



HM Government

A legal framework for a Troubles-related incident Victims Payment Scheme

Government response

January 2020

FOREWORD BY THE SECRETARY OF STATE FOR NORTHERN IRELAND

In October 2019, the Government launched a public consultation on a set of proposals for how to deliver a victims payments scheme. This scheme will recognise and acknowledge those living with serious and continuing disablement from physical and/or psychological injuries due to a Troubles related incident. A victims pension has been the subject of political debate in Northern Ireland for too long: as a society it is morally right that we acknowledge the unacceptable harm done to those injured during that dark period in Northern Ireland's past and move quickly to establish this scheme.

I am grateful to all those who took the time to share their experiences, thoughts and comments on the consultation paper. I recognise that in doing so, many individuals have bravely confronted and in some cases relived horrific experiences. I assure you that we have listened to you, and carefully considered all responses in reaching decisions about the scheme's provisions.

This document sets out our response to the main points raised through the consultation; in parallel I am laying a Regulation in Parliament to provide the legal parameters for the Scheme. The Northern Ireland Civil Service will intensify and finalise preparations to implement the scheme to ensure that the commitment to make it operational by the end of May 2020 is fulfilled.

Rt Hon Julian Smith CBE MP
Secretary of State for Northern Ireland

CONTENTS

FOREWORD BY THE SECRETARY OF STATE FOR NORTHERN IRELAND	2
CONTENTS	2
SECTION ONE: BACKGROUND	4
Introduction	4
Structure of the response	4
SECTION TWO: CONSULTATION FEEDBACK AND NEXT STEPS	5
Purpose of the scheme	6
Underpinning principles	7
Approach to financial payments	10
Permanence	15
Backdating payments	16
Lump sum option at 60	17
Transfers and applications from surviving spouses, partners and carers	19
Date parameters	22
Location of incidents and residency	23
Consultation proposal	23
Eligibility	25
Handling claims, including evidence and assessment	26
Other compensation and payments	28
Disagreeing with decisions	31
Support	33
Interaction with benefits and tax status	34
Review	34
Practical next steps and arrangements	35
ANNEX A - LIST OF ORGANISATIONS AND GROUPS WHO RESPONDED TO THE CONSULTATION	36

SECTION ONE: BACKGROUND

Introduction

1. On 22 October 2019, the Secretary of State for Northern Ireland, the Rt Hon Julian Smith CBE MP, launched a public consultation on a proposal for a scheme of payments in respect of Troubles-related injuries. The consultation provided an opportunity for anyone with an interest or experience to comment on the shape of the proposed scheme. It ran for five weeks and closed on 26 November. We recognise that this was a relatively short period in which to run a consultation, but we were keen to move this scheme forward after it has been delayed for too long, and we were very mindful of specific legislative deadlines.
2. 367 responses were received. The consultation team made itself available to meet a range of interested groups and parties to discuss the proposals and the issues arising from them. We would like to pay tribute to everyone who took the time to share their thoughts and experiences. We recognise and commend the courage and bravery of those who recounted their experience of horrific incidents in Northern Ireland's past, many of which have had deep-rooted effect on their lives and on the lives of their loved ones.

Structure of the response

3. **Section 1** provides background to the consultation.
4. **Section 2** sets out a summary of responses received, theme by theme, and the Government's intended next steps.
5. **Annex A** is a list of organisations and groups who responded to the consultation.

SECTION TWO: CONSULTATION FEEDBACK AND NEXT STEPS

Purpose of the scheme

6. In the consultation paper, we proposed that the scheme's purpose should be to provide those living with permanent disablement caused by injury through no fault of their own in a Troubles-related incident with payments in:
- acknowledgement of the acute harm which they have suffered;
 - recognition of the implications of living with disablement caused by a severe Troubles-related injury and the associated impact of such disablement on carers, who are often family members; and
 - recognition that in many cases coping with the disablement caused by the serious injury had an adverse financial impact on individuals, and their families.

Consultation feedback

7. There was broad support for the proposed purpose of the scheme in responses received to the consultation. Detailed feedback about the purpose of particular provisions is addressed in later sections of this response, but the language and intention of providing acknowledgement clearly resonated with many respondents, and there was also support for the recognition of the broader impact on people's lives.
8. There was a view among respondents that such a scheme would also help provide certainty and dignity to those struggling financially because of Troubles-related injuries. Some respondents were unclear, however, whether the scheme was providing acknowledgement or specific financial support in the form of a financial award. Some argued that it should be considered on the basis of need. It was also flagged that we used the language of "severe" in the purpose, but "serious" elsewhere.

Next steps

9. We are clear in our position that any additional financial support is a positive consequence of these acknowledgement payments and will be welcome to many, but that their primary purpose is to provide acknowledgement. In the light of feedback received, the scheme's purpose will be:

to provide those living with permanent disablement caused by injury through no fault of their own in a Troubles-related incident with payments primarily in acknowledgement of the acute harm which they have suffered. The scheme will also provide a measure of recognition of the implications of living with disablement caused by a serious Troubles-related injury and the associated impact of such disablement on carers, who are often family members; and recognition that in many cases coping with the disablement caused by the serious injury had an adverse financial impact on individuals and their families.

