

**„Victim Protection
in Criminal Proceedings Legislation:
A pan-European Comparison“**

Country Report: England and Wales

**Author:
Christopher Lewis**

General Statement on the position of victims within the legal system of England and Wales

The legal system in England and Wales differs somewhat from that in most European Countries. This makes it difficult to answer the questionnaire in the terms in which it has been constructed.

Basically the assumption that courts seek to discover the truth about a given circumstance is not a feature of English law. It is more an adversarial situation where judgement follows the presentation of facts by opposing parties.

The questionnaire also asks about rights of victims in the legal system. There are no rights as such save in a claim for compensation for an injury arising from a criminal occurrence.

Thus, questions that are predicated on the concept that the victim is a civil party to the criminal proceedings are not valid ones. For example, in civil law, the notion of a 'victim' in civil enforcement is not appropriate.

However, the questionnaire is answered as far as possible making allowances for the different situation in this country.

Background

Both criminal and civil proceedings can arise from a given event but the civil and criminal proceedings would not be legally connected in any way. However, the legal representatives of the victim can, in certain circumstances, refer to a case that has already been held.

The position for those victims where the offender is under 18 is different, has changed recently

(see page 4 of this note.)

The victim in a criminal case may be called as witness, and may, or may not get some compensation from the offender. However, he does not have the right to apply for a compensation order himself to the court. He is encouraged to tell the police that he would like to receive compensation and complete a form to give accurate details of his loss, including documentary proof. The police will then pass this information to the Crown Prosecution Service, who will make sure the court knows about it. Examples of things which can be compensated for are: personal injury: losses because of theft or damage to, property: losses because of fraud: loss of earnings while off work; medical expenses; travelling expenses; loss damage or injury caused to or by a stolen vehicle.

The court must consider compensation in each appropriate case and decide whether to order an offender to pay, and how much. The court takes account the offender's circumstances, so that any compensation may not be full amount of the loss. The court may make a compensation order and collect the money. It then passes the money on to the victim. Many orders are paid by instalments over a period, and it must be admitted that many compensation orders are not paid in full, since the collection procedures of the courts vary across the country. The victim is not permitted to contact the offender direct.

However, his civil position is unaffected. He is allowed to sue for damages, independently of any previous or forthcoming criminal trial. The civil case will be conducted on the facts of the case, as presented in court, and based on previous case

law and precedents. Damages may then be awarded by the court, but it is the victim's (plaintiff's) duty to enforce these damages.

Compensation for certain victims, where a criminal injury has occurred, has been a statutory right for many years, and a Criminal Injuries Compensation Authority exists. However, this is independent of whether a criminal or a civil case has been brought, or indeed whether the offender is known. The main details of the Criminal Injuries Compensation scheme can be found on page 5 of this note.

Apart from this compensation, in general, there are no victim's rights as such in English law. There are some duties imposed on statutory authorities to behave in a certain way towards victims, but not legal rights. There is a proposal likely to go forward to parliament soon to increase the number of such duties on the statutory authorities as far as victims are concerned. Although this proposal was ready for submission to parliament this session (November 2003-October 2003) legislative priorities were such that other new laws took precedence, so the date for this new Bill to go before Parliament is as yet uncertain.

This does not mean that victims are ignored in the English process. Rather that such provision for victims is not included within statute law, but in a series of publications, including a strong Victims Charter, (see page 5 of this note.) These publications are amended from time to time, and as a preparation to the changes in law now being discussed, a Review of the Victim's Charter was published in February 2001 (see page 5 of this note.) In general the government takes the position of victims very seriously, as can be seen from a recent response to the European Union on the UK position on the Framework decision on the Standing of victims in criminal proceedings (see page 6 of this note.)

Moreover there has been a strong non-government organisation, Victims Support in existence for many years (see page 5 of this note.)

Restorative Justice and the Position of young offenders

Since the implementation of the 1998 Crime and Disorder Act, victims of crimes where the offender is under 18 are subject to a different set of procedures whereby the offender can make reparation for his offence to the community and to the victim. This is a new disposal for the courts to help prevent further offending by bringing home to young offenders the consequences of their behaviour and enabling them to make amends, as appropriate, to their victims and the wider community.

The reparation order is available where a child or young person aged 10-17 is convicted of any offence other than one for which the sentence is fixed by law (usually very serious ones.) It is expected that the reparation order will substantially displace the use of the conditional discharge.

