

**Guidance and  
Application Form for  
Payments for Seriously  
Injured and Bereaved  
Victims**

Human Rights Centre  
School of Law  
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**QUEEN'S  
UNIVERSITY  
BELFAST**

## Guidance on Draft Regulations

1. This draft regulations Order builds on the Stormont House Agreement's commitment to undertake further work 'to seek an acceptable way forward on the proposal for a pension for severely physically injured victims in Northern Ireland.'<sup>1</sup> The purpose of the payments outlined in this Order is to ensure that those seriously injured have a pension and/or lump sum to allow them some financial security as they get older and/or their pain and/or injury becomes more acute. Appreciating that while there were different forms of payments made to victims in the past, these sums were often derisory, short term and likely now spent. This proposed payments scheme represents a new commitment to ensure victims are sufficiently catered for and to enable them to make the most of their old age as we together as a society transition to our shared future.
2. The problems of the compensation scheme and provision during the Troubles are well known and documented.<sup>2</sup> Compensation amounts awarded were seen as grossly insufficient, with injured victims having to live with inadequate financial support into their old age.<sup>3</sup> This was due to compensation being based on income and not long-term harm, victims' life expectancy was underestimated, and as they were unable to work as a result of their injuries the compensation awarded prevented their subsequent benefit allowance.<sup>4</sup> Victims who were injured also faced their compensation being cut after 16 years, despite their health deteriorating and dependency increasing as they become older.<sup>5</sup> Many of the compensation awards were based on wage earnings and the likelihood that this would only continue for twenty years, which meant that individuals who were young or not in full-time employment received substantially smaller compensation awards. Victims also mentioned to us in interviews that the costs of legal counsel as well as any claimed benefits were deducted from their compensation amount.<sup>6</sup> Individuals were often denied compensation where they refused to identify those responsible<sup>7</sup> or were assumed to be involved in riotous or violence

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<sup>1</sup> Para.28, Stormont House Agreement.

<sup>2</sup> See Kenneth Bloomfield, *We Will Remember Them*, 1998, para.5.9; Kenneth Bloomfield, *Report of the Review of Criminal Injuries Compensation in Northern Ireland*, 1999; and Pablo de Greiff, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his mission to the United Kingdom of Great Britain and Northern Ireland*, A/HRC/34/62/Add.1, 17 November 2016, para.64-65.

<sup>3</sup> CVSNI, *Initial Literature Review of the Needs of Victims & Survivors*, 17 January 2009, p27.

<sup>4</sup> Consultative Group on the Past, *Final Report*, 2009 p91; and Marie Breen-Smyth, *The needs of individuals and their families injured as a result of the Troubles in Northern Ireland*, WAVE 2012, p10.

<sup>5</sup> Breen-Smyth, *ibid.*, p9.

<sup>6</sup> Interviews with IR07, March 2017; and IR21, April 2017.

<sup>7</sup> *Moore v Secretary of State*, Northern Ireland Law Reports, [1977] NI 14; and *Gun victim loses appeal*, BBC News, 9 November 2001.

behaviour.<sup>8</sup> Other victims, including those killed, have been denied compensation where they were viewed to having being members of a proscribed organisation, based on security intelligence or past convictions unconnected to the death or injury.<sup>9</sup>

3. In light of these issues and the exclusion of a payment for injured victims under the proposals by the Consultative Group on the Past, a pension for injured victims of the Troubles was raised by Marie Breen-Smyth in her research on injured victims.<sup>10</sup> This was then developed by Stuart Magee in his research on behalf of WAVE on how a pension would operate,<sup>11</sup> this has been supported by the CVS.<sup>12</sup> Luke Moffett has developed legal models on how this could work in practice,<sup>13</sup> and the CVS has more recently proposed a payments system.<sup>14</sup> With this context in mind this guidance sheds more light on how to calibrate such a payment scheme to be in line with the proposed purpose and principles outlined in the consultation document. This guidance should also be read in light of the draft regulations Order and application form annexed to it, and as instructive in the implementation and delivery of the scheme. This guidance is derived from fieldwork in seven conflict and post-conflict countries with interviews and focus groups with over 300 victims, civil society actors and government officials who operate similar programmes, as well as drawing from a database on reparations and practitioner workshops in Kathmandu, Bogota and Geneva on these issues.<sup>15</sup>

## Purpose

4. We commend the clear purpose of the proposed regulation for seriously injured victims. While we would have liked to have the regulations on a primary statutory footing, we recognise the difficulties of passing such legislation for the start date in January 2020. We

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<sup>8</sup> *Quinn v Secretary of State for Northern Ireland*, Northern Ireland Unreported Judgments 7 March 1977; and *McCabe v Secretary of State for Northern Ireland*, Northern Ireland Unreported Judgments 1 March 1985.

<sup>9</sup> *Ann Marie McCallion and Others, Re Application for Judicial Review* [2004] NIQB 54; and *Carson's (Eileen) Application (Leave Stage)* [2016] NIQB 3.

<sup>10</sup> Smyth 2012, p13.

<sup>11</sup> Exploring models for the proposal of special pension provision for those injured in the Northern Ireland "Troubles", WAVE (2013).

<sup>12</sup> CVS, A Pension for people severely injured in the Troubles Commission Advice Paper 11 June 2014.

<sup>13</sup> Luke Moffett, A pension for injured victims of the Troubles: reparations or reifying victim hierarchy? (2016) 66(4) *Northern Ireland Legal Quarterly* 297; and Luke Moffett, Rachel Killean, Lauren Dempster and Claire Smith, The adequacy of services for injured victims of the Troubles in light of the right to remedy and reparations, Final Report for the Northern Ireland Human Rights Commission, July 2017.

<sup>14</sup> CVSNI, Victims and Survivors Pension Arrangement (VASPA) Advice Paper May 2019.

<sup>15</sup> This guidance is prepared by Luke Moffett, Caoimhe O'Hagan, Nikhil Narayan and Sunneva Gilmore. The reparations database is available here: <https://reparations.qub.ac.uk/reparations-database/> As part of the AHRC funded 'Reparations, Responsibility and Victimhood in Transitional Societies' project AH/P006965/1.

would like to emphasise that the proposed scheme is not a redo of the compensation schemes that already exist in Northern Ireland nor a double benefit scheme. This has implications for the eligibility and scope of such payments to be made, such as the prioritisation on those seriously disabled and exclusion of psychiatric injury. In other words, the scheme is unique and the guidance below and proposed draft bill we have produced provide a more nuanced understanding of the payments scheme to *acknowledge* and provide *financial security* to those who have borne the brunt of the consequences of the Troubles/conflict in and around Northern Ireland. We would caveat this by saying that payment of monetary awards cannot undo or repair the harm of the past, instead at best it represents a symbolic commitment to acknowledge the suffering caused and to alleviate some of the continuing harm.

5. We recognise that this proposed Order represents a unique opportunity to **acknowledge and remedy some of the harm victims have experienced through providing them financial security**. Indeed this the core purpose of the Order and the mischief it seeks to address that was left by previous legal iterations and should be kept in mind for the operation and monitoring of the scheme.

## Principles

6. We recognise the value of the principles outlined, and the United Kingdom government has a number of international legal obligations in this area, along with actively promoting the right to remedy and reparations for gross violations of human rights and serious breaches of international humanitarian law.<sup>16</sup> We would also add a **principle of incorporating gender inclusive language and gender sensitivity**,<sup>17</sup> given the particular gendered impact of the violence of the conflict, where many gave up careers, education and their own life plans to become unpaid carers for their seriously injured loved ones.<sup>18</sup>
7. The Stormont House Agreement outlines in dealing with the past the following principles should be followed: ‘promoting reconciliation; upholding the rule of law; acknowledging and addressing the suffering of victims and survivors; facilitating the pursuit of justice and information recovery; is human rights compliant; and is balanced, proportionate, transparent,

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<sup>16</sup> Both states sponsored and voted for the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Economic and Social Council 61st Session, 19 April 2005, E/CN.4/2005/L.10/Add.11, p16-17.

<sup>17</sup> See Article 12(b), Sri Lankan Office for Reparations Act 2018.

<sup>18</sup> See Gender Principles for Dealing with the Legacy of the Past, TJI 2015. Available at [ulster.ac.uk/\\_\\_data/assets/pdf\\_file/0009/66285/Gender-Principle-Report-Sept-2015\\_Final-Version.pdf](http://ulster.ac.uk/__data/assets/pdf_file/0009/66285/Gender-Principle-Report-Sept-2015_Final-Version.pdf)

fair and equitable.’<sup>19</sup> Some of these principles are reflected in this payments draft regulation Order, such as being compliant with human rights as per the 1998 Human Rights Act. However other principles in the Stormont House Agreement, such as the need to promote reconciliation, add little. The language of the Good Friday Agreement engaged in such rhetoric with a vision of looking to the future as reconciliation, without redressing the suffering of the past.<sup>20</sup> In the absence of clear parameters as to what promoting reconciliation looks like in practice or to guide the work of this scheme, it detracts from the principle of being victim-centred.

8. In terms of being victim-centred, this has in other contexts focused on effective procedural guarantees and reinforcing victims’ human rights in relevant processes.<sup>21</sup> This can have procedural and substantive dimensions, in that it recognises that victims as right-holders have agency to effectively participate in certain proceedings, have access to relevant information, are sufficiently protected, and that their role in procedure has a meaningful impact on the shape of substantive outcomes, in this case the payment award.<sup>22</sup> This means that victims are key stakeholders and participants in this payment scheme; however it does not mean they are decision-makers, as their interests have to be weighed against the public interest and the feasibility of the payment scheme. Other countries have included being victim-centred as a guiding principle.<sup>23</sup>
9. Payment schemes in other contexts have framed the justification of paying only victims of a conflict or terrorism on the basis of individuals’ inherent human rights and dignity, and that only through remedying their violation can reconciliation be promoted and secured for the future.<sup>24</sup> In some countries, the provision of payments is to acknowledge victims’ harm, given that may perpetrators were never or could never be brought to justice.<sup>25</sup> In Spain its payment scheme is guided by its principles on ‘remembrance, dignity, justice and truth, the

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<sup>19</sup> Para.21, Stormont House Agreement.

