

# LIBERTY

PROTECTING CIVIL LIBERTIES  
PROMOTING HUMAN RIGHTS

**Liberty's Briefing:**

**Victims of Overseas Terrorism Bill**

**April 2007**

## **About Liberty**

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

## **Liberty Policy**

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/publications/1-policy-papers/index.shtml>

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## Introduction

1. Since 2002, 43 British holiday-makers have been killed in terrorist atrocities abroad and many more have been injured. Sadly, the state has failed to provide the basic support and assistance these people need: the cost of repatriating bodies, funerals, medical treatment, counselling and loss of earnings. This Bill provides an opportunity for parliamentarians to move beyond the excessive anti-terrorism legislation that has become an almost annual occurrence and to make a real difference to the lives of Britons bereaved or injured in terrorist attacks overseas. Liberty hopes that politicians of all parties will support it and, by so doing, turn the political rhetoric about victims' rights into reality.

## The Bill

2. If enacted the Bill will provide support for British nationals who are injured, or the relatives of those injured or killed, in overseas terrorist attacks. In particular, it would
- place the assistance currently provided by the FCO and consular authorities onto a statutory footing;<sup>1</sup>
  - provide for the establishment of a government sponsored reinsurance fund of last resort with a view to encouraging insurers to cover risks against terrorist injury which might otherwise be difficult to reinsure on the private market; and
  - provide for the establishment of a fall-back scheme which would allow awards of compensation to be made from public funds – this would effectively operate like an adjunct to the criminal injuries compensation scheme (administered by the Criminal Injuries Compensation Authority, CICA).
3. The Bill is designed to provide compensation at minimum public expense. It is aimed to benefit British citizens, ordinarily resident in the UK, who have been injured by

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<sup>1</sup> At present, the Foreign and Commonwealth Office and the Department of Culture, Media & Sport provide routine emergency assistance for such victims but this is on a non-statutory basis.

an act of terrorism committed abroad. The definition of terrorism adopted is similar in scope and structure to that contained in the Reinsurance (Acts of Terrorism) Act, 1993 but also incorporates elements of the definition of terrorism in the Terrorism Act 2000. As with CICA, stringent tests would be applied to root out fraudulent claims and an individual's misconduct, criminal convictions or failure to cooperate with the British authorities would be taken into account when making (or withholding) an award - as would any payment which the applicant might claim from other sources (e.g. insurers) by way of compensation for their injuries. These provisions should ensure among other things that compensation is not paid to British citizens living or working abroad, or to anyone engaged in civil unrest or otherwise culpable conduct.

## **Why is Legislation Needed?**

4. The following stories of people injured or bereaved as a result of terrorist attacks abroad clearly demonstrate why victims often need support to help them rebuild their lives. Some have been confronted with uncertainty about how they can afford to repatriate their loved one's bodies or to pay for a funeral. Some have found it difficult or impossible to go straight back to work due to severe physical injury or mental distress. Many need continuous medical or psychological treatment to overcome or learn to live with their injuries, loss or horrific experiences.

### **Sharon Holden and Toni Pushon (from Durham)**

Sharon's daughter Helyn Louise Bennett was killed as a result of a bomb blast in Kusadasi, Turkey. Sharon has suffered severe depression following Helyn's death. The Turkish Government repatriated Helyn's body and Sharon received no financial assistance for funeral costs from either the British Government or from their insurer, Axa, who relied on the terrorism exclusion clause. After lengthy legal representation Sharon received an ex gratia payment from Axa. Toni, Sharon's sister, along with four other members of her family, was injured in the bomb that killed Helyn. Toni suffered burns, nerve damage from shrapnel, fractured eye socket and burst eardrums. She now has permanent damage to her left eye and ear. Toni's partner, Michael suffered severe injuries

– he is unable to use his left hand due to a severed tendon and bone damage; his left leg was blown away at the front and is being rebuilt using muscle from his stomach and bone from his hip; he has permanently lost part of the feeling in his foot; he suffers from electrical type surges of pain as a result of nerve damage. Michael cannot walk unaided. They have received no compensation or financial assistance from the Government.