By allowing the offender to do some form of practical reparation activity to benefit the victim (if he so wishes it) it is hoped the victim will gain a greater insight into the reasons for the offence, more easily come to terms with the offence and put it behind him. Reparation to the victim will also help the offender to realise the distress and inconvenience that his/her actions cause, accept responsibility for those actions and have the opportunity to make some amends either directly to the victim or to the community as a whole.

Reparation is intended to challenge the young offender's behaviour and attitudes. It should not be a mechanistic process but should be tailored both to meet the needs of the victim, benefit the wider community and address the young person's offending.

A reparation order can be combined with a compensation order but not with a custodial sentence, a community service order, a combination order, a supervision order or an action plan order. A responsible officer is appointed to supervise the order. Effective liaison with the victim, who must give consent, is essential to a successful reparation order. Courts have a great deal of flexibility as far as the content of the order is concerned.

If the reparation order is breached, the responsible officer must bring the case back to court, where it is dealt with as if an order had not been imposed. More detail can be found on www.homeoffice.gsi.gov.uk under 'Youth Justice'.

Criminal Injury Compensation Scheme

Under the Criminal Injuries Compensation Scheme, which also covers Scotland, blameless victims of violent crime can receive compensation for their injuries, ranging from 1,600 Euros to 800,000 Euros – subject to sustaining a minimum qualifying injury (broadly equivalent to a broken nose) Since 2002, a separate scheme has existed in Northern Ireland, broadly the same as in GB.

Victims Support

Victims Support is the national charity for victims of crime. It is independent and offers a free and confidential service, regardless of whether or not a crime has been reported. Each year it offers help to around 1.3 million people through a network of local branches across England and Wales, and Northern Ireland. Trained staff and volunteers provide emotional support, information and practical help to victims. Victim Support also run the witness service in every Crown Court in England and Wales. Staff and volunteers provide support and information about the court process to witnesses, victims and their families, before, during and after the trial. Anyone affected by crime can also contact the Victim Support line – a national low-cost telephone number. This offers support and information to victims and witnesses in complete anonymity and can put people in touch with local Victim Support Services and other relevant organisations for extra help.

Victims Charter

The bull points of the Charter are given below. More detail can be found in the Charter itself (see references.) Victims can expect:

- A crime they have reported to be investigated and to receive information about what happens

- The chance to explain how the crime has affected them and for their interests to be taken into account

If they have to go to court as a witness to be treated with sensitivity. In the Crown Court there will be a Witness Service to help you.

To be offered emotional and practical support

To receive a letter from Victims Support within four working days of reporting a crime

The Criminal Injuries Compensation Authority to consider their claim for compensation if they have been injured as a result of a violent crime

To be given special help in certain cases, eg if you are a child victim who appears as a witness in court.

In life sentence and serious sexual or violent attacks, to be given certain information about the likelihood of the offender being released from prison.

A review of the Charter started in February 2001. The main points of this review are:

Since the Victim's Charter was introduced in 1997 the Government has made certain improvements to the position of victims that could now be incorporated into a revised Victim's Charter. These are by

- Doubling the annual grant to Victim Support

- Introducing measures to support vulnerable witnesses, eg by banning the cross-examination of rape victims by the defendant

- Putting the services provided by the probation service to victims on a statutory footing

- Encouraging the Crown Prosecution Service to provide information direct to victims about its decisions.

- Taking forward the recommendations in the Stephen Lawrence report relating to better treatment of victims and witnesses from an ethnic minority background

EU Framework decision on the Standing of victims in criminal proceedings

A resume of progress on the main articles is given below.

Respect and recognition – In the last 10 years a range of measures have been introduced to ensure that victims receive high quality services – from personal and practical support to measures to help those who are particularly vulnerable to give their evidence in court

Hearings and provision of evidence – Victims who provide evidence to criminal proceedings are provided, where possible, with safe waiting areas and, where requested, with personal support both before and after giving evidence. Judges

have power to prevent intrusive and inappropriate questioning of victims while they are giving evidence. Victims are now provided with the opportunity to make a written statement as well as an evidential statement, which will be taken into account by decision makers at every stage of the criminal process.

Right to receive information – A number of information leaflets are provided, usually issued by the police. This is reinforced by those who contact Victim Support.