<sup>20</sup> Declaration of Support, para.2.

<sup>21</sup> See Francesca Klug, Human Rights and Victims, in Ed Cape (ed.), *Reconcilable Rights? Analysing the Tensions between Victims and Defendants*, (Legal Action Group 2004), pp. 111–124.

<sup>22</sup> See Luke Moffett, *Justice for Victims before the International Criminal Court*, Routledge (2014), p43-44.

<sup>23</sup> Article 12(c), Sri Lanka Office for Reparations Act 2018.

<sup>24</sup> See Preamble, Sri Lankan Office for Reparations Act of 2018.

<sup>25</sup> See Act Mandating the Reparations for Victims of Armed Conflict, Creation of a Reparation Program, Appropriating Funds Therefor, and for Other Purposes, House Bill No. 1334, 2016 (Short Title: Reparations for Victims of Armed Conflict Act of 2016). Explanatory Note by Hon. Scott Davies S. Lanette, MD, Member, House of Representatives, Republic of the Philippines.

comprehensive support’,<sup>26</sup> with ‘remembrance’ defined as important and relevant to the Northern Ireland scheme for acknowledgment as it ‘safeguards and keeps alive their social and political recognition’.<sup>27</sup> Support and relief of victims’ ongoing harm is also recognised in other countries.<sup>28</sup>

10. The principles of ‘fair and proportionate’ speak to the amount being awarded under the scheme, recognising that this cannot offer *restitutio in integrum*, but can provide a meaningful acknowledgement of victims’ dignity and harm along with providing financial support to mitigate some of its continuing consequences. The UN Special Rapporteur’s report on domestic reparation programmes outlines that such schemes should ‘including the distribution criteria across victims, families and those in the most vulnerable situations, should be reasonable and proportional.’<sup>29</sup> The principles of ‘transparent’ and ‘simple to navigate’ refer to the confidence in and accessibility of the scheme’s procedure. This can be achieved through accessible language, an effective communications strategy, clear rules of procedure and evidence, and an opportunity for appeal.
11. The principle of being in line with ‘current medical research/best practice’ is not used in other payment schemes, and given the role of the GMC in promoting and monitoring good professional development and knowledge in line with evidence based medicine, we do not think that it should apply to the whole scheme. We suggest a medical board to assist in the determination of injuries and disablement which are not apparent from the categories, evidence and application form. We are not confident that the scheme should explicitly support ‘wellness’, due to it being intended to acknowledge victims’ harm and promote final security, rather than replicate other services available to victims through the VSS or the forthcoming regional trauma network. Indeed focusing on wellness and treatment may overlook the mischief this Order seeks to remedy. This becomes important when addressing the issue of psychological injury and finding the best remedy for it. We have instead in the draft regulations Order replaced it with the principle of working in line with ‘best practice on access for victims, redress and international principles for remedies’.

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<sup>26</sup> Act on the Recognition and Comprehensive Protection of Victims of Terrorism, Ministerio del Interior, October 2014.

<sup>27</sup> Article 2(1), Act on the Recognition and Comprehensive Protection of Victims of Terrorism 2011.

<sup>28</sup> Preamble, The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2071 (2014), Act No. 1 of the year 2071 (2014/2015) (gazette/published 11 May 2014).

<sup>29</sup> Clara Sandoval, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, 11 July 2019, A/HRC/42/45, para.44(e).

12. The principle of not being open to ‘those injured through fault of their own’ is a complex issue and one not simply resolved by excluding those who were convicted in the incident in which they were injured. For the purposes of transparency and confidence in the system it is likely that a number of individuals who have convictions will benefit, and it may be necessary to put in some sort of appeal or review mechanism as a safeguard. Such a mechanism would not undermine a victim’s right to remedy under the scheme, but may reduce the amount available to them to reflect their responsibility for being convicted of serious crimes, such as murder, GBH, rape and inchoate offences associated with them. This reflects that individuals who were unlawful wronged by another do not lose their right to an effective remedy, but they are still responsible for the harm they have caused to others.<sup>30</sup> There is a risk that not being astute to these issues, some victims will self-excluded themselves from claiming the payments under this scheme and cause them further isolation and victimisation.
13. The final principle of being ‘financially viable and sustainable’. There are numerous and ripple-effect harms over time and space caused by the conflict/Troubles in and around Northern Ireland that cannot be easily encompassed in a financially feasible payments scheme. Former UN Special Rapporteur Pablo de Greiff acknowledged that most countries do not comprehensively create programmes that include all violations, but instead concentrate on those most serious violations, as to do otherwise ‘could lead to an unacceptable dilution of benefits.’<sup>31</sup> Indeed the practice of many countries has been to underestimate the amount of claimants - in Canada Indian Residential Schools this was over 25,000 and in the Philippines it was over 10,000.<sup>32</sup> With this in mind our guidance has aimed to provided a balanced account of prioritising the scheme for those with the most need, i.e. those seriously injured, and to provide fair amounts to those intimately affected by the conflict/Troubles who may not fall under this heading.

## Eligibility

14. Eligibility is a determining factor in framing those claimants who can benefit from a payments scheme. Most schemes around the world prioritise those with the most need or

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<sup>30</sup> See Luke Moffett, A pension for injured victims of the Troubles: reparations or reifying victim hierarchy?, *Northern Ireland Legal Quarterly* 66(4) (2016) 297–319.

<sup>31</sup> Report by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/69/518, 8 October 2014, para.26.

<sup>32</sup> See Ruben Carranza, Cristián Correa, and Elena Naughton, *Forms of Justice: A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations*, ICTJ (2017) p12.

seriousness of their harm. The following section outlines these in relation to the temporal scope of the payment scheme, nature of the injury, disablement, carers and territorial application.

### **Temporal Scope**

15. The time period of the scheme should cover from 1<sup>st</sup> January 1966 to 31<sup>st</sup> January 2020 when the Order will come into operation. 1966 is selected as the starting point so as to be consistent with The Victims and Survivors (Northern Ireland) Order 2006, which has an open ended date.<sup>33</sup> However we distinguish the purposes of the two orders, wherein the Victims and Survivors Order is intended to be broad and inclusive to encompass the ongoing work of CVSNI, in comparison to this proposed Order, which is aimed at having certain parameters around payments to seriously injured and disabled victims. This is consistent with international principles and state practice that have a broad definition for victims, but specific legal parameters for which victims are eligible for payments. The date 1966 is also the starting point for *Lost Lives* and other analysis of the Troubles/conflict in and around Northern Ireland. While three people were killed in 1966, one of them was Protestant widow Matilda Gould, a 74 year old pensioner, who was seriously burned in a petrol bomb attack on her home likely by the UVF on the 7th May 1966, and died nearly seven weeks later.<sup>34</sup> Her son was awarded £336 for loss of his mother's care and attention,<sup>35</sup> and is perhaps an insightful example of a seriously injured victim and the inadequate compensation made to surviving victims.
16. We provide the 31<sup>st</sup> January 2020 as a sunset clause in this Order to reflect that seriously injured and disabled victims were not adequately acknowledged and redressed under previous regimes. It also indicates that the majority of the violent incidents and injuries were caused before 1977 when a new compensation scheme was introduced and built on in subsequent years with tariffs, meaning that victims in the early years of the Troubles often received compensation awards that would not last them their entire lifetime. While the 31st January 2020 is intended to demarcate the operation of this Order, we believe to be in line with the principles that underpin it of being 'victim-centred', 'fair and proportionate' and 'transparent'. That said we have included it as a ground for appeal under the 'temporal' basis, as we have come across a few victims who are still alive from the pre-1966 period; we also

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<sup>33</sup> Section 2.

<sup>34</sup> Andrew Boyd, *Holy War in Belfast*, (1969), p187.

<sup>35</sup> Peter Taylor, *Loyalists*, Bloomsbury (2000), p40.



recognise that there is the potential for subsequent violence related to the constitutional status of Northern Ireland.

### **Troubles-related injury**

17. We recommend that the Commission be responsible for making the connection between the claimant's injury and disability to the Troubles, given that it will have access to police and other public records. Under the Irish Remembrance Commission physical injuries are covered under the scheme where they are 'as a direct result of an act of violence arising from the conflict in Northern Ireland.' In Croatia the law allows civilians to claim as war invalids where they are injured as a result of '1. the abuse or deprivation of liberty by terrorists or members of the Yugoslav People's Army of 17 August 1990; 2. in connection with war events (bombing, explosion of war material, stray bullets, etc.); 3. from the explosion of residual war material after the end of war operations; 4. in connection with sabotage or terrorist actions endangering the security or constitutional order of the Republic of Croatia; or 5. abuse or deprivation of liberty by the occupier or his aides during World War II.'<sup>36</sup> We take issue with the language of 'between people' and instead use 'against', reflecting that many people had no choice in the violence that visited upon them or were not responsible for such harm.

### **Injury**

18. The NI Executive Act 2019 defines injury as 'any illness or injury (whether physical or mental)'. Other countries have similarly used such a broad definition for injury which is qualified by the level of disablement it causes.<sup>37</sup> Under the Irish Remembrance Scheme injury was defined as 'physical injury', with psychological trauma alone not being sufficient for this purpose, with only the 'psychological effects' being included where it was 'consequent to the suffering of a physical injury'.<sup>38</sup>

19. Psychological injury is included within the definition of injury. Often the physical and psychological injuries of the conflict cannot be separated. In addition, similar claims under the Criminal Injury Compensation Scheme before the courts has established that injury

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<sup>36</sup> Article 8, Law on the Protection of Military and Civilian Disabled Persons of War OG 33/92, 57/92, 77/92, 27/93, 58/93, 02/94, 76/94, 108/95, 108/96, 82/01, 103/03, 148/13, 98 / 19.

<sup>37</sup> Article 3.1.7, Kosovo 2011.