#### **Trevor and Jill Lakin**

Their son, Jeremy (Jez) Lakin, 28 from London, was killed in the bomb blast in Sharm El Sheikh, Egypt, with his girlfriend, Annalie Vickers. They have both been emotionally devastated by his death as have his two brothers. Neither Jill nor Trevor has returned to full time work. Their insurers paid for repatriation of the body, Trevor and Jill's original travel expenses to Egypt were paid by the tour operator and insurers. There has been no compensation for loss of life due to the terrorism exclusion clause in both Jez's travel policies – Fortis and Axa.

#### **Glenn and Ian Shadbolt (from Midhurst, West Sussex)**

Glenn was badly injured in the 23<sup>rd</sup> July 2005 Sharm el Sheik attack, flown to Cairo as he was in a critical condition. After three days he was flown to London where his injuries were found to be badly infected and required 7 1/2 hours surgery. Glenn suffered chest, arms, face, neck and eye injuries. He was transferred to Moorfield eye hospital for a further 4 1/2 hours surgery to his eyes. He has since lost the sight of his right eye. He spent three weeks in London hospitals. No financial aid was given to his parents who had to provide themselves with accommodation in London. Glenn has also lost all his belongings and has not received any insurance payment. He has used all his savings and is now in debt with little hope of being able to repay the loans. Glenn continues to have glass removed from his body as it gradually comes to the surface.

**Peter and Julie Fulham (from Leicestershire)**

Their son, Matthew, was 17-years-old when he was killed in the bombings in Sharm El Sheikh, Egypt. The Disasters & Emergencies Charity paid for his body to be repatriated but their insurance firm had a terrorism exclusion clause. Peter had to search for his son's body in the rubble caused by the explosion. Both Peter and Julie were on medication and their 3 other children have been affected. Peter has taken early retirement and Julie has been unable to return to work on a full-time basis.

**John and Angela Corke (from Eastbourne, East Sussex)**

Their daughter, Annalie Vickers, 31, was killed in the bomb blast in Sharm El Sheikh, Egypt, with her boyfriend, Jez Lakin. They have both been emotionally devastated by her death. Angela has returned to work part time but John has been unable to cope with new projects at work and is still reducing his workload. Their insurers paid for repatriation of the body and their expenses and loss of belongings but there has been no compensation due to the terrorism exclusion clause.

5. That victims of terrorism need basic support and assistance is beyond doubt. Indeed, the state already compensates victims of terrorism here. Victims of terrorist atrocities in the UK have a statutory right to assistance under CICA. This scheme does not, however, extend any support to victims of terrorist incidents outside of the UK. The lack of state assistance is of particular concern given that most British travel insurers choose to rely on the Terrorism Exemption Clause, which means they are not required to pay out for costs incurred in the wake of a terrorist attack.

## **The Government's Response**

6. Following the terrorist bombing in Bali in October 2005, the Prime Minister announced that he was looking into setting up a separate compensation scheme for British victims of terrorism overseas. Unfortunately, no statutory scheme of

compensation for these victims has been established. The Government's arguments against extending CICA to cover this group do not, in our view, stand up to scrutiny:<sup>2</sup>

- *“Terrorism” is difficult to define and therefore poses problems in assessing eligibility* – Despite Lord Carlile's recent and questionable endorsement of the existing statutory definitions,<sup>3</sup> Liberty also has difficulties with the definition of “terrorism”.<sup>4</sup> However, if its meaning is clear enough to use as the basis for criminal responsibility and to confer significant coercive powers on the state, it must also be clear enough to provide a basis for ascertaining entitlement to financial support.
- *Any scheme for British victims of terrorism abroad would be open to fraud:* However, according to Howard Webber, the Chief Executive of the CICA, fraudulent applications are a small sub-category of those that are disallowed. In addition, we have criminal procedures in place to deal with those who attempt to defraud the CICA. Furthermore, the relatively limited number and high profile of terrorism incidents would make fraud less likely.
- *Cost:* According to the CICA website, the scheme receives about 65,000 domestic applications and pays out £200 million in compensation per year. Relative to this, the number of potential applications from victims of terrorism abroad is small. Indeed, using current CICA rules for the calculation of compensation, the estimated cost of operating the Scheme is £3 million per year (as against £200 million paid out in compensation by the CICA). If, however, the Government is not convinced that the financial implications of expanding the scheme will be small, they can reassess the role of insurance companies in these cases – i.e. requiring insurers not to include a terrorism exemption. Compensation will be paid out of the Overseas Terrorism Award Scheme envisaged in the Bill.<sup>5</sup>