Communication safeguards – The same interpretation facilities available to defendants are usually available to victims when they give evidence in a case.

Specific assistance to the victim – Free advice is available to victims from the police, the prosecution authorities, Victim Support, and others. As victims are not parties to legal proceedings in the British CJS, they do not receive legal aid or otherwise free access to lawyers.

Victims Expenses with respect to criminal proceedings – All victims who are witnesses are entitled to receive expenses. Also relatives of murder victims are also usually eligible to receive expenses to attend and observe the trial.

Right to protection – For those at substantial risk of further serious harm, a witness protection programme exists to provide relocation and, sometimes, a change of identity. Measures are also in place to protect those at lesser risk, eg the installation of panic alarms in a victim's house. When giving evidence, victims at risk of serious intimidation will be entitled to special treatment: eg giving evidence behind a screen, or via video link. On some cases, the judge can order the public area of the court to be closed.

Right to compensation – Courts are required to consider ordering an offender to compensate the victim and have to give reasons if they do not make an order.

Victims resident in another state – Arrangements are in place for victims to report most crimes committed against them in another state. Evidence can be given by video link, or by written statement.

Co-operation between Member states - Victim support is a key member of the European Forum for victim services that brings together similar groups from across the EU. This provides policy and operational links between member states and aims to promote:

- Development of effective services to crime victims

- Need for fair and equal compensation

- Rights for victims of crime in their involvement with the CJS

- Exchange of knowledge in this area

Specialist services and victim support organisations – Victims of all but the most minor crimes are offered the services of Victim Support. This may lead to a home visit, or a telephone call. Should the case go to court, Victim Support provides a separate Witness Support Service.

Training for personnel involved – This is encouraged

QUESTIONNAIRE FOR GOETTINGEN SEMINAR

Does your country's legal structure differentiate between the civil and criminal legal consequences of an offence?

Yes. But the civil and criminal arms of the law are very separate and have little interaction. The burden of proof is lower in civil law cases than criminal law. In general, the criminal law must prove things 'beyond reasonable doubt' whereas the civil law judgement is given 'on the balance of probabilities'. This difference in the standard of proof can be relevant to a victim if both a civil and a criminal case arise from the same incident.

If so:

What consequences are laid down by civil law (e.g. damages, compensation for pain and suffering)?

Any victim who can establish a civil claim can sue and claim for any damages under the civil law. This will be decided on the facts of the case, on case law and precedents. The judge has complete authority in his court. If the victim can establish a civil claim, then potentially they can recover damages for matters such as past and future loss and for pain and suffering. However, the ministry involved is not aware of many such cases being brought. The Criminal Injuries Compensation Scheme (see page 3 of this note) compensates injury as the result of crime and is likely to be a more straightforward way of obtaining compensation than trying to establish a civil claim.

What consequences are laid down by criminal law (e.g. fine, custodial punishment)?

A full range of penalties, ranging from discharges, fines, community service, to custody. Except for murder there are no mandatory sentences. The criminal court can also award compensation to the victim. The criminal court can also confiscate property of the offender. Some courts are experimenting with restorative justice, and for young people this is quite common. See note above.

Are there mixed forms (e.g. higher damages, compensation ordered as a sanction, symbolic compensation)?

The civil and criminal laws do not mix.

What form do the procedural means of enforcing civil and criminal legal consequences take?

The notion of a 'victim' in civil enforcement is not appropriate. However, a victim typically becomes a plaintiff and can have

judgement against a defendant. The parties then become judgment creditor (the victim) and judgment debtor (the offender). The victim has to enforce any judgement of the civil court. The means by which a judgment debt may be enforced in England and Wales are as follows:

Civil judgment debts are pursued through the County Court and through the High Court (where the value of the debt is over £15, 000). Civil judgments may be enforced in the following ways:

Attachment of Earnings Order: a monthly amount, decided by the court, is deducted directly from the debtor's salary, by their employer, and passed to the creditor (this is only available through the County Courts);

Charging Order: a charge is placed on the debtor's property or shares to obtain security over the debt;

Third Party Debt Order: if there are sufficient funds in the debtor's bank account to cover part or all of the debt, plus costs, this amount is released to the creditor following approval of a Judge;