<sup>38</sup> Amended Scheme of Acknowledgement, Remembrance and Assistance for victims in this Jurisdiction of the Conflict in Northern Ireland. Available at [www.justice.ie/en/JELR/RemAmendScheme.pdf/Files/RemAmendScheme.pdf](http://www.justice.ie/en/JELR/RemAmendScheme.pdf/Files/RemAmendScheme.pdf)

includes psychological injury.<sup>39</sup> We have intentionally excluded the category of psychiatric injury, given the volume of claims that were made during the Troubles on this ground, but more importantly that it falls outside the ambit of this Order, which is intended to redress the harm of those left seriously disabled and not pertaining to duty of care.<sup>40</sup> Moreover, the inclusion psychiatric injury for those who witnessed trauma are likely to be compensated under the criminal injuries compensation scheme or court claims, this proposed scheme is not intended to replicate such payments or schemes, but attend to the issue of those seriously injured. That said it may be that those who suffered psychiatric injury arises to the level of serious disablement under the psychological injury where it is of a permanent nature.

20. We recognise that PTSD and similar debilitating psychological injuries and illnesses can present late, have a late onset and can be complicated by other intervening incidents.<sup>41</sup> Moreover, research conducted in Northern Ireland and other jurisdictions has found high prevalence of PTSD among perpetrators due to their repeated exposure to violence and victimising others.<sup>42</sup> Some researchers distinguish PTSD from those who experience by witnesses and victims, from perpetrators who can experience Perpetrator-Induced Traumatic Stress from being socialised to use violence, witnessing it and living with the guilt.<sup>43</sup> Others suggest that perpetrators can face further psychological problems at the end of hostilities, where they are not socially reintegrated and still face stigma and shame for their actions.<sup>44</sup> We appreciate that this is a complex and difficult issue, but we return to the purpose of this Order and the mischief it seeks to remedy, namely for those victims who were left seriously disabled as a result of the Troubles in and around Northern Ireland. As such, the monetary payment awards are aimed at acknowledging victims' suffering and providing some financial security, for psychologically injured victims, of whom there are potentially tens of thousands, would be best dealt with through the regional trauma network where they do not rise to the level of disablement and permanence.

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<sup>39</sup> *Hoy's Application No. 2* [2009] NICA 7.

<sup>40</sup> Such as under *Alcock v Chief Constable of South Yorkshire Police* [1991] UKHL 5.

<sup>41</sup> See CVS, *Troubled consequences: A report on the mental health impact of the civil conflict in Northern Ireland*, 2011.

<sup>42</sup> See Stein DJ, Williams SL, Jackson PB, Seedat S, Myer L, Herman A et al (2009) Perpetration of gross human rights violations in South Africa: association with psychiatric disorders. *S Afr Med* 99:390–395; and Traumatic events and their relative PTSD burden in Northern Ireland: a consideration of the impact of the 'Troubles', p442.

<sup>43</sup> See Rachel M. MacNair, *Perpetration-induced traumatic stress: The psychological consequences of killing*, Praeger (2002).

<sup>44</sup> Kennedy Amone-P'Olak, Sarah Bøgelund Dokkedahl and Ask Elklit, Post-traumatic Stress Disorder among child perpetrators and victims of violence from the Northern Uganda civil war: Findings from the WAYS study, *Journal of Psychology in Africa* 27(3) (2017), 235-242.

## **Death of the injured victim after January 2020**

21. Where the injured victims died after the scheme comes into place, their carer can exercise the choice of receiving a pension for 10 years or to exercise it to be made as a lump sum. For those injured victims over 60 if they exercise the choice to claim the full lump sum, it could leave their carer with no grounds to benefit. Of course it is likely that the carer is in the same household as the injured victim, but if they are not an heir of the injured victims' estate they should be able to claim the 10 year pension. For seriously injured victims who died between 1 January 2005 - 31st January 2020 their carer would be eligible for a lump sum of between £20,000-£50,000 depending on the level of disability. While the consultation document indicates that a pensionable amount would be available for those who died during this period working on the basis of the Stormont House Agreement date, this may be too arbitrary and create a more complex adjudication of awards that undermines the principle of transparency and simple to navigate.

## **Bereavement**

22. The scheme should allow for an injury payment for bereavement. Bereaved payments are already suggested under the scheme given that individuals who are carers and the primary victim died before the scheme came into operation can benefit from a lump sum and ten year pension. Bereavement should be a separate heading of claiming payment as an injury under the scheme as a one-off payment to reflect that this was often not or inadequately compensated. For those bereaved during the Troubles/conflict in and around Northern Ireland pain or loss of bereavement was not a compensable head before 1988 when it was introduced under a new scheme for spouses and parents,<sup>45</sup> and built upon in 2002 'to acknowledge the grief and sorrow caused by the death of that person and the loss of that person's care, guidance and society'.<sup>46</sup> While there is an ongoing review of the Victims and Survivors Strategy that will likely pinpoint compensation for the bereaved being an ongoing issue, we believe that this scheme represents the best opportunity to address this issue. Many bereaved victims are getting older and cannot wait any longer, especially given over half of the deaths were over forty years ago.

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<sup>45</sup> Patricia MacBride, *Reparations in Northern Ireland – A duty to victims?* CVS 2011, p4; under section 9, *Criminal injuries (Compensation) (Northern Ireland) Order 1988*.

<sup>46</sup> Section 4(2)(d), *Criminal Injuries Compensation (Northern Ireland) Order 2002*.

23. Bloomfield noted that £26 million paid to relatives of those killed, and £160 million to those injured during the Troubles.<sup>47</sup> Although this may seem like a high amount of compensation paid to injured victims, estimates put the number of injured victims between 47,500-100,000 individuals.<sup>48</sup> For those bereaved some 3,600 would on average received just over £7,000 if the total was £26 million, but we have interviewed a number of victims who only received £50-£250 or nothing in compensation. The Cost of the Troubles Study found that only 9.4% of their respondents received compensation, with the majority of them (89.7%) thinking it was inadequate.<sup>49</sup>
24. For those bereaved the amount would be £15,000 as a one-off lump sum to acknowledge their pain and loss as moral harm. To be eligible it would include those who were unlawfully killed by another. Those eligible would be next-of-kin, consistent with current legislation and international best practice in the order of parents, spouse, children and siblings. In terms of apportionment this would be primarily be surviving spouse/cohabiting partner or parents,<sup>50</sup> if none of these beneficiaries remain then surviving children would be eligible to split the sum into equal amounts, if there are no children then the sum is split equally amongst surviving siblings. In other contexts payment awards are often split half between spouse/cohabiting partner and half to any children.<sup>51</sup> Given the relatively small amounts that would be awarded under this heading, it is better to award it to an individual rather than splitting it, i.e. this will likely be a surviving parent or spouse/partner. In light of our principles of being gender inclusive and gender sensitive, the majority of those killed were young men, meaning that many of the survivors were women who were often not awarded adequate, if any, compensation. As we are excluding psychiatric injury, we believe that this provision would satisfy many victims who feel that due to most murders being unsolved, this sum for bereavement would at least offer some acknowledgement and recognition of their loss.

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<sup>47</sup> Kenneth Bloomfield, *We Will Remember Them*, para. 5.6.

<sup>48</sup> Marie Breen-Smyth, *The needs of individuals and their families injured as a result of the Troubles in Northern Ireland*, WAVE 2012, p94-95.

<sup>49</sup> Mike Morrissey, Marie Smyth and Marie Therese Fay, *The Cost of the Troubles Study - Report on the Northern Ireland Survey: the experience and impact of violence*, INCORE 1999, p89-90.

<sup>50</sup> Article 1(A)(2), Fatal Accidents Act 1976; and Article 9(3), Criminal Injuries (Compensation)(NI) Order 1988.

<sup>51</sup> Article 17(3), Act on the Recognition and Comprehensive Protection of Victims of Terrorism, Ministerio del Interior, October 2014.

## Serious disablement

25. We have chosen the language of serious disablement to concentrate efforts on those left with injuries that have fundamentally impinged on their quality of life. We also believe that such a definition is in line with the principle of being ‘financially viable and sustainable’ by focusing funding to those with the most need and to avoid flooding the Commission with claims for those with less than 40%, which would likely be closer to large injured victim universe of around 47,000 physically injured persons as documented in the police records. In Croatia those who are injured, i.e. below 20%, are distinguished from civilian war disabled who have to show 60% or more disablement to be eligible.<sup>52</sup>
26. In other contexts disablement is usually grouped based on a percentage. In Bosnia this ranges from Group I-VI, with Group I being a 100% disabled persons who need caring by another person, Group II as 100% disability down to Group VI a 60% disabled person.<sup>53</sup> In Kosovo KLA veterans have access to a pension where they have a disability above 20%, whereas civilians only have it for above 40%.<sup>54</sup> Notably the Kosovo scheme allows for a carer’s allowance for those disabled over 80%, whether KLA veteran or civilian.<sup>55</sup> The Iraqi scheme provides more generous pension awards for those in the security forces, but for them and civilians it has three levels of disability awards (>75%, 50-74%, and <50%).<sup>56</sup> In Nepal a special care package and monthly pension is only provided to injured former Maoist combatants, split across four classes from 0-100%, but no provision for civilian disabled victims.<sup>57</sup>
27. The **rate of 40%** for the Northern Ireland scheme was arrived at based on research by RSM McClure Watters and Spence on similar schemes such as the Naval Order 2006 scheme and comparable arrangements for injured police officers.<sup>58</sup> Over 40% would capture those so

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<sup>52</sup> Article 8, Law on the Protection of Military and Civilian Disabled Persons of War OG 33/92, 57/92, 77/92, 27/93, 58/93, 02/94, 76/94, 108/95, 108/96, 82/01, 103/03, 148/13, 98/19.

<sup>53</sup> Article 56, Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children (Official Gazette the Federation of Bosnia and Herzegovina”, no. 36/99).

<sup>54</sup> Articles 10 and 14, 2011 Law on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosova Liberation Army, Civilian Victims of War and Their Families.

<sup>55</sup> Articles 10(5) and 14(6).