Underpinning principles

Consultation proposal

10. We proposed a set of high-level principles to underpin the scheme, to shape its design and delivery, and to make it clear what people could expect from it:
- **Victim-centred:** the needs of victims must be a high priority given the aim to acknowledge and help meet their needs, and to avoid the risk of re-traumatisation, for example through an insensitively handled assessment processes.
 - **Fair and proportionate:** the scheme cannot provide restitution (putting people back to where they were), but it ought to provide most help where there is most need on a clearly evidenced and understood basis.

- **Transparent:** it should be clear who will benefit from the scheme and in what ways.
- **Simple to navigate:** the scheme must be as user-friendly as possible for individuals and their families.
- **In line with current medical research/best practice:** the scheme should support wellness and not disincentivise treatment.
- **Consistent with the Government's commitment that it will not be open to those injured through fault of their own:** individuals who were injured as a result of their involvement in the orchestration of the relevant incident, as evidenced by a relevant criminal conviction, will not be eligible for payments.
- **Financially viable and sustainable:** if the scheme is to provide ongoing support and a degree of financial certainty, it must be well managed, affordable and robust.

Consultation feedback

11. A majority of consultation respondents supported the proposed principles, with many expressing particular support for the scheme being victim-centred, transparent and seeking to avoid re-traumatising victims so far as possible.
12. The importance of ensuring the needs of victims are well understood and that the scheme is effectively implemented were underlined in responses. We are grateful to all those victims and survivors - individuals and those represented by groups - who contributed to the design of this scheme through engaging with the consultation. Design of this scheme has also benefited enormously from input from the Northern Ireland Human Rights Commission and we are grateful to them for their advice.
13. Many highlighted the risk of re-traumatisation from insensitive treatment during assessment or through poor communication. Difficult previous

experiences of assessments and processes were referenced and shared. It is clear that a knowledge and understanding of trauma and the NI Troubles among those administering this scheme will be vital to its success. We also received considerable feedback about the need for the scheme to communicate well, so that people can make informed choices about whether to apply, in full knowledge of how the process will feel and what the possible outcomes could be.

14. Respondents also asked that we be clear that the scheme would act without undue delay. Others noted the importance of data being held securely, to give confidence to those who might have specific security concerns.
15. There is also clearly a need for this scheme to interface well with other elements of victim support, to ensure that the changing victim support landscape meets the needs of Troubles victims well, including through taking into account any differential needs based on gender and other section 75 equality categories.

Next steps

16. We have listened carefully to feedback received. We are very aware of the importance of victim feedback to the scheme, sensitive handling of data, timely handling of applications, and ensuring staff are trauma-aware and understand the context of the NI Troubles. The scheme must also sit effectively within the victim-support landscape, playing its part along with other victim support schemes and arrangements to ensure that the needs of victims are met through the entirety of what is on offer. The revised principles underpinning the scheme will therefore be:
 - **Victim-centred**: the scheme must give high priority and be responsive to the needs of victims, playing its part in ensuring that these are understood so they can be met across the range of victim support services. Staff will be Trauma-aware.
 - **Fair and proportionate**: the scheme cannot provide restitution (putting people back to where they were), but it ought to provide

most help where there is most need on a clearly evidenced and understood basis.

- **Transparent and communicates well:** the scheme's provisions should be well publicised with clarity around what it does and who will benefit.
- **Simple to navigate:** the scheme must be as user-friendly as possible for individuals and their families.
- **In line with current medical research/best practice:** the scheme should support wellness and not disincentivise treatment.
- **Consistent with the Government's commitment that it will not be open to those injured through fault of their own:** individuals who were injured as a result of their involvement in the orchestration of the relevant incident, as evidenced by a relevant criminal conviction, will not be eligible for payments.
- **Financially viable, sustainable and well managed,** processing applications in a timely manner and handling information sensitively.

17. The scheme will monitor performance against these principles in its operation, and where they do not directly relate to the design of the scheme architecture they have been turned into legislative language in the Regulation establishing the scheme.

Approach to financial payments

Consultation proposal

18. We proposed to adopt degrees of disablement methodology, which underpins the Industrial Injuries Scheme and the War Pension Scheme. These schemes make regular payments for the impact of injuries on an individual's ability to undertake day-to-day activities of industrial accidents and military service respectively. The general approach taken is to compare the effect of a relevant injury on an individual's ability to

undertake day-to-day activities with that of a healthy person of the same gender and similar age not living with the same injury, and for a healthcare professional to quantify that impact as a percentage.

19. We proposed to adopt the same entry point for eligibility as industrial injuries, which begins at 14% degree of disablement (paid at the level of a 20% disablement), reflecting the usual impact of loss of an index finger.
20. We included a table of injuries and related degrees of disablement in the consultation paper to give an indication of where particular injuries were likely to fall on that scale - a usual scheduled assessment of degree of disablement is plotted on the scale for particular injuries, but a case-by-case decision is taken on the impact on each person, and injuries not listed are assessed with appropriate regard to relevant similar injuries that are listed. We proposed that the same approach taken by other schemes - considering the impact of the injury on undertaking day-to-day activities - would be taken to both physical and psychological injuries.

Consultation feedback

21. There was broad support for the proposed approach, including the entry point of 14% degree of disablement. Many welcomed our proposal to use an existing scale and approach rather than creating a brand new system with all the associated risks and challenges that would bring. A few felt that industrial injuries might not be the best comparator given the different contexts of those injuries, but most were content with the approach. Some argued for an entirely case-by-case approach to assessment, but the majority saw the benefits of using an established model. The approach of adopting a sliding scale whereby greater disablement leads to a higher payment rate was welcomed.
22. Some argued for a higher entry point than 14%; others for an entry point of 0%. A few respondents were concerned not to see their injury specifically listed and others wondered if some injuries should be elsewhere on the scale.