Warrant of execution: this orders a county court bailiff to seize the goods of a debtor against whom judgment has been made. A county court bailiff will attempt to recover goods to the value of the debt and have these goods sold at public auction (a warrant is only available following a County Court judgment where the value of the debt is less than £5,000 or the matter arises under the Consumer Credit Act);

Writ of Fieri Facias: this orders a sheriff to enforce a High Court writ by seizing the goods of a debtor against whom judgment has been made in the High Court, or following a county court money judgment where the amount sought to enforce is between £600 and £5,000 and the creditor chooses to transfer the debt to the High Court for execution;

Order to Obtain Information on a Judgment Debtor: although not a method of enforcement in itself, this is a tool by which to decide the most appropriate method of enforcement as a debtor is ordered to attend before an officer of the court and provide details of their financial and personal circumstances on oath.

Further details on the operational aspects of civil enforcement and on policy developments arising from a recent review of civil justice enforcement may be found in the White Paper Effective Enforcement (March 2003.) A copy may be viewed on the LCD at <http://www.lcd.gov.uk/enforcement/wp/index.htm>

The criminal court will enforce its own judgements, using agencies such as the probation and prison services. The court will also enforce a compensation order ordering the offender to pay money to the victim. However, there is evidence that this is not done very effectively in all parts of the country.

What are the decisive differences for instance in the procedural position of the victim or in the courts duty to discover the facts?

The victim has no legal position in English criminal courts.

He becomes a plaintiff in the civil courts.

Courts have no duty to discover the facts in England and Wales. They respond to facts as placed before them by prosecution/defence in the criminal courts or plaintiff/defendant in the civil courts.

Criminal courts have a duty to award compensation where the facts support this.

Are there mixed forms? If so, what procedural model do they have?

Civil and criminal courts do not mix in England and Wales

Does your country's legal order take efforts by the perpetrator which aim to provide personal conciliation with the victim (mediation) or compensation for the material or immaterial damage done to the victim into account? Will it acknowledge symbolic acts of compensation?

In law only for victims where the offender is under 18. (see page 2 of this note.)

However, in the criminal law, it is up to judge to take into account any relevant issue, when passing sentence. Hence efforts by the perpetrator could be allowed for by the judge, but this would not be a matter of law. The judge has (virtually) complete discretion in sentencing. So he/she could, for example, postpone sentence until the results of any reparation is known (some experimental work is proceeding in a few parts of the country along such lines.) He/she could also take into account any known compensation already paid by the perpetrator to the victim. But there are no legal provisions to make him/her do this.

If so:

General Questions

Which perpetrator efforts to mediate or compensate will be considered (please give an overview in key-words)?

Depends entirely on the judge in the individual court. There is no right to have any efforts taken into account.

Does it make a difference whether the legal rights of a natural person or those of another holder of legal rights (e.g. a company, the general public, the state) are concerned?

No.

In detail:

Does your country's legal system support a perpetrators efforts which are aimed at providing conciliation with the victim (mediation) or compensation for the damage caused,

(For perpetrators under 18 see page 2 of this note)

before formal criminal investigation is initiated (e.g. in mediation or restitution proceedings initiated or accompanied by the state),

Only in an experimental way in some areas.

before the formal criminal court procedure begins

Only in an experimental way in some areas.

as part of the formal criminal court procedure

No

as part of the execution of punishment stage?

Only in an experimental way in some areas, as a result of the judge postponing sentence.

If so:

By which means does your legal system support these efforts?

The probation service and the police, in some experimental areas, are trying out some reparation schemes. These are proving to be quite effective in reassuring the victim, but of no great consequence in reducing the likelihood of the offender stopping reoffending against other people.

Which factual conditions (e.g. seriousness of the offence, confession by the perpetrator) are associated with these means?

In such experiments, the perpetrator must agree to the restorative justice procedure and the offence must involve less serious offences (minor property crime, minor violence)

What rights and obligations do the victim and perpetrator have in these proceedings?

None.

Can these proceedings be forced against the victim and/or perpetrator's will?

No.

What consequences do the perpetrator's efforts to provide for personal conciliation with the victim (mediation) or compensation for the damage caused have in relation to criminal proceedings in general and in particular to the criminal sanction?

Depends entirely on the judge.

Do mediation or compensation efforts negate criminal culpability (always or only as long as other conditions are fulfilled)?

No.

Is it possible for the investigative authorities to (finally) drop criminal proceedings after successful mediation or compensation efforts?

