	11
Recoveries from Offenders	– 561	– 180	– 505
TOTAL RESOURCES	33,725	71,582	31,384
CAPITAL	45	22	22

Annex F

**YEARLY SAVINGS ARISING FROM THE USE OF REVISED PROCEDURES FOR
PROCESSING TERRORISM ACT 2000 CLAIMS**

	<i>Old Procedures</i>	<i>Revised Procedures</i>	<i>Difference</i>
Average Claims Received per month	633	78	
Percentage of awards (average)	91.7%	81.4%	
Average claims paid per month	580	63	517
Average payout per claim	£444	£396	
Total amount payable(per month)	£257,520	£24,948	£232,572
Yearly saving from revised procedures			2,790,864

APPENDIX 3**Further supplementary memorandum submitted by the Compensation Agency**

Thank you for your letter of 26 January 2004 outlining the further information that the Committee requires, following its hearing on 21 January.

For your convenience, I have structured my reply in a question and answer format:

Q: *How many claims under the Criminal Damage Compensation Scheme are outstanding awaiting the Chief Constable’s certificate (CCC)?*

A: The Agency currently has 1,599 undecided claims under the Criminal Damage Scheme. Of these, 902 have been identified as requesting a CCC. At present 57 claims are held where a decision as to the issue/refusal of a CCC has not yet been received by the Agency.

Q: *The Scheme provides that someone with a terrorist conviction is excluded from compensation. How many cases have been turned down where there are multiple applicants and only one of the applicants has a terrorist conviction?*

A: Of those claims where compensation was not paid due to the provisions of Article 10(3) of the Criminal Damage scheme, nine were made by multiple applicants. Unfortunately, the Agency does not hold a computerised record of which applicant(s) was affected by Article 10(3). These nine claims stretch back

many years and the Agency has initiated a search of its paper records for each such claim to try to provide a definitive answer. I will write again once this search has been completed. However some of the records may have been destroyed over the years.

Q: The use of the Agency's power to recover compensation from offenders was raised and the Minister agreed to provide a more detailed note on the statistic in the Annual Report that compensation was not being pursued in more than 1,100 cases where offenders have been identified.

A: As noted in the Agency's Annual Report for 2002–03, there were 1,129 claims settled during the year where an offender was identified but no recovery was sought from that offender. Over the past five years the Agency has recovered almost £3.0 million from 1,150 offenders.

The Agency's policy in relation to the exercise of its power to recover from an offender is longstanding and predates the creation of the current Agency. Following a review in 1991, it was accepted by the then Minister that the focus of the recovery powers should be on those cases where offenders themselves become entitled to compensation from public funds at a later date. It was also accepted that attempts to recover compensation directly from the earnings or assets of offenders should not continue and that no attempt should be made to recover in any outstanding cases.

The rationale was that it was relatively easy to recover compensation when the offender him/herself was due to receive compensation from the public purse, but considerably more difficult when attempting to recover directly from the offender's earnings/assets. The legislation requires the courts (before making a recovery order), to "have regard to the financial position of the offender, his employment, the possibilities of his future employment, his liabilities to his family and other such matters as the court considers relevant".

In practice, the courts did not make formal recovery orders unless the offender was in regular employment, or had readily available assets. In order to make such an application, evidence had to be gathered by the NIO, as to the offender's financial status. Reliable information was difficult to obtain and enforcement frequently ineffective. In all the circumstances a decision was taken to limit recovery proceedings to recovery from an offender's compensation.

Since that time, the policy has been revisited on a number of occasions. However, the original arguments still apply and indeed are strengthened by the intervening powers of the court to award compensation to a victim from the offender as part of the original criminal action. Equity demands that the Agency treats all offenders equally.

4 March 2004

APPENDIX 4

Memorandum submitted by the Association of Personal Injury Lawyers

1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 by plaintiff lawyers with a view to representing the interests of personal injury victims. APIL has currently over 4,800 members in the UK and abroad, of which 118 are based in Northern Ireland. Membership comprises solicitors, barristers, legal executives, and academics whose interest in personal injury work is predominately on behalf of injured claimants. The aims of the association are:

- To ensure accident victims receive fair, just and prompt compensation;
- To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
- To provide a communication network exchanging views formally and informally.