Next steps

23. There was clear support for adopting an existing model and scale for assessment payment, so we will proceed on that basis. Payments will be annually updated in line with similar scheme's rates. The injuries we listed in the consultation document were drawn from industrial injuries legislation. The impact in terms of ability to undertake day-to-day activities between someone who has lost a limb and someone who has lost all function in that limb will be substantially similar. The placing of injuries on that scale has been carefully considered by medical professionals and others in establishing other schemes and we do not seek to second guess that work. The scheme is designed to help those living with permanent disablement that is not minor, and so we will take the approach of making payments to those with 14% disablement or greater.

Psychological injury

Consultation proposal

24. The consultation proposed to assess psychological injury on the same basis as physical: considering the impact on ability to undertake day-to-day activities of the injury on an individual, compared to a person living without that injury of the same age and gender. We explained that such assessments were likely to be very individual, given the very individual impact of mental health injuries on different people.

Consultation feedback

25. Most respondents (particularly organisational ones) welcomed the inclusion of psychological injury given the clear psychological impact of Troubles-related incidents on individuals' lives. Some respondents wanted greater clarity and/or emphasis on psychological injury in our proposals.
26. Technical responses focused on the importance of taking a broad approach to the impact of psychological injury, noting that psychological

injury can affect people in a variety of ways, ranging from impaired social relationships to inability to maintain a job. Degrees of disablement does assess impact on ability to undertake day-to-day activities in a broad way, covering an appropriate range of impacts.

Next steps

27. We are firmly committed to the inclusion of psychological injuries in the scheme. Assessment of the impact of a mental health illness will need to be case-by-case, as mental health illnesses can impact different people in varying ways. But the scheme will operate within defined parameters to ensure that its approach is fair and consistent. The scheme will assess disablement caused by physical and psychological injuries, and each standalone, where appropriate. Some asked how multiple injuries would be assessed - the cumulative impact on an individual will be assessed, to ensure that the total relevant impact is considered. The range of impacts of mental health illness will be considered broadly, including social relationships, work and psychological state.

Presence at incident

Consultation Proposal

28. We proposed to include not only those injured psychologically by fear for their own safety at an incident, but also those with a diagnosable psychological injury caused by witnessing a loved one being injured or killed at the scene of an incident, or being present in the immediate aftermath of such an incident.

Consultation Feedback

29. Some respondents to the consultation felt that we should not require presence at an incident, highlighting the impact that an incident may have had on others including families and carers after the event. We fully recognise the terrible impact of the Troubles on so many and it is vital that as a society that we do more to address that. And that is why provisions such as the Regional Trauma Network and increased funding

for mental health in Northern Ireland are so vital. But this scheme cannot in itself meet all the psychological needs of the NI population, not least as so many households were impacted - in varying degrees - by the Troubles.

Next Steps

30. We therefore intend that the scheme should pay those injured directly at an incident, or those with enduring psychological injury caused by direct perception of an incident in which a person with whom they had a close tie of love and affection was injured, those responding to an incident, and those who feared for themselves because of the incident.
31. Immediate aftermath would already include those injured who - for example - ran to help loved ones when they heard the explosion at the Cenotaph in Enniskillen, which a number of people raised in feedback. It can also include attending an injured person in hospital in the same condition that they were in at the scene of the incident shortly afterwards. The scheme must take an appropriately generous approach to what is considered to be the immediate aftermath of an incident.

Bereavement

Consultation Feedback

32. Some felt that this scheme should do more for those bereaved in the Troubles, given the terrible consequences for their lives and families.

Next Steps

33. We fully recognise and appreciate the terrible loss of those bereaved through Troubles incidents, but this scheme is specifically intended for those living with serious injury (and to pass to their spouse, partner or carer through a transfer on death). Nonetheless, we recognise that there is a wider issue here around the suitability of arrangements to make payments to the bereaved, and we would encourage the Executive Office to review this. Introducing this new scheme changes the victim support landscape in Northern Ireland, and the last comprehensive

review of victims needs was undertaken in 2013. We welcome commitments to update the Comprehensive Needs Analysis alongside the ongoing independent evaluation of The Executive Office's Victims and Survivors Strategy. These pieces of work must consider what more should be done to help the bereaved.

Dedicated payments to carers

Consultation Feedback

34. Some respondents argued that specific, standalone payments should be made to carers given their 'unsung hero' role in supporting those living with serious injuries.

Next Steps

35. This scheme allows an injured person to leave ten years worth of ongoing payments to a carer (or loved one) and other financial schemes are available to carers. However, carer support, including financial support, should be considered as part of the independent evaluation of The Executive Office's Victims and Survivors Strategy and the refresh of the Comprehensive Needs Assessment, and we recommend that the Executive Office and others consider carer support further.

Permanence

Consultation Proposal

36. We proposed that the scheme would make payments to those whose disablement was permanent - i.e. had reached a settled or steady state after appropriate treatment. Otherwise individuals would be likely to have to be subjected to regular reassessments, which could result in less certainty about continuing payments.

Consultation Feedback

37. Some highlighted that this might present challenges when considering those with late onset of, or late presentation for, a mental health condition caused by their injury. People may not have sought medical support until relatively recently or may have experienced symptoms of psychological injuries such as PTSD later in life. Some also noted that psychological injury can fluctuate, with better and worse periods of time.