It is always possible for criminal proceedings to be dropped,. Whether or not such efforts have taken place.

Does the failure of such efforts act as an impediment to proceedings being dropped by the investigative authorities?

Depends on the judge

After successful mediation or compensation efforts can the courts drop proceedings without a judgement, can it refrain from punishment within a judgement or give a milder sentence?

In the experimental situation lower sentences can be given.

Does, on the other hand, a failure of such efforts act as an impediment to the procedural possibilities described or can it even lead to the perpetrator being punished more severely?

No.

Can successful mediation and compensation efforts by the perpetrator have an effect on the actual form of punishment (e.g. priority given to restitution rather than a fine, early release from penal custody, more relaxed or „open" execution of a custodial sentence e.g. the prisoner is permitted to leave the prison during daytime to go to work)?

Depends on the judge when giving sentence, or on the appropriate authorities when considering the corrections regime.

Can, alternatively, the failure of such efforts lead to more severe sentencing or execution of punishment (e.g. refusal to

accept instalment payments for fines, the refusal to grant early-release from prison, the refusal of privileges in prison)?

Depends on the judge when giving sentence, or on the appropriate authorities when considering the corrections regime. Anecdotal evidence is that the corrections regimes, especially in prison do make allowance for whether a perpetrator has made any such efforts when considering him for a programme intervention. (eg a sex offender who has not admitted his guilt may be placed on a different treatment programme to one who has attempted some reparation.)

Can the investigative authorities or the criminal courts require personal conciliation between victim and perpetrator (mediation) or compensation for the material and immaterial damage done?

No

Is it possible to (preliminarily) drop proceedings on condition that the perpetrator attempts to achieve personal conciliation with the victim or that he (completely or in part or symbolically or excessively) compensates for the damage caused?

It is always possible to drop proceedings on various grounds, but this is not common. It is up to the prosecution authorities

If a punishment is put out on probation can this be done with the condition that the perpetrator is required to attempt to achieve personal conciliation with the victim or that he compensates (completely, in part, symbolically, excessively) for the damage caused?

Only as part of an experimental procedure

Can personal conciliation between the perpetrator and victim or (complete, partial, symbolic, excessive) compensation for damage caused be ordered as part of a criminal court's judgement?

No.

Can the victim require the investigative authorities or the courts to make an order as described in questions 1-3?

The victim has no rights as such in English Law. If he makes suggestions these could be placed before the court, but are not always.

What consequences does a failure on the perpetrators part to fulfil the conditions and orders described in questions 1-3 lead to?

Entirely up to the judge, in the circumstances before him.

Can criminal legal or criminal procedural mechanisms be used to secure a claim against the perpetrator's assets for the victim's benefit?

Not as such. A compensation order can be made. A seizure of assets order can be made. These are separate orders and it is up to the court, or more recently the assets recovery agency, to execute these orders separately.

If so: does the victim have a right to such mechanisms?

A victim has no rights in English Law.

What consequences do the conciliatory or compensatory efforts a perpetrator makes have on the rights of the victim under civil law (e.g. on damages or compensation for pain and suffering) or on potential civil law litigation?

This will entirely depend on the court in any particular case. If the perpetrator has already compensated the victim for loss, a civil case may be less likely to succeed. But there is nothing in the law to cover this point. A judge will have recourse to previous cases (case law) if a body of precedents exists. Such precedents will also be available to the plaintiff and his advisers when deciding whether to bring a case to the civil court.

Do successful conciliatory or compensatory efforts on the perpetrators part nullify the victim's rights under civil law (automatically or under particular conditions, completely or in part)?

Depends on the case in question

Do unsuccessful conciliatory or compensatory efforts on the perpetrators part have consequences for the victim's rights under civil law?

Depends on the case in question

Do successful conciliatory or compensatory efforts on the perpetrators part settle (i.e. end) civil law litigation?

Depends on the case in question

If so:

Does this require a special declaration by the victim or the perpetrator?

There is no set procedure

Does a court decision follow?

There is no set procedure

Do unsuccessful conciliatory or compensatory efforts on the perpetrators part have consequences for civil law proceedings?

Depends on the case in question

Do successful conciliatory or compensatory efforts on the perpetrators part have consequences for the execution of judgements already made under civil law or for the execution of other declarations (e.g. documents providing for immediate rights, in-court agreements)

Depends on the case in question

Do unsuccessful conciliatory or compensatory efforts on the perpetrators part have consequences for the execution?