INTRODUCTION

2. The Northern Ireland Affairs Committee is currently conducting an enquiry into the Compensation Agency (CA). The Compensation Agency administers the new tariff-based criminal injuries compensation scheme, which was introduced in May 2002. The committee is seeking views on the following:

- The efficiency and effectiveness of the administration and expenditure of the agency, including its performance against key indicators and targets; and
- The role of the Compensation Agency in:
 - Supporting the victims of violent crime by providing compensation for the serious injuries and financial loss;
 - Sustaining the confidence of the community by providing compensation for physical damage and consequential loss arising from criminal damage to property; and
 - Providing compensation to those who suffer loss from action taken under the Terrorism Act 2000.

3. In November 2001 APIL responded to the Northern Ireland Office's consultation document on the Criminal Injuries Compensation (NI) Order 2001. APIL was strongly opposed to the new measures being introduced with the new compensation scheme. In particular, we expressed concerns about the following:

- A fixed tariff scheme for injuries compensation
- Removal of paid legal assistance
- Multiple injuries

4. Indeed, with reference to these items, APIL has been able to gain feedback about their operation within the structure of the Compensation Agency.

The Fixed Tariff Scheme—General

5. APIL strongly objects to the use of a fixed tariff scheme. As stated in our November 2001 response to Criminal Injuries Compensation (NI) order 2001, “a fixed tariff scheme would be unfair and inflexible”. Injuries are listed against specific and inflexible figures and no distinction is made between individuals—each victim of crime with the same injury is treated in the same way as another. This inevitably leads to anomalies and unfairness. For example, a broken hand is worth more to a pianist than an 80 year old woman.

6. APIL is concerned that the award for multiple injuries appears very low, leaving plaintiffs seriously under compensated. The current tariff scheme, operated by the Compensation Agency, is that where there is more than one injury, and the injuries are separate from one another, 100% of the tariff is awarded for the most serious injury, 30% of the tariff is awarded for the second most serious injury, 15% of the tariff is awarded for the third most serious injury and 10% of the tariff for all remaining injuries. In the previous scheme each injury was compensated on its own merits; if a person had his arm and leg broken during a crime, it was possible for him to get 100% compensation for both injuries. APIL feels the level of tariff awards does not match the previous schemes and does not match the needs of the victims of crime.

7. As detailed in our November 2001 response, APIL propose the following tariff structure for multiple injuries:

- 100% of the tariff amount for the highest-rated, or most serious, description of injury; plus
- 50% of the tariff amount for the second highest, or serious, description of injury; plus where there are three or more injuries,
- 25% of the tariff amount for the third highest-rated, or most serious, description of injury and all remaining injuries.

APIL is also alarmed that the only way in which tariff amounts can be altered to accommodate personal circumstances is via either a review of the original decision or an appeal to the Criminal Injuries Compensation Appeals Panel for Northern Ireland (CICAPNI); both of which would further delay much needed compensation monies.

8. As already mentioned the new criminal injuries compensation scheme lacks discretion in relation to awards. For example, similar scars on two different people can have a very different affect to their appearance depending on other aspects of their physical appearance. While the tariff system does distinguish between different types of scars, it does not provide sufficient discretion to ensure that the degree to which a scar presents disfiguration takes into account a number of factors including the age of the victim, where the scar sits in respect of the victim’s hairline, how easily disguised the scar may be or whether the scar blends in with crease lines in the head.

The Fixed Tariff Scheme—Minor Injuries

9. APIL particularly feels that the current tariff system is unfair to victims with minor injuries. In order to qualify for compensation the plaintiff must have suffered at least three separate physical injuries, and at least one of these injuries must have significant residual effects six weeks after the incident. The fact that the victim must also visit a medical practitioner on two separate occasions during the aforementioned six-week period is wholly unreasonable and may discriminate against a number of different categories of persons. The use of these qualifications means that the number of injured people who will be able to gain access to the scheme will be significantly restricted. APIL feels this restriction is inequitable as the precise specification of an injury should not disqualify someone from compensation. For example, if someone had received two black-eyes during a crime, and the effects of these lasted five weeks, in which time the person was unable to work, it would inequitable to deny him compensation using the above qualifying factors.