Next steps

38. We therefore propose that, in those limited circumstances, payments will be made on the basis of an interim assessment of the current range of disablement for a fixed period, until a permanent assessment can be made. The length of time and level of disablement for an interim award will be determined by an appropriately qualified psychologist or psychiatrist (subject to a maximum of four years). During that period, further treatment could be sought. After that appropriate period, individuals would be invited back for a further assessment so that the permanent level of disablement can be established with a reasonable degree of confidence.
39. Those assessing disablement will consider disablement across an appropriate period and establish the average level of disablement across that period. As with all applicants, it will be possible to avail of the worsening procedure we set out later.

Backdating payments

Consultation proposal

40. We proposed that initial awards under the scheme would be backdated to the date that the Stormont House Agreement was signed (December 2014) - the significance of this date being the point at which political commitments were given to undertake further work to deliver a victims pension.

Consultation feedback

41. A majority of respondents supported the proposals around backdating. Some suggested other approaches, a few mentioning that it would have been even better if the backdating had been to the date of the Belfast/Good Friday Agreement and others feeling that awards should be backdated to the date of injury given the lifelong impact. Some others thought that the proposals were too generous in this area and that backdating was not desirable.

Next steps

42. We recognise the significant impact of living with disablement caused by a Troubles-related incident and the importance of backdating provisions being generous given the passage of time since commitments were made to establish such a scheme. At the same time, we must ensure that we do not ask more than is reasonable of the NI public purse, which of course also serves our hospitals, schools and a whole range of other vital public services.
43. Based on the significance of the Stormont House Agreement date and the broad support for the use of this date in consultation responses, we will backdate payments under the scheme to the date of the Stormont House Agreement (23 December 2014). In many cases the sums involved will not be small - a 5 year backdated payment ranging from £10,000 to £50,000 depending on the degree of disablement - and we consider this generous arrangement to be fitting given the passage of time since it was agreed that such a scheme should be established.
44. The UK Government will also review these Regulations after two years of the scheme's operation, and as part of that review will consider whether to continue to backdate awards after year three of its operation and beyond.

Lump sum option at 60

Consultation proposal

45. We proposed that applicants would be able to have access to a lump sum payment instead of a recurring payment when they turned 60, to give them choice and options. Such a lump sum would be calculated on the basis of the value of ten years of payments at the present degree of disablement and value. Sixty years old was suggested because this is in line with the usual definition of an older person used by the Commissioner for Older People Act (NI) 2011. The proposed conditions of accepting a lump sum included agreeing that the award would not be passed on to a carer/spouse as a continuing payment, although individuals could of course make provision through a will to give a similar, but not identical, effect.

Consultation feedback

46. The majority of responses to this consultation supported the inclusion of a lump sum option and our proposal for how it would operate. People saw this provision as giving agency to the recipient, enabling them to choose how they would spend monies they would later receive in present day, for example investing in home alterations, transport or medical needs. We were asked to clarify that the lump sum would be an option, not mandatory; we confirm that this is absolutely the case.
47. The importance of access to good financial advice for applicants when deciding whether to accept a lump sum or ongoing payments was a recurring theme, and we have already provided that the scheme must provide access to appropriate financial advice to those making financial decisions such as this.
48. Some were concerned that this aspect of the proposed scheme increased the risk of people facing financial difficulties in later life, for example if a beneficiary of the scheme spent the money quickly or lived considerably longer than ten years. Others were concerned about the

impact on spouses, partners or carers who would have had the regular payments transferred to them not receiving an ongoing award. There was some concern that beneficiaries might be pressured to follow a particular course of action or be subject to coercion.

49. A few responses suggested that the number of years to base the calculation on should be greater than ten, and that entitlement should begin at 55 as injured victims and survivors often have shorter life expectancies than the rest of the population.

Next steps

50. We recognise the concerns and motivations of those flagging potential risks and challenges associated with a lump sum. The coercion and undue influence risk will be managed by ensuring that the scheme has appropriate safeguarding mechanisms, and where there are specific mental capacity issues these will be dealt with through special provisions. Although we see the challenge of monies being spent quickly, that is ultimately a matter for each individual to consider, as is how they choose to distribute any future monies. In addition, the scheme is not designed to meet specific financial need; it is primarily to provide acknowledgement.
51. There was clear support for a lump sum provision and our proposed model, and so we have made such provision in the Regulation. We recognise that in some cases it may be appropriate to make exceptional provision for access to a lump sum in cases of terminal illness and so the scheme will also be able to make such arrangements, should an individual wish.

Transfers and applications from surviving spouses, partners and carers

Consultation proposal

52. We proposed that the injured beneficiary of the victims payment scheme should be able to nominate an individual to receive continuing payments

on their death. We proposed that the payments could pass to a spouse, civil partner or cohabiting partner¹, or a registered carer, and we suggested that it would be appropriate for the payment to be made at the full rate for a period of ten years. This was because of the second and third elements of our purpose: recognition of the associated impact of such disablement on carers, who are often family members; and recognition that in many cases coping with the disablement caused by the serious injury had an adverse financial impact on individuals, and their families.

53. Furthermore, we proposed that eligible carers or spouses of those who were seriously injured in a Troubles-related incident and who died in the period 2004-2014 should be able to receive the balance of payments that they would have received if the scheme had become operational in 2014.