<sup>56</sup> Article 9, Law on Compensation of Victims of War Operations, Military Mistakes and Terrorist Operations 2009.

<sup>57</sup> See Govinda Sharma, James Gallen, Luke Moffett and Laxmi Pokharel, From Relief to Redress: Reparations In Post-Conflict Nepal, RRV (2019), p33.

<sup>58</sup> Similar to the 2011 Kosovo Law No. 04/L-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosova Liberation Army, Civilian Victims of War and their Families. Spain requires only 26% disability under its Victims of Terrorism Solidarity Act (32/1999) and Law for the integral protection and recognition of victims of terrorism (29/2011).S.42, Naval, Military and Air Forces etc.

seriously injured that they were no longer able to work after the incident and build up a work-based pension. 20% or less would include hearing loss, which would create a large category of victims and diminish the available funds for each individual award.

28. In the case of multiple injuries suffered by claimants, these would be calculated together for disablement. For instance the Armed Forces Compensation Scheme uses a weighted system for multiple injury taking the first largest injury as 100%, 30% for the second largest injury and 15% for the third, including psychological injuries. However, the Commission will have to determine eligibility based on the degree of disablement (from medical evidence) and how multiple injuries will factor in this determination. The RSM McClure Watters and Spence report commissioned by the CVSNI cites the example of Israel in working out degrees of disablement for multiple injuries:

- When there is one injury, the degree of disability will be the disability percentage of that injury. For example: If a 40% degree of disability was established for one injury, that person's degree of disability will be 40%.
- When there are several injuries, each of which has a separate degree of disability, the injuries are weighted. For example: If there are two injuries, the first at 60% and the second at 30%, the first injury will be ranked as 60% and the second will be ranked as 12% - which is 30% of the remaining 40%. Thus, the overall disability percentage will be 72%.
- Under this calculation method, the more injuries there are, the lower the net disability percentage for each injury beyond the most significant injury. When two or more injuries relate to pairs of limbs (two arms or two legs), the medical committee may add together the disability percentages for these limbs. For example: a 40% disability in one arm and a 30% disability in the other will be equal to an overall 70% degree of disability. However, the final degree of disability cannot exceed 100%. For example, a 40% disability in one leg and a 70% disability in the other equals an overall 100% degree of disability (and not 110%).<sup>59</sup>

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(Disablement and Death) Service Pensions Order 2006; and Social Security (General Benefit) Regulations (NI) 1984 (No.92) Amendment 11 April 2011, The Law Relating to Social Security, Schedule 2.

<sup>59</sup> Invalids (Compensation and Rehabilitation) Law, 5719 – 1959 (National Insurance Institute of Israel), from RSM report p47.

29. In terms of **psychological disablement, we also believe that only ‘severe’ and ‘moderately severe’ should be included**, given that these fit within the ambit of the law. Namely that ‘severe’ PTSD as defined by the Green Book as ‘involve permanent effects which prevent the injured party from working at all or at least from functioning at anything approaching the pre-trauma level. All aspects of the life of the injured person will be badly affected.’<sup>60</sup> Whereas ‘moderately severe’ better prognosis where ‘some recovery with professional help is anticipated. However, the effects are still likely to cause significant disability for the foreseeable future’.<sup>61</sup> Lower forms of PTSD are judged not to cause permanent, disabling effects and thus outside the scope of this scheme. The consultation document outlines a range for psychological injury that works off a disablement scale from 11-81+%, but this is perhaps best interpreted in line with the Green Book.
30. Going by compensation guidelines under the Green Book it is worth distinguishing serious physical disablement awards, such as quadriplegia (£475,000 – £700,000) and loss of sight (£275,000 – £485,000) awards, compared to severe PTSD (£60,000 - £120,000). An award for severe psychiatric injury can also be made (up to £210,000) were a claimant has a poor prognosis and ‘marked problems’ with the following issues: ‘(i) Ability to cope with life, education and particularly work (ii) Effect on relationships with family, friends and those with whom he comes into contact, etc. (iii) Extent to which treatment would be successful (iv) Future vulnerability.’<sup>62</sup> Given the compensated scales of harm for physical and psychological injuries causing disablement we would suggest a comparable difference between the two headings. In that **‘moderately severe’ disablement being over 51%-80% we would suggest they benefit from the lower 20% rate** suggested in the consultation (£1,974 annually) and for **‘severe’ disablement (>81%) the amount of the 30% rate** (£2,961 annually). We believe this reflects a more proportionate and fair rate to similar arrangements under compensation schemes.<sup>63</sup> **For those with psychological injury amounting to disablement over 40% they would need to fulfil the four criteria outlined in the Green Book and demonstrate its permanence with previous supporting evidence.**

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<sup>60</sup> Guidelines for the Assessment of General Damages in Personal Injury Cases in Northern Ireland, The Judicial Studies Board for Northern Ireland (2018), p13.

<sup>61</sup> Ibid. p13-14.

<sup>62</sup> Green Book p12. Similar the 2009 Compensation Scheme defines a mental illness as disabling ‘if it significantly impairs a person’s functioning in some important aspect of that person’s life.’ A Guide to the Northern Ireland Criminal Injuries Compensation Scheme (2009), p27.

<sup>63</sup> The 2009 NI Compensation Scheme awards £19,000 for moderately severe and £27,000 for severe disabling and permanent mental illness, as confirmed by psychiatric prognosis. A Guide to the Northern Ireland Criminal Injuries Compensation Scheme (2009), p33.

## Carers

31. Carers often made substantial sacrifices to their own careers, education and daily life in the absence of sufficient responsible state support. This has a gender aspect, where many mothers, sisters and daughters took on carer roles and continue to do so to look after both civilians and combatants. As one interviewee said, carers are “unsung heroes who don’t get recognition.”<sup>64</sup> While we welcome the provision that carers will benefit under the scheme by gaining a ten-year pension on death of the injured victims, this may be too late and does not help to alleviate the day-to-day work that they carry out. We recommend that further thought is given to providing **an increased allowance under the VSS for carers** from £500 to £1,500-£2,000 given that most injured victims will benefit under this new scheme, in particular for those who care for injured victims over 80%, as outlined in other schemes. In Croatia family members who are responsible for looking after those who are 100% disabled are entitled to a family care and assistance pension (around €876 annually).<sup>65</sup> Such an amount for carers would allow them to get respite breaks, pursue further education or allow them some extra disposable income to acknowledge the work they carry out. Such provisions are included in other countries, where carers are able to avail of an allowance for looking after those most severely injured.<sup>66</sup> We recognise that some injured victims have more than one carer, in the application form we have indicated that the applicant should note who these carers are (limited to two) and they should be informed that they can change their carer at a later date if they so choose.

## Territorial scope

32. The consultation document outlines that only individuals who are ordinarily resident now or at the time in the United Kingdom are eligible. The Irish Remembrance scheme for fatal injuries limited claims to those victims who were residents in the jurisdiction at the time the fatal injury occurred or fatally injured in the jurisdiction.<sup>67</sup> As the purpose of the Order is to provide those living with a permanent disability as a result of the violence of the Troubles in Northern Ireland with an acknowledgement and financial support to improve their quality of

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<sup>64</sup> Interview with IR12, March 2017.

<sup>65</sup> This is just over 10% of the annual average wage, but is complemented with other benefits. Article 17, Law on the Protection of Military and Civilian Disabled Persons of War OG 33/92, 57/92, 77/92, 27/93, 58/93, 02/94, 76/94, 108/95, 108/96, 82/01, 103/03, 148/13, 98/19.

<sup>66</sup> See Article 62, Bosnian Law; and Article 14(6), Kosovo Law 2011.

<sup>67</sup> See The Remembrance Commission and Scheme of Acknowledgement, Remembrance, and Assistance for Victims in this Jurisdiction of the Conflict in Northern Ireland.



life and financial security it would be contrary to its spirit and the principles of ‘victim-centred’ and ‘fair and proportionate’ to automatically exclude such non-UK resident victims. It is likely to be a small number of victims who will fall within this category, but would include notable incidents such as the Dublin, Monaghan and Omagh bombings.

33. We recognise that the Troubles in Northern Ireland extended outside of its territorial boundaries, with violence organised by individuals and organisations in the country carried out attacks in the Republic of Ireland, the United Kingdom and elsewhere in the European Union. While under European Union law individuals from outside the UK should have access to compensation in the country they were harmed or residing member state,<sup>68</sup> we believe that **provision should be made to allow victims not normally resident in the UK to be eligible under this Order**. This is to reflect that individuals who are non-UK residents were seriously injured in violence related to the Troubles whether within the UK or by acts originating from armed groups in Northern Ireland in other countries.
34. We would recommend that **50% of the lump sum amount of eligible individuals from outside the jurisdiction and ordinary residence of the UK should be able to claim for the payment scheme where they are eligible on other grounds**. This is to reflect that such individuals were caught up in the violence within Northern Ireland, or such violence was exported to their countries, in particular the Republic of Ireland,<sup>69</sup> Germany<sup>70</sup> and Belgium.<sup>71</sup> In Spain, relevant incidents include attacks carried out by groups originating from the country or against Spanish interests.<sup>72</sup> Spanish nationals who are victims of terrorist acts abroad are only entitled to economic compensation, 50% if they are resident in the country where the terrorist attack occurs or 40% where they do not resident in that country.<sup>73</sup> Moreover, the Spanish government pays the difference if the country where the attacks takes place does not provide the victim compensation or at least pays the difference where the award obtained abroad is lower than the Spanish amount.<sup>74</sup> This seems a fair compromise, given that Spain

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<sup>68</sup> EU Council Directive 2004/80/EC.

<sup>69</sup> There were six bombings between 1 December 1972 to 7 March 1976 in the Republic that killed 42 people and injured hundreds, many of whom were seriously injured.

<sup>70</sup> The 1987 IRA Rheindahlen bombing injured 27 West Germans and four British citizens.

<sup>71</sup> The Brussels bombing injured four British bandsmen and 11 civilians. See I.R.A. Sets off Bomb at Belgian Concert, *New York Times* 29 August 1979.