Legal Representation

10. APIL is concerned that the Compensation Agency does not allow for the recovery of any legal costs by legal representatives aiding in either the completion of the claim forms or indeed in any aspect of the claim. Whilst the Legal Aid Department may pay limited fees in respect of initial advice, clients often ask and require continuing assistance. The complex issues involved can be extremely confusing to many people, and this will be made more difficult if they have recently been traumatised as a result of a crime.

11. The lack of funded legal assistance means that if solicitors are used in the application process and onwards, any assistance would have to be paid for by the plaintiff. This will often involve the payment of legal fees by the plaintiff to the solicitors out of any awarded compensation. This is the current situation in England and Wales.

12. The extra funding provided to Victim Support of Northern Ireland (VSNI) for the purposes of assisting in the completion of criminal injuries applications under the Compensation Agency is broadly welcomed by APIL. However we have deep concerns about VSNI's capacity to provide advice and assistance to victims in complex cases. Indeed, in its submission to the Ad Hoc Committee on the Draft Criminal Injuries Compensation (NI) Order 2001 (published 08/07/02), VSNI recognised that this was a major failing of the proposed CICA scheme.

13. In consultation with APIL members it appears that few victims are using the VSNI to help process their claims. APIL feels that the VSNI does not have the capacity to adequately cope with additional work load produced by the scheme. For example, in 2001 the Compensation Agency received between 14,000–15,000 applications for criminal injury compensation, whilst the VSNI has only eight branches across Northern Ireland each with three core branch staff members. In contrast, however, there are some 500 solicitors' firms all with experience of dealing with criminal injury claims. This seems to inevitably lead to more plaintiffs consulting their local solicitors.

14. The lack of legal aid assistance also substantially hinders child applicants' ability to gain compensation. Due to the fact that the plaintiff is a child, the solicitor is unable to bill the child directly. Thus the parents are liable for legal expenses incurred. It is inherently unfair that parents should have to pay for access to a system when their child has been injured as the result of a crime. We understand that this conflict is leading some solicitors into taking a disproportionate amount of pro-bono work in respect of criminal injuries. This could lead to solicitors being unable to help criminal injury victims pursue their claim and effectively gain access to justice because of business pressures. This also means that other areas of pro-bono work are tending to suffer as a result.

Advertising of the Criminal Injuries Compensation Scheme

15. APIL strongly supports the need for a more visible and prominent campaign in advertising the use of the Criminal Injuries Compensation scheme. Whilst there was a "flurry" of advertising around the initial roll-out of the scheme, there appears to have been little press coverage since. This lack of visibility means that people are unlikely to know that their injuries are compensatable and that this is the appropriate method in which to claim. This restricts access to justice for people suffering injuries due to crime.

16. The lack of awareness that surrounds the scheme means that many claimants seeking advice still contact a legal representative first. Whilst some are advised to contact their local Victim Support, the fact that only eight sites are currently operating in the Northern Ireland jurisdiction (of which two are based in Belfast) means that this may involve travelling into their nearest population centre. This is naturally traumatic as the plaintiff they may still be suffering from injuries, and the option to travel may make things worse.

Completion of Forms

17. APIL feels that the claims forms are too long and can be unclear. In addition the guidance notes which accompany the claim forms are comprehensive in their detailing of the scheme but offer little help in how to actually fill the forms in. These factors combined with the fact many plaintiffs are daunted and intimidated by the forms means that they often seek independent legal advice in order to complete the application form. APIL is additionally concerned that the claim forms require detailed information that the claimant is unlikely to have, or have easy access to. For example, the police command and control number are only known by the police and these are rarely provided to the victim. A possible solution would be for the police officer who records the complaint to provide the victim with a card bearing the name of the relevant police officer and the crime reference number. Also a hospital number would be completely unknown by anybody attending as a patient. The lack of this information makes the completion of the relevant claims forms more difficult.