Consultation feedback

54. There was widespread support both for the principle and approach to transfers, and welcome for the proposal to provide payments to eligible recipients where a primary beneficiary passed away between 2004-14.
55. Some argued that the transfer should be for life; others felt that payments should stop on the injured person's death, while others still suggested other time periods for transfer ranging from two to ten years. A few advocated an award tapering over a period of years for the transfer, and others advocated a lump sum option.
56. One consistent theme in feedback was that more should be done to ensure that those who are deserving of the transfer payment receive it. It was argued that the criteria for those who could be nominated for the transfer should be relaxed to ensure that those individuals who provided regular and substantial care but were not registered carers would not lose out. Some suggested that children should be specifically included in the eligible groups as many provide *de facto* care without payment or

¹ Those living together as if they were married or in a civil partnership.

being registered. Others argued that close family and next-of-kin should be able to be designated for the transfer.

Next steps

57. The intention behind this element of the proposal has received strong support within the consultation and we think that the approach we have taken is broadly correct.
58. The consultation has, however, highlighted a concern that carers, including children, who have undertaken genuine and significant caring responsibilities but did not have registered carer status or not sought financial allowances should be eligible. Given our intention to provide a measure of recognition of the traumatic effect of serious disablement on the family unit and carers, we are extending the eligibility criteria to allow anyone who can prove that they have provided a substantial amount of care (akin to the 35 hours per week a registered carer would provide) to be eligible to be nominated for a transfer. Although we appreciate the arguments about widening family transfers further, we believe it is right to offer the transfer to the closest family and/or those who provided the most care, and where this is next of kin or children who provided significant care, under this revised approach it will be possible to designate them as the transfer recipient on death. The Board will have limited discretion to consider exceptional cases in respect of this parameter.
59. Although we appreciate why some argued for the transfer to be for life, the transfer is intended to be a gesture recognising sacrifice made, not an enduring benefit, and ten years worth of payments will not be insubstantial amounts of money, particularly considering the potential benefit to the extended family unit if both the injured person and transfer beneficiary are part of it. Monies paid will supplement, not replace, existing benefits and provisions, and individuals will have the opportunity to invest, save or spend the money as they best see fit. We have therefore decided that the transfer will be for a period of ten years.

Date parameters

Consultation proposal

60. The consultation paper referenced a commonly used time period for the Troubles: beginning in 1966 and ending with the signing of the Belfast/Good Friday Agreement on 10 April 1998, and sought views on what suitable date parameters for the scheme might be.

Consultation feedback

61. This was understandably a question which provoked strong reactions. We genuinely sought to understand through this consultation what people felt would be the right date parameters. Public dialogue and debate about the end of the Troubles continues and there is not a single, settled view about whether and when the Troubles ended. Some believe that they continue today, citing the security threat level in Northern Ireland, continuing dissident paramilitary activity and isolated incidents like the tragic murder of Lyra McKee. Others were clear in their view that the Troubles extended beyond April 1998 given the volume of dissident incidents in the early 2000s. The majority agreed that it was right that the injured victims of the Omagh bombing be provided for, as well as those injured in some other incidents beyond 1998.
62. There was also some debate around a start date for the Troubles.

Next steps

63. We are mindful of the range of perspectives here, and the strength of feelings, including of those who argued that there should be no end date to the scheme. But this scheme is an exceptional one designed to provide acknowledgement to those injured during the worst of the NI Troubles and whose lives were irrevocably changed by incidents in that dark period of our past. Other state-sponsored mechanisms are also in place to support and recompense those injured in crime and criminality today, including victims of paramilitary activity.
64. In the Stormont House Agreement our political leaders recognised that Northern Ireland was in transition to long-term peace and stability, but

that an approach to dealing with the past was necessary. But there was also recognition that the past was firmly in the past. Although the Fresh Start Agreement set out a commitment to deal with the scourge of paramilitarism, there was no suggestion of equating organised criminality and dissident violence - often in response to the peace process - with the everyday horrors of the Troubles.

65. Given the journey of Northern Ireland society since the signing of the Belfast/Good Friday Agreement - including a fully functioning Executive, the decommissioning of arms by the major paramilitary groups in 2009 which represented a significant step towards the normalisation of the security situation, and the devolution of policing and justice powers in 2010 - and the difference between the present day and the height of the Troubles, we do not believe that it would be appropriate to have an open ended scheme and to imply that the Troubles continue today. Nevertheless, the number of incidents after the Belfast/Good Friday Agreement and into the 2000s must not be taken lightly and we are therefore extending the date parameters to April 2010, when policing and justice were devolved to the Northern Ireland Executive. The Board overseeing the scheme will also have a limited discretion to consider incidents either before or after these dates which appear to be so manifestly Troubles-related that it would be right to consider them in the interests of reconciliation and fulfilling the aims of the scheme.

Location of incidents and residency

Consultation proposal

66. We proposed that the scheme should be open to victims of the Troubles injured in the UK and ordinarily resident in the UK now or at the time of the injury. We specifically proposed to include those no longer resident in the UK because we know that a number of people left NI in response to a Troubles incident and now reside abroad. In the consultation paper, we noted that other states have a duty to provide for their citizens.

