

## Lifting the roof on the 'same roof rule'

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## Why has the rule been changed?

Firstly, there was an important Court of Appeal decision in the summer of 2018. A woman known as 'JT' brought a claim. Her stepfather abused her between the ages of 4 and 17 and was later convicted of eight offences including rape. However, when she applied for damages through the CICA she was refused because of the same roof rule.

JT contended that the decision to reject her claim was incompatible with Article 14 of the European Convention for the Protection of Human Rights as incorporated into UK law by the Human Rights Act 1998. The Court of Appeal upheld her appeal with one Judge commenting that the scheme was all the more unfair because JT was a child when the abuse took place and had no control over where and with whom she lived.

Secondly, the IICSA in an interim report in April 2018 recommended that the Criminal Injuries Compensation Scheme be reformed in a number of ways including abolition of the same roof rule.

Thirdly, in September 2018 the Government introduced a 'Victim Strategy' which included an indication that the MoJ intended to abolish the rule.

What is very clear is that the mood has decisively changed. Over many years there were regular complaints that some of the rules regarding the making of a claim; procedural and evidential strictures and delay had the effect of discouraging rather than encouraging claims. The scrapping of the rule will allow those refused compensation under the rule and those applying for the first time to make a claim. The MoJ has said 'Whilst no amount of compensation can make up for the immense suffering endured by victims of violent crime, we are committed to ensuring that they receive the help and support needed to rebuild their lives'

## What does this mean for civil compensation claims?

The existence of the pre-1979 same roof rule and the generally restrictive approach of the CICA had the effect of pushing claims towards the civil courts. Typically, someone abused in their home, who could not make a successful claim through the CICA, alleged a failure to remove or protect against the local authorities who had had social worker involvement with their family. Such claims were brought in negligence and were notoriously difficult to prove and were disproportionately expensive in terms of legal costs incurred on both sides. The Court of Appeal, in the case of *CN v Poole Borough Council* [2017] EWCA Civ 2185, restricted the ability to bring such claims. It remains to be seen whether the Supreme Court will lift that restriction and what, if any, account they will take of the fact that compensation will now be more widely available via a CICA payment.

When the impact of future IICSA reports, the government's own Victim Strategy and the ongoing review of the CICA is looked at in the round, it is likely to become more straightforward to bring successful claims through the CICA. Awards are likely to rise and become more genuinely compensatory and akin to civil court levels of compensation. If that comes to pass then, even if the Supreme Court reverses the Court of Appeal judgment in *CN v Poole Borough Council*, claims against local authorities alleged to have failed in their oversight of families may begin to fall.

Society may consider that a claim against the abuser (or at least the state standing immediately behind the abuser) is preferable to a secondary claim against an organisation with perhaps only a tangential connection with the victim. Time will tell.

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