<sup>72</sup> Article 6(2)(a), Act on the Recognition and Comprehensive Protection of Victims of Terrorism, Ministerio del Interior, October 2014.

<sup>73</sup> Articles 6(3) and 22, Act on the Recognition and Comprehensive Protection of Victims of Terrorism, Ministerio del Interior, October 2014.

<sup>74</sup> Article 22(2), *ibid.*

itself only pays 50% of compensation, but it also imposes an obligation on claimants to refund the state if they receive over this amount.<sup>75</sup>

### **Those injured during a crime of which they were convicted**

35. A point of contention that has unduly delayed the passing of these pension payments has been the issue of injured members of non-state armed/terrorist/paramilitary groups being potentially eligible. The formulated exclusion within the consultation proposes those ‘individuals with a criminal conviction directly related to the incident in which they sustained their injury.’<sup>76</sup> While this can be seen as a balance between the right of victims to claim redress, it also affirms that those responsible cannot have a right of action for their own suffering. There remains some ambiguity in such matters, for instance where an individual is convicted in being involved in a riot in which they are shot and left with severe brain damage, blindness or paraplegia from live rounds or rubber bullets. It is unlikely that such individuals would be convicted, but given the principles of being fair and victim-centred it may be best to judge these claimants on a case-by-case basis. For **bereaved claimants, a more appropriate formulation would be those who were unlawfully injured by another.**

36. Under torts law, in particular trespasses against the person (such as battery), the two principles of illegality and contributory negligence place limits on individuals’ ability to claim damages where they are responsible for their own or others’ suffering. For the first of these, illegality is based on the defensive principle of *ex turpi causa non oritur actio* that no action can arise for an individual who engages in an immoral or illegal act. This rule is again based on public policy to prevent a person from profiting from their wrongdoing.<sup>77</sup> Nonetheless, the defence of illegality has been held inapplicable to claims of trespass against the person.<sup>78</sup> This exception is on the grounds that individuals should not be excluded from the protection of the law, as to do otherwise would undermine the integrity of the legal system and access to redress for serious harm.<sup>79</sup> However, the courts will take into account the claimant’s illegal conduct in his or her own suffering that is so ‘inextricably linked’ with that claimant’s own ‘criminal or illegal conduct that the court could not permit him to recover

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<sup>75</sup> Article 22(3), *ibid.*

<sup>76</sup> NIO Consultation, para.59.

<sup>77</sup> See *Standard Chartered Bank v Pakistan National Shipping Corporation* [2000] 1 Lloyd’s Rep 218, [232]; and James Goudkamp, ‘*Ex turpi causa* and immoral behaviour in the tort context’ (2011) 127(July) *Law Quarterly Review* 354–58.

<sup>78</sup> Law Reform Commission (LRC), *The Illegality Defence: A Consultative Report* CP No 189 (LRC 2009) 128–30.

<sup>79</sup> *Revill v Newbery* [1996] QB 567. See Rick Glofcheski, ‘Plaintiff’s Illegality as a Bar to Recovery of Personal Injury Damages’ (1999) 19(1) *Legal Studies* 6–23, p20.

without appearing to condone that conduct'; in other words, an individual cannot claim redress if they have suffered from their own hand, reflecting the distinction between internal and external causation of harm.<sup>80</sup> That said, the courts do take a more pragmatic approach based on the facts of the case and public policy, moving away from moral responsibility in terms of the historical immorality or 'public consciousness test'.<sup>81</sup>

37. In light of the pragmatic approach to illegality in this context, the courts' ability to determine the responsibility or fault of a claimant turns more on their contributory negligence. This rule distinguishes between a claimant's right to claim a remedy, if they suffer damage as a result of their own fault and the fault of another person, but it does not debar them from claiming damages. However, it does allow a defendant a defence to reduce the damages available on 'just and equitable' terms on the basis of the claimant's share of their responsibility in the damage.<sup>82</sup> At least in the UK, contributory negligence is not applicable to trespasses against the person, on the basis that such harm is criminalised on public policy grounds, as according to Glanville Williams, it is a 'penal provision aimed at repressing conduct flagrantly wrongful' as well as being the 'result of the ordinary human feeling that the defendant's wrongful intention so outweighs the [claimant's] wrongful negligence as to efface it altogether'.<sup>83</sup> Accordingly, when it comes to trespasses against the person, the courts are very reluctant to prevent individuals from being able to seek damages as a remedy for serious harm in the form of personal injury, regardless of their background or past conduct. This is apparent in the case of Aidan McKeever, a getaway driver in an IRA attack on the police station in Coalisland in 1992. He was successful in suing the Ministry of Defence for injuries suffered in the course of an ambush by the SAS which killed four other IRA members. The High Court found that the SAS was not justified in shooting him and upheld the award of £75,000.<sup>84</sup> The Ministry of Defence raised the defences of *volenti non fit injuria*, *ex turpi causa non oritur actio* and contributory negligence, but these were all rejected by the court.

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<sup>80</sup> *Cross v Kirkby*, The Times (London 5 April 2000); affirmed in *Gray v Thames Trains Ltd and Network Rail Infrastructure Ltd* [2008] EWCA Civ 713, see Lord Hoffman para.29.

<sup>81</sup> As per LJ Bingham, *Saunders v Edwards* [1987] 1 WLR 1116, 1134. See LRC 2009, p140–42.

<sup>82</sup> Law Reform (Contributory Negligence) Act 1945, 1(1).

<sup>83</sup> Glanville L Williams, *Joint Torts and Contributory Negligence: A Study of Concurrent Fault in Great Britain, Ireland and the Common-law Dominions* (Wildy 1951) 197–98; and *Co-operative Group (CWS) Ltd v Pritchard* [2011] EWCA Civ 329, para 37.

<sup>84</sup> *Aidan McKeever v Ministry of Defence* [2011] NIQB 87.

This decision may not vindicate a non-discriminatory approach, but rather the failure of the Ministry of Defence to satisfy the evidential burden in proving the defences.<sup>85</sup>

38. There are also questions around the reliability of past criminal convictions, where there remain a large number of convictions being appealed before the Criminal Case Review Commission. A workaround could be excluding them until 'proven innocent'.<sup>86</sup> There would need to be consideration for provisions to annul a pension payment where an individual claimant is subsequently convicted in the injury in which he was awarded.
39. Fraudulent claims should be treated as a crime under the Fraud Act 2006, rather than creating any new laws of procedures. This is similar to practice in other contexts,<sup>87</sup> and this also requires a criminal burden of proof beyond reasonable doubt, so it would mean that it would only cover those who likely to have a criminal intent, rather than simply wrongly applied in good faith to the scheme. That said there may be implications for those who are injured and convicted in the same incident, that if they did apply and not disclose their conviction it may fall under the crime of fraud.<sup>88</sup> Well-trained scheme official can often detect fraud, such as repeated evidence or documents.<sup>89</sup>
40. A complex group of claimants in relation to this clause will be psychologically injured and disabled individuals who have a criminal conviction, where repeated exposure to violence is likely to compound their harm, so it will be difficult if not impossible to distinguish a criminal conviction from each individual incident. This is only further complicated by ongoing investigations where if an individual withholds information on an injury it may amount to fraud or may implicate them in a crime which the Payments Commission would be obliged to disclose if recorded on the application form.

## Procedure and Evidence

41. In taking a victim-centred approach the procedure of the payment scheme should be an opportunity to treat victims with dignity and respect, in that the process itself builds trust and confidence to those coming before it. We appreciate the work the NIO and other organisations have done in putting a human face on these issues by engaging in face-to-face

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<sup>85</sup> See Luke Moffett, A pension for injured victims of the Troubles: reparations or reifying victim hierarchy?, Northern Ireland Legal Quarterly 66(4) (2016) 297–319.

<sup>86</sup> Ibid. p317. Article 17, Compensation for those Affected by Military Operations, Military Mistakes and Terrorist Actions, Law No 20. 2009

<sup>87</sup> Article 21.3, Law No. 04/L-054 Law No. 04/L-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosova Liberation Army, Civilian Victims of War and their Families 2011..

<sup>88</sup> Section 3, Fraud Act 2006.

<sup>89</sup> ICTJ 2017, p57.

meetings with victims, victim groups and other actors demonstrating that their concerns are being listened to and there is an effort to ‘get things right’ for seriously injured victims. In this light the procedural and evidential requirements of the scheme should be conducted in a way that alleviates the burden of claiming on victims as far as possible. Many victims will recall going through intrusive examinations and inhumane treatment in previous compensation awards and reviews of disability payments when the scheme was moved over to PIPS. Providing robust training to staff on being victim-sensitive within the scheme, providing good access in different formats for victims to engage and communicate their issues and have a clear and transparent system, which also includes review, auditing and monitoring of the delivery of the scheme, would be good practice. The experience of the VSS and how they work with victims may be instructive, especially given that for non-eligible victims they are signposted to other available services and support.

## **Evidential Requirements**

42. It is well established that in payment claims in the aftermath of mass violence or conflict that undue burden should not be placed on victims in claiming a remedy, often at a maximum level this will be a balance of probabilities.<sup>90</sup> Indeed the European and Inter-American Courts of Human Rights have consistently held that in cases of gross violations of human rights, such as extra-judicial killings and serious injury, moral damage is reasonably assumed, often requiring them to only register and prove their identification.<sup>91</sup> In other contexts this has included evidential presumptions that victims’ claims for certain reparations would be accepted on the grounds of ‘good faith’ subject to verification by the state administrative body.<sup>92</sup> In Morocco and Peru victims’ testimonies were accepted as sufficient, taking into account that many had lost their documentation.<sup>93</sup> Before certain reparation bodies identification by two credible witnesses’ statements was deemed necessary to support victims’ claims on harm and identification.<sup>94</sup> Where stringent evidential requirements are

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<sup>90</sup> Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012, ICC-01/04-01/06-3129-AnxA, para.22.