Consultation feedback

67. Some respondents felt that residency and location should not matter to eligibility for this scheme. Some argued that it should extend to incidents in Ireland, and called on the Irish Government to provide a similar scheme or to contribute to ours. Others argued for the scheme to include incidents in Europe, giving examples including attacks on UK armed forces personnel stationed in Europe. A few other responses expressed the view that the scheme should focus on Northern Ireland because it was the area most impacted by the Troubles. Many felt that the scheme should include those injured while studying or visiting Northern Ireland but not from here, such as the Spanish schoolchildren injured in the Omagh bomb.
68. A few felt that consideration should be given to whether an incident “originated” from the UK.

Next steps

69. It was clear from feedback that people in NI feel a sense of connection with foreign nationals injured in the Troubles and a desire to acknowledge their harm through this scheme as part of Northern Ireland’s journey towards reconciliation. We have therefore decided that the scheme will be open to anyone injured in an incident that occurred in the United Kingdom, regardless of their current or previous residency status.
70. We will also make payments to those injured in Europe who are UK citizens, or who are entitled to such citizenship on the basis of birth and the provisions of the Belfast/Good Friday Agreement, or employed as crown servants, to ensure that we include service personnel injured in Troubles-related incidents in Europe and any other people of Northern Ireland or the UK injured in Europe.
71. We do not recognise the concept of incidents “originating” from the UK during the Troubles and so have not made provision for the scheme to consider this.

Eligibility

Consultation proposal

72. In striking what we felt to be an appropriate balance between two polar positions on eligibility for this scheme, we proposed that those injured by their own hand would not be eligible for the scheme, because they are at least partly culpable for that injury, and caused cost and harm to society. Injured by their own hand would be assessed specifically on the basis of a criminal records check, and anyone involved in actively facilitating or participating in the incident from which the injury they were seeking to claim a victims payment arose would not be eligible.

Consultation feedback

73. The consultation received a broad spectrum of views, including those who supported our proposal. Others strongly believed that the inclusivity of the victim definition used in the NI Victims and Survivors Order 2006 and elsewhere must be maintained to determine eligibility for this payment. Others still argued that those with any conviction relating to the Troubles or thought to have been involved in a Troubles related incident should not be eligible for the scheme. Some thought that a special panel should consider the relevance of a conviction, and consider withholding or reducing awards on that basis. Many noted that a lack of agreement on exclusions had resulted in the scheme being delayed for too long, to the detriment of those seriously injured in the Troubles. On the one hand those advocating for the broadest inclusion argued that excluding people on the basis of conviction would be traumatising and resurface old wounds; on the other, those advocating a broader exclusions policy argued that not excluding more people would retraumatise and hurt victims.

Next steps

74. We have carefully considered all feedback received on this matter, as with all aspects of the scheme. Undoubtedly this is a difficult matter and one which often provokes strong views. We will continue to exclude those injured at their own hand from the scheme, as they caused harm

and cost to society and so we could not justify providing acknowledgment payments in connection with injury sustained through criminality (as evidenced by a spent or unspent conviction).

75. Having carefully considered consultation feedback, an independent Board will be appointed to oversee the scheme and will have discretion to withhold a payment where they consider it appropriate to do so because of an unspent serious criminal conviction, or in exceptional circumstances (having regard to material evidence). This provides a mechanism for deciding whether a conviction or, exceptionally, other evidence means that it would not be appropriate for a person to be entitled to an award through this scheme. The Board will have a mixture of legal and lay experience, and will act independently in making these decisions.
76. We believe that this approach is a fair, balanced and proportionate one, and whilst we appreciate that some may disagree with us, we hope that the greater good of helping many injured people without any convictions can be our collective focus.

Handling claims, including evidence and assessment

Consultation proposal

77. We proposed that the scheme needed to make two key evidence-based decisions. First, whether an applicant is eligible based on whether or not they were present at the incident in which they were injured. Second, evidence of the degree of disablement caused by the relevant injury.
78. We proposed an appropriate standard of evidential proof for both decisions would be the balance of probabilities. We proposed that establishing presence at a Troubles Related Incident would be best evidenced by a Police Incident Report, similar official documentation, or evidence from Doctors and other healthcare professionals to help determine on the balance of probabilities whether or not an applicant was present at the event in which they were injured. We had in mind, for

example, notes from presentation at A&E following an explosion and other public records.

79. We proposed to assess an applicant's degree of disablement through existing clinical evidence wherever possible, to reduce so far as possible the risk of re-traumatisation and trauma of further face-to-face examination. To minimise the burden on applicants we proposed that the scheme would seek suitable additional evidence from GPs, hospitals and other relevant healthcare professionals. In many cases we hope that notes from a range of sources (treatment by a specialist, previous benefits assessments etc) will provide evidence of the degree of disablement, but the precise evidence required to assess disablement will not be available for some applicants, for a variety of reasons. In these cases, we proposed to give applicants the option of a face-to-face clinical assessment. Where a face to face assessment is required, those carrying out the assessments will be well trained in trauma, the needs of victims and survivors, and the values and ethos of the scheme.

Consultation feedback

80. Some respondents said that it might be difficult to obtain suitable evidence, especially for some of the earlier incidents of the Troubles, and that some police and medical reports will have been destroyed, misplaced or could not be located.
81. The risks of re-traumatisation were highlighted further. Respondents stressed the importance of the need for relevant expertise when making decisions about eligibility and assessment. Some suggested that an independent panel should be set up, especially for eligibility decisions.