18. In addition, APIL suggests that the police should supply all victims of crime with a claim form on the recording of their complaint at the police station. This would enable the victim to instigate a claim for compensation as soon as possible. The current situation, however, is that claim forms are only available from the VSNI and via the internet. If a person doesn't have access to the internet—which many don't—they would need to travel to the nearest VSNI office to get the appropriate forms. As already mentioned, due to the distance and lack of easy access, this may well be very traumatic for the person.

Medical evidence

19. APIL is concerned that the Compensation Agency, in order to define the tariff level, may request that the plaintiff attends a Compensation Agency nominated doctor. This lack of independence is unfair and inequitable to plaintiffs. In order for independence to be preserved the use of independent medical opinion ought to be sought about the extent of the injuries, and the appropriate compensation tariff level. In relation

to the operation of the current system, however, judging by the responses from our members, it appears that the Compensation Agency contacts the plaintiff's GP (or treating Accident and Emergency department) directly requesting a copy of his medical notes. These medical notes are supplied to the Compensation Agency at a nominal fee (under £25) via an agreement with the British Medical Association (BMA). The low fee and the lack of a specific medical examination relating to the criminal injury being claimed for may indicate a potential lack of thoroughness.

20. Whilst the independence of the plaintiff's GP means that this medical information is more appropriate than that of a CA nominated doctor, the lack of specialist medical knowledge may mean that their opinion lacks a full understanding of the long term implications of any criminally inflicted injury.

21. APIL also feels that the reluctance of the Compensation Agency to release the acquired medical notes of the plaintiff to his nominated legal representatives will lead to a growing number of appeals being lodged. A solicitor would normally use the medical notes of a plaintiff to ascertain the validity of his claim and the quantum of damages that the plaintiff is due. The lack of this information hinders the solicitors' ability to advise his client appropriately, and will lead to appeals based on the perception of under-compensation.

Compensation Agency delays

22. APIL feels the long delays in getting claims resolved by the Compensation Agency are unacceptable. Of the eleven different Northern Ireland legal firms contacted 82% stated that there were long delays in getting claims determined by the CA and of these eleven firms 45% have yet to even have a claim determined at all. Indeed even the simplest of claims has been extensively delayed. These delays naturally affect the claimants, who often need the security that compensation provides in order either continue with their lives or start rebuilding their lives.

23. In addition to long delays APIL is anxious that neither claimants nor their solicitors are being kept up to date on the progress of the claim. Indeed in some examples it took four to six weeks for an acknowledgment of the application forms to be received. After the receipt of the application pack, there appears to be little or no further contact; neither the claimant nor solicitor are updated about the progress of the application. The delays in the determination of claims may be more bearable if the claimant were kept informed about the ongoing status of their application.

CONCLUSION

24. APIL feels that the Compensation Agency, and the Criminal Injuries Compensation scheme that it runs, do not appear to have made claiming compensation any easier. Indeed Sir Kenneth Bloomfield's original comments that "many of those victims to whom [he] spoke found the procedures complex, baffling, frustrating and on occasion humiliating"¹, could be equally applied to the current system.

25. APIL feels that whilst the new system was attempting to produce a fairer, more equitable and more affordable system, the tariff system and loss of legal funding means that this is not happening. Indeed there is little evidence, as Amanda Patterson (head of Compensation Policy Unit) stated concerning the loss of funded legal advice, "that the public money that funded legal advice under the existing compensation scheme is now being used to widen access to cover more victims."

September 2003

APPENDIX 5

Memorandum submitted by Victim Support Northern Ireland

Victim Support is the lead agency in Northern Ireland, helping people cope with crime. We provide support to ANY person affected by crime, irrespective of the nature of the crime or the profile of the victim.