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<sup>2</sup> Criminal Justice System, “Rebuilding Lives: Supporting Victims of Crime”, December 2005, p.21

<sup>3</sup> “The Definition of Terrorism: A report by Lord Carlile, the independent reviewer of terrorism legislation”, March 2007

<sup>4</sup> See our submission to Lord Carlile's review: <http://www.liberty-human-rights.org.uk/pdfs/policy06/terrorism-definition-response.PDF>

<sup>5</sup> The Scheme could be funded, for example, from the Pool Re Scheme which was set up by the Treasury to provide reinsurance to commercial property insurers following the IRA attacks in 1993. Income from Pool Re is payable to HM Treasury and Pool Re currently has reserves in excess of £1,664 billion. Alternatively,

7. The Government has suggested that a statutory compensation scheme for British victims of overseas terrorism is not necessary because European legislation requires member states to provide compensation to any victims of terrorist attacks within their territory.<sup>6</sup> This does not, however, absolve the UK of the moral obligation to provide assistance to Britons injured or bereaved as a result of terrorist incidents overseas. First, it would provide no protection for those who died or were injured in bombings outside the jurisdiction of states that had signed up to the European legislation.<sup>7</sup> Furthermore, we understand that it is often very difficult or impossible in practice to obtain financial support which is in theory available from foreign governments. Such problems include language barriers, very short limitation periods,<sup>8</sup> and high legal costs in making applications with difficulties in getting insurers to cover these costs. Furthermore, as Kevin Smith's story (below) demonstrates the compensation which provided may be insufficient.<sup>9</sup> For these reasons we believe that the UK should provide a safety-net for its citizens.

#### **Kevin Smith**

Kevin was injured in the bombing in Marmaris last August, suffered burns and a variety of other injuries, and has been left with one leg shorter than the other. Like others involved in the bombing, he attempted to claim compensation from the Turkish authorities under the state compensation scheme there, but had to abandon his application when it emerged that the costs of instructing local lawyers, notarising documents etc would vastly exceed the maximum 1,000 Euros he could have been awarded. (This cap doesn't apply to people who are more seriously disabled by their injuries.) The legal fees/expenses that he did incur were not met by his insurers, who chose to rely on a

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the Government could follow the example of France by introducing a levy on certain insurance contracts (see question 8 below).

<sup>6</sup> Cf Article 13 of the Council of Europe Convention on the Prevention of Terrorism, signed by the UK on 16<sup>th</sup> May 2005

<sup>7</sup> i.e. Bali (2002), Sharm el Sheikh (2005), Bali (2005), Qatar (2005) or Dahab (2006) or Jordan (2006)

<sup>8</sup> Only 60 days, although periods in hospital are not included.

<sup>9</sup> It is not surprising that differing costs of living and of obtaining support in states which are parties to the Convention could mean that the awards paid in one country to those living in another may be insufficient, out of step with what a British victim would receive from CICA had they suffered as a result of a terror attack in the UK.

terrorism exclusion clause. Kevin is self-employed, so has not received sick leave payments. He has therefore lost a lot of income as a result of his injuries. His daughter, his partner, and his partner's two children were also injured in the bombing, but not as severely as he was.

8. We understand that the DCMS, through the administration of the British Red Cross, is currently in the process of establishing a charitable emergency relief fund for UK victims of terrorism abroad. £1 million has apparently been pledged to this fund to provide immediate and short-term relief. This is, however, far short of the sums required to put victims of terrorism abroad on an equal footing with those who suffer criminal injuries of any kind within the UK (and who can therefore claim under CICA). DCMS Minister Tessa Jowell has herself acknowledged that “the Red Cross Scheme is not a compensation scheme”. In particular, we fear that the Red Cross would pay only a fixed sum to victims, irrespective of the level of injury sustained or the long term impact the injury has on the individual, especially with regard to loss of earnings. Another concern with the proposed Red Cross Scheme is its non-statutory nature. Victims would not be given a legal right to the support and assistance they need and no legal obligation would be created for the state to continue funding the scheme.

**Jago Russell, Liberty**