<sup>91</sup> Heidy Rombouts, Pietro Sardaro and Stef Vandeginste, *The Right to Reparation for Victims of Gross and Systematic Violations of Human Rights*, in Koen de Feyter, Stephan Parmentier, Marc Bossuyt, and Paul Lemmens (eds) *Out of the Ashes: Reparation for Victims of Gross Human Rights Violations*, Intersentia (2006), p383.

<sup>92</sup> In Colombia see Artículo 5, Ley de 1448/2011.

<sup>93</sup> Sandoval, A/HRC/42/45, para.57.

<sup>94</sup> Carla Ferstman and Mariana Goetz, *Reparations before the International Criminal Court: The Early Jurisprudence on Victim Participation and its Impact on Future Reparations Proceedings*, in C. Ferstman, M. Goetz, and A. Stephens (eds), *Reparations for Victims of Genocide, Crimes Against Humanity and War*

imposed, such as the Philippines scheme requiring collaboration through two sworn statements, it meant that out of 75,000 claimants only 11,100 were eligible for compensation.<sup>95</sup>

43. Most claims commissions have used a relaxed burden of proof, with the parties cooperating in gathering evidence to reduce the evidential burden on the claimant.<sup>96</sup> The UN Claims Commission for the Iraqi invasion of Kuwait took a flexible approach requiring claimants to provide ‘simply’ documentation on the proof of the fact and the date of injury or death, i.e. *prima facie* proof.<sup>97</sup> For those claiming for property damage up to \$100,000 they had to be ‘supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss’, i.e. on the higher evidential burden of a balance of probabilities.<sup>98</sup> The Holocaust claims process a relaxed standard of proof of ‘plausibility’ that claimants were entitled to the dormant bank accounts, taking into account the destruction of the Second World War and the Holocaust, as well as the long passage of time.<sup>99</sup>
44. Even though Northern Ireland is a well-developed and settled democracy, evidential records were destroyed through attacks during the conflict/Troubles or diminished by the effects of time. Victims have suffered through demeaning and humiliating assessment of their injuries and should not undergo such experiences again. There may already be a dearth of information within bodies such as the VSS and Department of Health, which should be passported in from them to the Payments Commission, subject to the claimant’s consent. Victims should be able to send copies of medical records they may have with their application or request their GP to forward them on to the Payments Commission. Given that 355 seriously injured victims are already established claimants before the VSS, they should be treated as having a ‘conclusive presumption’ that they are eligible and require no further evidence, just verification of their

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*Crimes: Systems in Place and Systems in the Making* (Martinus Nijhoff 2009), 313–350, p323. *Uganda Situation*, Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06 of 10 August 2007, ICC-02/04-101, 10 August 2007, para.14.

<sup>95</sup> Sandoval, A/HRC/42/45, para.58.

<sup>96</sup> Property, Restitution and Compensation: Practices and Experiences of Claims Programmes, IOM (2008), p26.

<sup>97</sup> Recommendations made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category "B" Claims), S/AC.26/1994/1 26 May 1994, at 34-5. Article 35(2)(b), UNCC Rules.

<sup>98</sup> Article 35(2)(c), UNCC Rules.

<sup>99</sup> Article 22, Rules of Procedure for The Claims Resolution Process Adopted on October 15, 1997 by the Board of Trustees of the Independent Claims Resolution Foundation.

identification.<sup>100</sup> For other victims who are not within this scheme, the Payments Commission should designate a member of its commission to be responsible for researching archival records to locate supporting information of the injury being conflict-related, such as police records, PRONI, Linen Hall library and CAIN. This would ease the burden on victims to make the causal connection between the injury and the Troubles.

45. As outlined below with regard to the application form evidence will take two forms: personal; and injury. The first type of evidence is to identify and distinguish the personal details of the applicant. This can be achieved by normal identification documents such as a driver's licence, passport or other photographic documentation accepted for voting. The second form of evidence can be passported through from the VSS or PIPs, so minimal evidence may be need from those most seriously physically disabled victims within it's system, as all this require is verification. In the application the victim can note their injury type, disablement and narrative of harm. For other individuals not in receipt of VSS or PIPs they will need to provide copies of medical records or submit themselves for assessment.
46. There is an obligation under the Data Protection Act 1995 and the General Data Protection Regulation (EU) 2016/679 to maintain the confidentiality of the claimant's records. On the application form we have indicated that this should be indicated by the applicant, in particular with regards to sharing information, with the consequence that failure to do so may impede the processing of their application. Other contexts have similar confidentiality obligations.<sup>101</sup>

## **Payments**

47. We believe that it would be easier to administer the scheme to have fixed amounts spelt out in the regulations Order, fitting with the scheme's principles of being 'fair' and 'transparent'. For those seriously physically injured at 100% their lump sum would be £50,000 on application and £9,870 annually in the first year. The lump sum amounts are calculated as rounded up to the nearest thousand pound amount and multiplied by five years since the Stormont House Agreement. The disablement levels between 40-100% reflect both physical and psychological present in a claimant, with only psychological disablement recognised for those who fall within the more permanent and debilitating severe and moderately severe categories. For the two categories of severe psychological disablement the lump sum is calculated as £15,000 and for moderately severe as £10,000. For those bereaved the amount would be £15,000 as a one-off lump sum to acknowledge their pain and loss as moral harm.

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<sup>100</sup> See section 17, Republic of the Philippines, Act 10368; and ICTJ 2017, p54.

<sup>101</sup> See section 13, Sri Lankan Office of Reparations Act of 2018.

These amounts are consistent with payments schemes in other countries, such as in Colombia,<sup>102</sup> and schemes in the UK.<sup>103</sup>

<b>Level of Disablement and Injury</b>	<b>Lump Sum Amount</b>
100%	£50,000
90%	£45,000
80%	£40,000
70%	£35,000
60%	£30,000
50%	£25,000
40%	£20,000
Severe Psychological	£15,000
Moderately Severe Psychological	£10,000
Bereaved	£15,000

48. In terms of monthly amounts these should be in line with the consultation proposed amounts on p20. Payments should be index linked. This is to be consistent with other government schemes the payment should be made in line with the Gross Domestic Product price deflator.<sup>104</sup> While the Retail Price Index would over the past twenty-five years be slightly more generous (measuring inflation at 2.9% instead of roughly 2.8% under the GDP

<sup>102</sup> USD \$10,500 bereavement and disability payment lump sum - see Camilo Sanchez and Adrian Rudling, *Reparations in Colombia: Where To? Mapping the Colombian Landscape of Reparations for Victims of the Internal Armed Conflict*, RRV (2019), p40.

<sup>103</sup> £11,000 bereavement payment under paragraph 55, The Victims of Overseas Terrorism Compensation Scheme 2012; paragraph 62, England and Wales Criminal Injuries Compensation Scheme 2012; and paragraph 40, NI Criminal Injuries Compensation Scheme 2009.

<sup>104</sup> See section 13, Historical Institutional Abuse (Northern Ireland) Act 2019.



deflator), the deflator determined by the Treasury is a more inclusive index for the purposes of bought goods and services in this period and a more accurate measurement for future changes.

### **Prioritisation**

49. For those over the age of 70 they should be placed at the front of the application processing order, similarly for those who are terminally ill, so they can be fast tracked. For those terminally ill a letter from their GP should be sufficient to establish this, provided they meet the other eligibility requirements.

### **Double compensation**

50. In light of the principles of ensuring the scheme is ‘fair, proportionate and transparent’ there may be grounds to consider large compensation awards made more recently to avoid not prioritising those who were compensated forty years ago with smaller amounts. Some victims have already been compensated and some continue to receive work pensions. Breen-Smyth reports that from her sample of 65 injured victims some 85.5% had received some form of compensation.<sup>105</sup> In addition, some groups consulted during the drafting of these model bills raised the issue of state forces receiving pensions and the fact that this would amount to a ‘double-pension’, as would similar payments made to non-state armed group members who were unlawfully shot by state forces.<sup>106</sup> However, research by Bloomfield found that many individuals had been under compensated or denied redress during the Troubles.<sup>107</sup> Although members of state forces who served their full 30 years have substantial pensions that they contributed to and received injured while on duty payments, many part-time, reservists or those on short-term contracts who were injured received paltry sums. To make the pension means tested could cause increased marginalisation and poverty to victims who had been awarded small sums in the past, or even large ones decades ago, but have since spent it. In contrast to benefit schemes, this payment scheme is not a social security hand-out, but a public recognition and remedy that an individual has suffered a violation of their right to personal integrity.

51. That said, the draft regulation Order gives the Commission some leeway to withhold an award if it would be inappropriate to bestow a pension or lump sum to somebody very

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<sup>105</sup> Marie Breen-Smyth, *The needs of individuals and their families injured as a result of the Troubles in Northern Ireland*, (WAVE Trauma Centre May 2012), p141.

<sup>106</sup> *Aidan McKeever v Ministry of Defence* [2011] NIQB 87.

<sup>107</sup> Kenneth Bloomfield, *We Will Remember Them*, Report of the Northern Ireland Victims Commissioner (1998).

financially well off from previous schemes. This provision is an exceptional resort and would only be used to maintain the integrity of the system if such a case came to light. It may be in a few cases a carer may be eligible for a lump sum after the death of an injured victim and also as bereaved, these amounts should not be discounted, given the relatively modest award for this second heading.