Next steps

82. We reiterate our commitment to this scheme being victim-centred and placing a high priority on the needs of victims. We will seek to manage the range of challenges and complexities around sources of evidence by the scheme supporting victims seeking suitable evidence and agreeing appropriate arrangements with bodies such as the PSNI, the Public Records Office, health trusts and GPs. We have set the burden of proof

as balance of probabilities, not higher, because we recognise that there may be some challenges with historical records - but it is right that we require sufficient proofs given the amounts of money attached to awards through our scheme.

83. An independent Board will decide on eligibility for the scheme, to ensure that claims are considered objectively and independently.
84. We will ensure that only appropriate qualified health care professionals assess disablement, and for those with psychological injury particular arrangements for expert assessment are put in place. The scheme will do as much assessment by paper as it can, but where a face-to-face assessment is required to substantiate a claim it must do all it reasonably can to support applicants through that experience and to manage the risk of re-traumatisation.

Other compensation and payments

Consultation proposal

85. We proposed to adjust awards in respect of previous compensation received over a certain threshold, given the potential argument that it could be unfair for some people who had received nothing (or very little) previously getting exactly the same amount from this scheme as those who had received or are still receiving sizeable payments in respect of relevant injuries. We also proposed to adjust awards directly for ongoing payments, such as war pensions, industrial injuries payments etc.

Consultation feedback

86. Many respondents did not want to see adjustments for historic compensation. A range of concerns were raised, including:
 - that the level of criminal injury compensation awards were often based on predicted short life expectancy, and people had in fact lived longer;

- that levels of award made were thought to be inconsistent, and in some cases considered derisory;
- that the applicant may have used the compensation received in the past to pay for reasonable adjustments, housing, medical treatment etc.;
- that the assessment and other processes were felt to be combative and in some cases considered to be humiliating/demeaning;
- that the applicant may not have been fit, mentally or physically, to challenge the amount of proposed compensation payment or have had appropriate legal representation.

87. There was general acceptance of our approach of adjusting for ongoing compensation, such as injury on duty awards and war pensions. Some argued that that adjustment should not impact ability for a spouse, partner or carer to access a transfer of the full amount that would otherwise have been transferred had such an adjustment not been made.

Next steps

88. We appreciate the many sensitivities and challenges around considering historic compensation. However, it is important that so far as possible we find an approach which is fair across the range of different circumstances and scenarios. We have therefore decided that the Board will have discretion to consider the amount by which monthly payments should be reduced, how long that reduction should continue and how it should taper off.

89. It will be required to take into account the following factors when deciding any adjustment to make:

- the amount received,
- the passage of time, and
- any other factor it considers to be relevant in considering what a just adjustment would be.

90. Furthermore, the Board will only consider adjusting awards in respect of historic compensation paid out for the same injury over certain

thresholds. Those thresholds shall be calculated by taking the proposed base rate award to be paid (depending on the degree of disablement) and extrapolating how much would have been paid to the date of injury if the scheme had existed (adjusting for inflation by applying a GDP deflator and the Bank of England base rate). We consider these thresholds to be appropriately high. Exemplar calculations are set out below and the scheme will need to make available user-friendly tools to help potential applicants understand this aspect of the scheme.

91. We will adjust awards directly for ongoing payments for the same injury through other public sector schemes. On the basis that these are very similar in quantum to these payments and have not dissimilar purposes to that of our scheme. Where such adjustments are made, this will not automatically read across in the amount transferred to a spouse, partner or carer - instead the same principle will be applied and where an injury payment is being made to them, an appropriate adjustment will be made to the total award that would have been payable to the injured person had their award not been adjusted. For the avoidance of doubt, adjustments would not apply for disability benefits including Disability Living Allowance, Attendance Allowance and Personal Independence Payments.

Exemplar threshold calculations

Year of injury	Degree of disablement	Threshold
1971	100% £9, 870 pa	£ 727,527.73
1981	100% £9, 870 pa	£ 522,844.49
1991	100% £9, 870 pa	£ 309,685.05

Year of injury	Degree of disablement	Threshold
1971	80% £7,896 pa	£582,022.19
1981	80% £7,896 pa	£418,275.59
1991	80% £7,896 pa	£247,748.04

Year of injury	Degree of disablement	Threshold
1971	60% £5,922 pa	£436,516.64
1981	60% £5,922 pa	£313, 706.69
1991	60% £5,922 pa	£185, 811.03

Year of injury	Degree of disablement	Threshold
1971	40% £3,948 pa	£291,011.09
1981	40% £3,948 pa	£209,137.80
1991	40% £3,948 pa	£123,874.02

Year of injury	Degree of disablement	Threshold
1971	20% £1,974 pa	£145,505.55
1981	20% £1,974 pa	£104, 568.90
1991	20% £1,974 pa	£61, 937.01

Disagreeing with decisions

Consultation proposal

92. We proposed establishing an appeals process for applicants who disagreed with a decision made by the scheme. An internal “reconsideration” would be the first step to reviewing a decision. If the applicant still disagreed with the (reconsidered) decision, we proposed establishing an independent appeals mechanism to consider it again.

93. We proposed a 12 months time limit to request a reconsideration and then, if desired, a further 12 months to appeal a decision.
94. We also proposed an option for re-assessment if an applicant's condition deteriorated, so that if applicants have evidence that their condition has deteriorated their case could be reassessed to see if their level of future payments should be increased.

Consultation feedback

95. There was widespread support across all the consultation responses for the establishment of independent appeals arrangements. Some requested further details. The importance of an appeals body having suitable expertise and experience of trauma was emphasised. The need to provide assistance to claimants going through the appeals process was also stressed.
96. The importance of some discretion beyond 12 months for appeal was also raised, to provide for exceptional circumstances; and clarification was sought that the appeals route would not remove the right of redress through the courts.