Depends on the case in question

Which position does the legal system in your country grant victims?

There are no rights in law, except to compensation under the criminal injuries scheme. However, a series of circumstances gives them access to a large number of the following, resulting from a combination of criminal justice procedures that have grown up over the last 10-20 years and the existence of a national body of victims support groups, substantially funded by the government

What informational rights do they have?

(e.g. reports on the progress of investigations, concerning the investigative authority's interview dates, court dates, concerning the outcome of proceedings, as to the upcoming release of the perpetrator from prison; rights to view files)

There are no such rights, but the victims charter lays out a system of procedures that the authorities usually follow (see page 3 of this note.)

What opportunities do they have to influence the development of criminal proceedings or to actively participate in them?

(e.g. criminal prosecution only if they request it, i.e. press charges; requirements that they be heard or give their consent before proceedings are dropped; right to be present, to ask questions and to make formal requests during the investigative and court proceedings; possibility of making appeals against decisions made by the investigative authorities or the court)?

There are no such rights, and a victim's intervention with a criminal court is dependent on his interacting with the police, who may place such evidence before the court, and with the court itself, if the victim is called as a witness. If the victim is not called, for example,

if the plea is guilty, then the victim may not have any interaction with the court at all.

Do crime victims have the opportunity to use the assistance of a lawyer and to be represented by one? Do they have a right to have a lawyer paid for by the state?

There is no right to be represented by a lawyer paid for by the state. It would be up to the judge whether a personal lawyer could appear on behalf of the victim. This could be possible, but would not happen very often.

In how far is the position of the „victimised witness" different to that of other witnesses?

Not at all. But, if the witness is likely to be intimidated by the perpetrator in any way, then protection can be given to such a witness. However, this witness need not be a victim.

What further legal and practical mechanisms are used to help protect the victim or reduce the stress caused to him/her by criminal proceedings?

(e.g. a lawyer or other person is paid by the state to accompany him/her; exclusion of the public; taking of evidence without the accused being present; evidence taken only by the judge or another specified person; the use of video-technology in the investigative and court stage; rights to refuse to make a statement; the right to refuse examinations or evaluations)

There are several such practices that have grown up in recent years, not as a matter of legal right, but as a matter of better treatment of witnesses. They are not directed at victims as such but at any witnesses likely to suffer from an appearance at court. A judge has a great deal of flexibility in his/her court and can allow some evidence to be taken by video-links, or to have the witness invisible to the perpetrator. This is particularly used for child victims and for cases of sex abuse. There are also rules of evidence that forbid irrelevant questions being asked to blacken the name of the witness.

On the other hand: what obligations are placed on crime victims?

None really, except to answer the questions that the judge allows to be put to the witness in court.

Again, witnesses have achieved a significant improvement in the way they are treated by courts in the last 10-20 years. This is a matter of practice rather than a matter of legal right, however.

Are there state or private institutions in your country that grant crime victims compensation for damage caused and support independent of efforts on the perpetrators part?

Yes, the Criminal Injuries Compensation scheme (See page 5) , which is a state scheme.

What is the current factual situation regarding the use, acceptance and success of the possibilities your country's legal system offers for personal conciliation between victim and perpetrator (mediation), compensation of the damage caused to the victim and symbolic compensatory acts on the perpetrator's part?

The experimental restorative justice scheme is running for a period three years and being evaluated by an academic. Results are expected next year. Interim conclusions are that the scheme is good for increasing confidence among victims, but poor in reducing further offending by perpetrators.

Which particular aims are part of the legal political debate in your country to improve and increase victim protection?

Particularly:

Is there a desire to provide for simpler and faster means of satisfying crime victims' interest in mediation or compensation?

Is there a desire to provide for or to further develop a unitary process which simultaneously satisfies the states interest in punishment as well as the victim's conciliatory and compensatory interest?

Various proposals have been produced and should be before our Parliament soon. None of them go as far as giving victims legal rights, but many lay duties on the criminal justice authorities to give more attention to victim's rights (see page 6 of this note.)

REFERENCES

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Chris Lewis, Research, Development and Statistics, Home Office, London

chris.lewis@homeoffice.gsi.gov.uk