From the 1st May 2002, Victim Support have been providing victims of violent crime in Northern Ireland, with help in applying for compensation under the new "tariff" based scheme.² Our Criminal Injuries Compensation Service (CICS) is a free, confidential and professional service, delivered by volunteers and staff in each of our eight local Branch areas. We have a dedicated Advice Worker in each Branch (2 in North & West Belfast).

In addition to providing emotional support throughout the entire process, the service provides:

- Advice and information about applying for compensation.
- Help with filling in the application form.
- Explanation about letters and decisions.
- Help with reviews.
- Representation at Appeals.

¹ "We will remember them" (published April 1998), paragraph 59.

² The Northern Ireland Criminal Injuries Compensation Scheme 2002.

In the first year of CICS we helped 1,733 people with their applications to the Compensation Agency; this represents 21% of all applications made in Northern Ireland. Many of these applicants include people who suffered sexual abuse as children, but where time barred under the old legislation.

The delivery of this service to victims is in line with Victim Support's belief about how Compensation fits into our service delivery to victims. Victim Support believe that the purpose of compensation is to "recognise on behalf of society the experience which victims of crime have suffered; and to help the victim to recover from it and live as normal a life as possible in the circumstances . . . in so far as possible . . . to place the victim in the position which he would have occupied if he had not suffered the wrong."³

The introduction of the Criminal Injuries Compensation Service into Victim Support, has contributed to ensuring that we provide a seamless service to all victims of crime in Northern Ireland. We have a network of eight Branches, strategically placed throughout Northern Ireland, and services available to victims include support in victim's homes following a crime; the comprehensive Criminal Injuries Compensation Service and support for victims attending A&E hospital departments.

APPLICATIONS AT THE FIRST STAGE

The introduction of the new scheme presented challenges for VSNI, but also the Compensation Agency as they began to administrate the new system, as well as having a backlog of several years with claims under the common law scheme. It was our experience, in approximately the first 18 months of the scheme, that the Compensation Agency were taking longer than originally anticipated to make decisions. Therefore, our Advice Workers and Branch staff placed under additional pressure in meeting the demands of victims whose applications were still at the first stage, including regular letters from the agency, and requests for updates and emotional support from the victims.

These matters appear to be resolved, in the main. The following details the applications completed for this year.

VSNI STATISTICS FOR CRIMINAL INJURY COMPENSATION CLAIMS APRIL 2003–DECEMBER 2003

	<i>VSNI</i>	<i>Compensation Agency</i>
<i>April to June</i>		
April	207	
May	160	
June	179	
TOTAL	546	530*
<i>July to September</i>		
July	211	
August	204	
September	171	
TOTAL	586	575*
<i>October to December</i>		
October	146	
November	154	
December	97	
TOTAL	397	263*

*There are currently some discrepancy between our statistics and the CAs which we require to resolve.

REVIEWS AND APPEALS

As the CA begin to make decisions, victims we have assisted requesting help with reviews and later appeals if they are turned down at review. We are also receiving referrals from victims who have been advised by their solicitor to go to VSNI, as there is no legal aid for applying to the Criminal Injuries Compensation Scheme. Reviews and appeals present different challenges for VSNI, not least in the technical support of Advice workers, and the further training of volunteers to undertake this aspect of our Criminal Injuries Compensation Service. Appeals will also require Advice Workers to represent victims at the appeals panel, which requires significant preparation of the victim.

³ Compensating the Victim of Crime, Victim Support Northern Ireland, 1995.

RESOURCE IMPLICATIONS FOR VSNI

We are funded by the NIO, via the Community Safety Unit, to operate our CIC service. At present we are awaiting a review of the service by Business Consultancy Service(NIO) who will look at staffing and other resource requirements, to ensure we are in a position to meet the needs of victims who wish to apply to the scheme. The main difficulty has been in relation to the administrative burden it has placed on Branches. Further work will of course be required to promote the service and highlight public awareness of the fact that there is new Criminal Injuries Compensation Scheme and service in NI. In addition, we are about to approach the Compensation Agency to look at the feasibility of using their customer satisfaction survey, to ascertain why applicants have not used our service.

April 2004