52. We recommend that a sliding scale be used where the claim reaches over and above a particular amount. There should also be grounds for appeal on the issue of discounted payments as a finding of double compensation. We do not believe an actuarial adjustment of payments taking into account previous payments, as this would impose undue hardship on individuals who have spent their money in houses, disability aids or private healthcare over the long period of their injury. Given that most seriously injured and disabled victims were harmed over thirty years ago, it is very unlikely that they have much or any of the original award remaining. Moreover, compensation awards in the past had benefits while awaiting final award and court costs deducted from the final amount, reducing their value for victims.
53. In terms of the sliding scale we think it would be equitable that any payment over £500,000 since 1998 should have a reduced not be able to exercise the option of a lump sum of the pensionable amount. This does not deny a person a pension, but rather reduces the amount of the lump sum to ensure some form of equity with those victims who were inadequately compensated in the past. At the same time the lump sum base rate would not go below £10,000, to ensure that they can benefit from the initial acknowledgement payment from the scheme. For instance if a person was awarded £750,000 in 2002 and is in the 80% disablement bracket, £250,000 is over the £500,000 threshold, divided by the equitable number of the factor of ten this would be a discount of £25,000 meaning that their lump sum would be £15,000 under the scheme. Similarly for a claimant who is in the 100% disablement bracket and was compensated £950,000 in 2005, they would have a discount of £45,000 from the total £50,000, but as the base lump sum rate is £10,000 they would be eligible for this amount instead. This will only include a few claimants, but will help to ensure the fairness of the scheme.
54. Alternatively a discount scheme could be calculated working that in today's real terms of a £10,000 annual pensionable amount would be the base rate for each year since the Good Friday Agreement in 1998. So that an individual awarded £750,000 in 1998 would be worth £1.3 million in today's terms, 22 years of £10,000 could be the calculation for discount in terms of attrition over time of their total pension payment. This would involve complex

calculations and in the short term may seem equitable, but over the next twenty-thirty years and repeat the mistakes of the past, where these more recent victims may have to live off this amount for 40-50 years.

55. For state security forces the pension scheme would be aimed at those on short-term, part-time or zero hour contracts who were injured and the scheme offers a top up on their current pension. As such for those in the armed forces the War Pension would be considered in whether or not they reach the £10,000 annual pension threshold for 100% disablement. If it is over this amount they would not be eligible for the pension. However in terms of the lump sum this is likely not to be more comparably generous than the civilian criminal compensation schemes. The Armed Forces Compensation Scheme has a 15 point tariff scheme for those injured that runs between £1,200 to £570,000. While there is also the option to award a Guaranteed Income Payment (GIP), only 3% of claimants were awarded a GIP and lump sum in the 2005-2014 period.<sup>108</sup> Further research and data would be needed to understand the impact of this and provisions for injured police officers to ensure a fair and proportionate response for all those injured.

### **Application Form**

56. Many victims should be able to fill out the simple and accessible application form themselves, but additional money through the VSS should be made available to victim groups to enable them to advise and assist victims coming forward to them to apply. Such assistance should guide victims on the scheme and inform their expectations of the criteria - this is not to manage victims but to ensure they can exercise informed consent. Some victims are not affiliated with a group and may for personal or security reasons be unwilling or unable to seek advice in filling in their form with a group as such legal aid should be available, capped at £500 which can be drawn down by solicitors acting on behalf of victims in the completion of an application form. The Payments Commission should provide a short accessible briefing and/or infographics to all eligible victims and advertise the scheme. More detailed guidance should be given to intermediaries such as solicitors or victim groups in facilitating the completion of an application form. The ICC victim application forms and guidance to

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<sup>108</sup> UK Armed Forces Compensation Scheme Biannual Statistics: 6 April 2005 to 31 March 2014, p14.

intermediaries may be instructive, which includes indicative information to facilitate its completion.<sup>109</sup>

57. In line with the principles of ‘victim-centred’ and ‘simple to navigate’, the application form should be used only to gather relevant and useful information in a concise manner. We have annexed an example form. The ICTJ has highlighted that well designed application forms can ‘contribute to an efficient and transparent registration process that can respond to victims’ right to “access to relevant information concerning violations and reparation mechanisms.”<sup>110</sup> It may be helpful for victims to have a body map on the application form to indicate their disability, rather than having to articulate it.<sup>111</sup> Alternative versions of the application form should be made available in braille, audiotape and other mediums as needed for those who are audio or visually impaired. The application form allows for it to be completed by someone on behalf of the injured victim, such as a carer.
58. Information relevant to be collected and processed in an application form fall under three main headings of first personal identifying information to distinguish the individual claimant, second the nature of injury and third declaration of truthfulness.<sup>112</sup> With regards to identifying information a personal identification number (national insurance, passport or driver’s license number), unique patient identifier (health and care number (H&C) in Northern Ireland), date of birth and address are needed. This should include information on the person applying on behalf of a victim, such as those lacking capacity.<sup>113</sup> Gender is included as a heading to comply with the gender inclusion principle and to allow the collection of data to better understand the gender dimensions of the harm and scheme's operation.<sup>114</sup> Bank details are also requested in the form to facilitate the speediness of lump sum and pension payments; this is a common practice in scheme in other contexts.<sup>115</sup>
59. In terms of the injury or violation the application form should include the date of incident, nature of harm suffered, and other relevant information. The Commission should be

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<sup>109</sup> See here: [https://www.icc-cpi.int/itemsDocuments/appForms-yn/ynAppFormInd\\_ENG.pdf](https://www.icc-cpi.int/itemsDocuments/appForms-yn/ynAppFormInd_ENG.pdf) and guidance here: [https://www.icc-cpi.int/itemsDocuments/appForms-yn/ynAppFormIndInst\\_ENG.pdf](https://www.icc-cpi.int/itemsDocuments/appForms-yn/ynAppFormIndInst_ENG.pdf)

<sup>110</sup> Ruben Carranza, Cristián Correa, and Elena Naughton, Forms of Justice A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations, ICTJ 2017, p10, citing UN General Assembly, Basic Principles on Reparation, paragraph VII. 11(c).

<sup>111</sup> See ICTJ 2017 p30-31.

<sup>112</sup> ICTJ (2017) p16.

<sup>113</sup> Community Health Index (CHI) in Scotland and NHS Number in England, Wales and the Isle of Man.

<sup>114</sup> ICTJ 2017 p19.

<sup>115</sup> ICTJ 2017 p21.

responsible for cross referencing the information provided by the claimant against public and police records. This is to reflect the principles of victim-centred and simple to navigate, by reducing the burden on victims to prove the injury is Troubles-related. If the Commission is unable to find information to verify the injury being Troubles-related, then it should contact the victim and inquire for further information. If the Commission rejects an application for the injury not being Troubles-related the claimant will have the right to appeal the decision. It may be helpful for some applicants who cannot remember or articulate the nature of their injury and continuing harm to complete a body map, which can be included as an additional page on the application form.

60. The application form should include a declaration signed by injured victim or person acting on their behalf. This should include a notice that intentionally providing or withholding information can be construed as fraud and the relevant provisions around consent for disclosure.

#### **Assessors**

61. Determining the level of disability while as far as possible it can be organised under degrees based on injury or illness, there will need to be some form of medical assessment to determine the appropriate individual level of injury arising to disability. In other contexts a specialist medical commission or committee to inform the award of payments, such as doctors within the ministry of health.<sup>116</sup> In Zimbabwe a medical board to assess claimants is made up of two medical doctors.<sup>117</sup> In Spain the Medical Advisory Board is made up of doctors and a member of the Ministry of the Interior who is familiar with providing assistance to victims of terrorism.<sup>118</sup> In terms of the proposed Northern Ireland payment scheme there is likely to be less than 2,000 eligible victims but there is likely to be thousands of claimants, in particular for psychological injury given its large impact.<sup>119</sup> The CVS recommends a multi-disciplinary panel for assessing the physical and psychological injury, drawing from relevant disciplines of 'psychiatry and psychology (Consultant Grade), physiotherapy and/or occupational therapy'. However, we would suggest this is too narrow and more welfare

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<sup>116</sup> Article 10.2, Kosovo 2011; and Article 2(2), Iraq Law No. 20 on Compensation for Victims of Military Operations, Military Mistakes and Terrorist Actions, 2009.

<sup>117</sup> Section 27, War Victims Compensation Act 1980.

<sup>118</sup> Article 28(2), Act on the Recognition and Comprehensive Protection of Victims of Terrorism, Ministerio del Interior, October 2014.

<sup>119</sup> RSM drawing from VSS data suggested there were 355 claimants who could be eligible. See McClure Watters, Impact of the Individual Needs Programme, CVS, February 2015, p37-38.

based, whereby medical doctors are best placed to determine injury and disablement for the purposes of a more compensation facing scheme.

62. Instead given that there are going to be more psychological injury claimants, the medical assessment board should be split into a physical and psychological injury to help more effectively triage each group before moving onto the second stage of disablement. There will need to be rehabilitative medical specialists (such as neurological) and trauma specialists, with a good rounded and comprehensive knowledge of living with the immediate and long term impact of physical injuries, and be able to consult with relevant other specialists, including law. For instance, a person who had kidney damage due to a bullet passing through their body, a nephrologist would be the appropriate expert. Ultimately the injury itself may need input from the specialist medical expert, a physiotherapist or occupational therapy is more needs based and for the disability level and function. This may need a broader consultation of specialists that can be consulted on a case-by-case basis, such as an advisory panel for the medical assessment board. The members of the medical assessment board would need to be specially trained to be victim-sensitive and centred in their work on these panels and board, so as to minimise and avoid retraumatisation.
63. We recommend a medical assessment board be made up of two panels one to focus on claimants coming forward for both physical with or without psychological injury and another panel for those just claiming for disablement due to psychological injury. Each panel would be made up of two specialist doctors, with one from each panel sitting on the Commission. Once injury is established, the panels will determine the level of disability of the claimant and make call upon the advice of occupational health and rehabilitative specialists. The Commission will process applications based on medical records and VSS data primarily, where there is not enough information in this first instance then these medical panels would be used to carry out assessments.

## Commission

64. We suggest that to operate this scheme a Payments Commission be established that will be responsible for adjudication, delivery and monitoring of the payments and pensions. The Irish Remembrance Commission was made up of five members including a chairperson and supported by a secretariat, with members appointed by the Minister for Justice, Equality and

Law Reform.<sup>120</sup> The Chilean pension scheme was organised under a corporation of a director and six other members, appointed by the President and approved by the Senate.<sup>121</sup> In Turkey the Damage Assessment Commission is made up of one chairperson and six other members.<sup>122</sup> In Sri Lanka REPPA is managed by a board of five members.<sup>123</sup> Accordingly five to six individuals seems to be average number for commissioners. As two members will be drawn from the medical assessment board, three members should be individuals who have experience in victim issues, reparations expertise, media engagement and/or archival research. The Chief Commissioner should be someone with legal experience, ideally a judge to adjudicate on applicants and has experience with compensation issues.