Next steps

97. After carefully considering the consultation responses which highlighted the need for this process to be robust and supportive while reducing the risks of retraumatisation, and as we are now establishing an independent Board to consider key decisions in respect of the scheme, there is no longer a need for both an internal mandatory reconsideration stage and a separate independent review. We will work with the relevant authorities to establish a suitable appointment process, to ensure independence. An appeals panel will be able to consider both eligibility and assessment decisions if an applicant disagrees with the original decision, and will have the power to request relevant evidence to enable it to recommend a change in the level of disablement award if required.

98. Applicants will have 12 months to make an appeal, and the Board will have discretion to hear cases beyond 12 months in exceptional circumstances.
99. Support and assistance will be provided to those engaging with the appeals process through the victims sector. None of these arrangements would preclude someone dissatisfied with a decision from seeking redress through the courts, but our intention is to create a non-adversarial environment in which cases could ordinarily be heard, by an independent body with relevant expertise.

Support

Consultation proposal

100. We set out in the consultation that the scheme would work with victim support groups to ensure that appropriate support is available to applicants, to inform their decision making about whether to apply and to provide support during the application process. We also explained that the scheme would make arrangements to give additional help to those who require assistance completing forms and making claims, and/or those lacking mental capacity to make decisions relevant to this scheme.

Consultation feedback

101. There was broad welcome for our commitment to excellent support arrangements for this scheme. Respondents felt that victims and their families should receive support from within their existing and trusted advocacy groups, but also highlighted the need to ensure that those not currently connected to any group are also able to access appropriate support mechanisms. Some responses raised the issue of resourcing the support infrastructure appropriately to meet the increased demand on existing services and structures that the introduction of the scheme will generate, including pre-empting that demand before the scheme opens to applications at the end of May.

Next steps

102. We remain committed to ensuring that adequate support arrangements are in place and have set out provisions for them in the Regulation. It is vital that an effective partnership approach is taken to ensure end-to-end support is provided effectively to applicants and prospective applicants. The scheme will be obligated to ensure that appropriate arrangements are in place, and we agree that this must involve both relevant sectoral expertise and provision for those not aligned to victims support groups.

Interaction with benefits and tax status

103. We stated in the consultation paper that the scheme would not affect entitlement to income-based benefits - by this we meant that it would not be treated as income for the purposes of means-testing for benefits such as Employment Support Allowance, Jobseeker's Allowance and Universal Credit. There was considerable support for this provision and we are pleased to confirm that this will be the case for benefits in the UK.
104. Some payments made under the scheme would ordinarily be subject to tax. The Government intends to introduce tax reliefs for payments made under the scheme, for income tax, capital gains tax and inheritance tax. These arrangements will be provided for in separate, specific legislation, as is the normal case with tax arrangements.

Review

105. We are grateful to all those who contributed to the consultation on this scheme and have carefully considered all feedback received as we have reached final decisions about its shape. But inevitably with any new scheme, it may benefit from improvements later and so we commit to undertaking a review of this legislation, with input from the relevant NI Departments, after two years of the scheme's operation. To do so in one year's time would be too soon after its establishment, but the scheme will also establish a victims' feedback and engagement panel which will

provide regular feedback on its operation to the scheme's managers. This mechanism must be used effectively to ensure that needs of victims are handled sensitively and continue to be met, as appropriate, through this scheme on an ongoing basis.

Practical next steps and arrangements

106. The scheme is due to open from end-May 2020. Clear and comprehensive communications will be issued and robust support arrangements established. The scheme will open to applications for a period of 5 years from the date its opening is advertised in the Belfast Gazette. We will ensure that messages about its establishment, eligibility and arrangements are clearly communicated before and at its launch. The creation of such a scheme has been delayed too long and we believe that this framework provides a fair, proportionate and balanced way forward for its establishment in the coming months.

ANNEX A - LIST OF ORGANISATIONS AND GROUPS WHO RESPONDED TO THE CONSULTATION

Alliance Party of Northern Ireland

British Medical Association

The Castlehill Foundation

Galway and Jackson Conflict Management

Commission for Victims and Survivors NI

Commissioner for Older People-for NI

Decorum NI

Division of Clinical Psychology NI

Docklands Victims Association

Democratic Unionist Party

The Ely Centre

Falls Community Council

Families Acting for Innocent Relatives

Families Moving On

Fírinne

Grand Orange Lodge of Ireland

Green Party NI

Healing through Remembering

Justice for the 21

KRW LAW LLP

Law Society of Northern Ireland

MUVE (Mid Ulster Victims' Empowerment) NI

NI General Practitioners Committee

NI Human Rights Commission

NI Prison Service Benevolent Fund

Omagh Support & Self Help Group

Pat Finucane Centre

Police Federation NI

Presbyterian Church in Ireland

Professor Siobhan O'Neill - Professor of Mental Health Sciences,
University of Ulster

Queen's University Belfast, Human Rights Centre, School of Law

Relatives for Justice

Royal British Legion

Royal College of Psychiatrists NI

Social Democratic and Labour Party

South East Fermanagh Foundation

Sinn Féin

Survivors of Trauma

Ulster Human Rights Watch

Ulster Unionist Party

Victims and Survivors Service

WAVE