65. The Guatemalan PNR also had a five member Consultative Council of Victim Organizations, which included women, indigenous people and human rights organisations to participate in meetings of the Council, but not to vote.<sup>124</sup> In Colombia victim tables (*mesas*) were established to allow victims and human rights defenders to participate at the local, national and regional level in the design, implementation, execution and evaluation of the reparation programme,<sup>125</sup> though it has suffered from victim engagement in the long term.<sup>126</sup> For the Northern Ireland scheme having a consultative body made up of 6 members including those victims and human rights organisations experience on injured victim would help meet the principle of transparency and bring victim-centred. Such individuals should be able to avail of a per diem and travel costs similar to the Victims' Forum and should be as far as possible a gender balance. This scheme would look like something in the graphic below:

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<sup>120</sup> See Amended Scheme of Acknowledgement, Remembrance and Assistance for victims in this Jurisdiction of the Conflict in Northern Ireland.

<sup>121</sup> Artículo 7, Crea Corporacion Nacional de Reparacion y Reconciliacion, Establece Pension de Reparacion y Otorga Otros Beneficios en Favor de Personas que Señala.

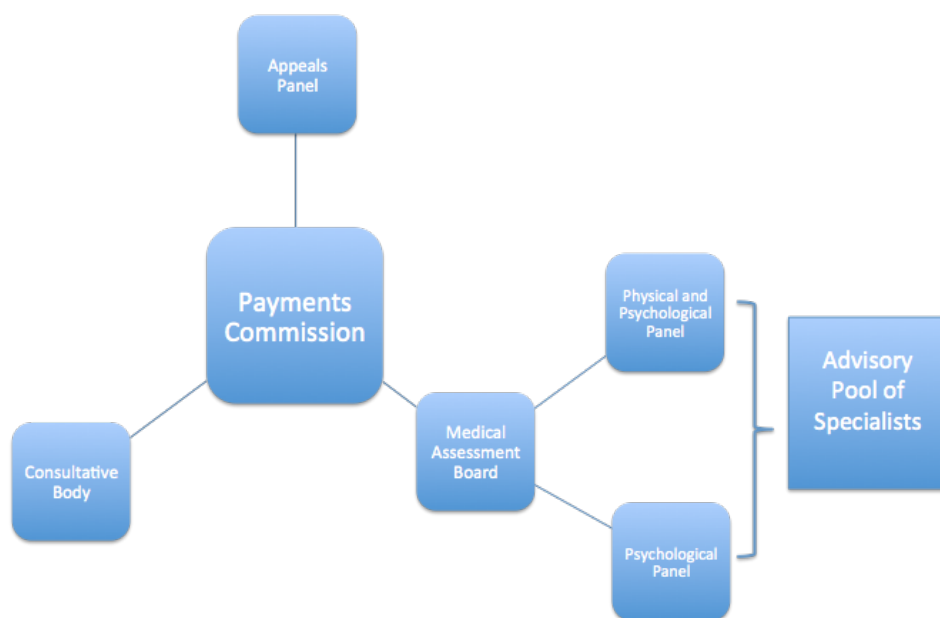
<sup>122</sup> Article 4, 2004 Turkey Law 5233 on the Compensation of Damages that occurred due to Terror and the Fight against Terror.

<sup>123</sup> Article 3(1), Rehabilitation of Persons, Properties and Industries Authority Act, No. 29 of 1987.

<sup>124</sup> Article 4, National Compensation Program - Governmental Agreement 258-2003, 8 May 2003.

<sup>125</sup> Article 193, Law 1448/2011.

<sup>126</sup> See Mijke De Waardt and Sanne Weber, Beyond victims' mere presence: an empirical analysis of victim participation in transitional justice in Colombia, *Journal of Human Rights Practice* 11(1) (2019) 209–228.



66. Commissioners should be individuals who have qualities and experience likely to command the respect and confidence of victims, public authorities and others with an interest in the work of the Commission; are able and willing to exercise their functions in an independent, impartial and sensitive manner; and are not expected to have any financial or other conflict of interest in the performance of their functions.

67. In terms of registration of claimants a generous time period should be allowed, such as five years as in the HIA Redress scheme.<sup>127</sup> In other contexts, such as in Argentina and Chile, there was a need to extend the registration period to allow victims who had not heard or been initial eligible for the scheme to register.<sup>128</sup>

### Appeals process

68. As part of ensuring transparency, fairness and victim-centred an inbuilt appeals process is included in the scheme. For those individuals who have their application rejected they have 6 months from notification to appeal the decision. The appeals panel will be made up of the Chief Commissioner and two lay members. There would be five grounds for appeal:

- Temporal
- Territorial

<sup>127</sup> Section 5(2), Historical Institutional Abuse (Northern Ireland) Act 2019.

<sup>128</sup> Sandoval, A/HRC/42/45, para.59.



- Application
- Carers
- Transparency and confidence

69. Transparency and confidence appeal would allow a commission or victim to appeal a decision to award a lump sum to an individual who may bring the system into disrepute. This reflects that without such a procedural guarantee in place a number of eligible and needy victims would self-exclude themselves from this payment scheme to avoid. This would frustrate the purpose of the scheme and principle of being victim-centred. We believe a helpful compromise is to include a ground of appeal that can be initiated by a commissioner of the scheme to reassess the inclusion of an individual who may undermine the confidence of the programme if a payment is made. This is an exceptional power and would require at least a prima facie ground to make such a review to proceed. In Peru there is no right to appeal within the PIR compensation scheme for individuals who are excluded due to them being a convicted member of the MRTA or Shining Path, but they can lodge an appeal through the courts.<sup>129</sup> Victims have a right to a remedy for suffering unlawful harm caused by another, but it does not absolve their responsibility where they have victimised another, so there may be grounds to deny in extreme cases or reduce their amount to reflect this complex issue and to avoid moral equivalence.

## Services

70. It is well documented in other schemes that monetary awards cannot remedy all victims' harm or meet or their needs, and as such need to be complemented with rehabilitation and other measures so that there is a more complex provision of benefits while maximising resources.<sup>130</sup> Compensation at best allows victims to exercise their agency and spend it as they see fit to alleviate the consequences of their suffering. As seriously injured victims will be better catered for under this scheme, it may be worthwhile for the Victims and Survivors Service (VSS) to reconsider shifting resources to carers and other bereaved victims, such as grandchildren, who are unlikely to benefit from this proposed scheme. We do acknowledge that more needs to be done in terms of service provision for seriously injured victims beyond

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<sup>129</sup> Law N°28592, art. 4 and Supreme Decree N°015-2006-JUS, art. 45, See Julie Guillerot, *Reparations in Peru: 15 Years Of Delivering Redress*, Reparations Responsibility and Victimhood in Transitional Societies project, (2019), p20.

<sup>130</sup> Report by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/69/518, 8 October 2014, paras.30-31.

the work VSS, in particular in integrating a victim-sensitive approach in the statutory sector, such as health and housing.

71. Other contexts alongside providing a pension have also stipulated provision of other benefits, such as waivers on tax and rates, educational scholarships for children and in cases of those severely disabled the allowance for carers and assistance.<sup>131</sup>
72. Raising awareness of the scheme is vital to ensure victims are informed and have access to it. Different approaches have been used from radio broadcasts, TV adverts, SMS messaging, and full page newspaper advertisements that include the application forms have all been implemented in different contexts.<sup>132</sup>
73. It may also be useful for victims to be provided with financial management advice, to ensure that they are able to maximise the use of their pension and lump sum. This could be independent, through victim groups or by the Commission itself in the form of guides, meeting with a commission staff or hotline.

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<sup>131</sup> Articles 6.1.1 and 9.1.3, Law No. 04/L-054 Law No. 04/L-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosova Liberation Army, Civilian Victims of War and their Families 2011.

<sup>132</sup> ICTJ 2017 p14.

Annex

# Application Form

There is no fee required to complete this form. You are entitled to seek assistance if filling out this form from a local victim group or solicitor.

**Personal Information**

**Name**

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**Date of Birth**

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**Gender**

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**Passport Number**

**Driver's License Number**

**National Insurance Number**

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**Present Address**

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**Permanent Address for correspondence if different from present address**

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**Phone Number**

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**Email**

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**Patient Identifier** (available from local GP)

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**Bank details**

Bank Name: \_\_\_\_\_

Sort Code: \_\_\_\_\_

Account Number: \_\_\_\_\_

Carer(s) - designate up to two individuals

**Name**

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**DOB**

---

**Address**

---

---

---

**Name**

---

**DOB**

---

**Address**

---

---

---

**Phone Number**

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**Phone Number**

---

**Email**

---

**Email**

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**Signed:**

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**Signed:**

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**Date:**

---

**Date:**

---



## Declaration

This application form is completed to my full knowledge and I consent to my information to be passed onto the police and department of justice for verification of my injury.

**Signed:**

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**Date:**

---

**Name in capitals:**

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**If you are signing on behalf of the applicant as an injured victim, please sign below for the purposes of the declaration:**

**Signed:**

---

**Date:**

---

**Name in capitals:**

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**Tick to confirm consent:**

- I consent to my personal information and details of my injury being shared for verification purposes with the Victims and Survivors Service, Department of Health and Department of Communities for verification.
- I consent to my personal information and details of my injury being disclosed to the Police Service of Northern Ireland and the Public Records Office of Northern Ireland for verification of my injury being conflict-related.

Failure to consent to your information being passed onto other service providers may impact the passage and speed of reviewing your application.

Information collected in this application form will be held securely for thirty years reflecting the likely lifetime of this scheme. At which point it will be archived securely for 20 years before becoming public record. The Payments Commission will take every effort to maintain the confidentiality of your application and records, under your unique and anonymous applicant identifier, which you will be provided upon receipt of this application.

Dishonestly and intentionally making a false representation or failing to disclose information may amount to the crime of fraud under sections 3 or 4 of the Fraud Act 2006.



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