



**Advice Paper:  
Individuals Under Threat**

**11 June 2014**

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## **Purpose**

The purpose of this advice paper is to:

1. Consider whether individuals under threat and intimidation can be classified under the legal definition of a victim and survivor as set out in the Victim and Survivor Order (NI) 2006;
2. If individuals under threat and intimidation are classified as victims and survivors to then consider the policy implications of this interpretation.

## **Background**

Over the period October 2013 to March 2014 the Commission received representations from 5 individuals and 2 groups. These individuals presented as individuals under threat and intimidation and requested the support of the Commission in accessing services under the Victims and Survivors Service (VSS) and other statutory agencies. All individuals who declared an immediate concern about threat to life or injury were passed to the PSNI immediately.

The Commission maintains a detailed record of queries received from individuals and groups. An anonymous version can be found in the appendix to this paper.

In addition to the Commission's evidence, the latest Peace Monitoring Report highlights that the Housing Executive recorded a sharp increase to 411 in 2012/13 in the number of people intimidated out of their homes and accepted on to the Special Purchase of Evacuated Dwellings scheme – up from 303 in 2011/12.<sup>1</sup>

## **Status of Advice Paper**

This advice paper has been prepared in response to a request for advice dated 12 November 2013 from the Director of Social Investment & Good Relations.

Whilst Ministers have corresponded with the Commissioner on this matter on 28 January 2014, formal policy advice has not been requested. Instead advice has been requested on the “evidence base” and “proposals for potential improvement”.

The Commissioner has formally responded to these two specific issues and will refer to this advice paper and recommendations on how to progress this complex and highly sensitive matter.

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<sup>1</sup> Community Relations Council (2014) Northern Ireland Peace Monitoring Report: Number 3, Belfast: CRC, p.11

## **Current Provision of Services to Individuals Under Threat**

There is currently no central signposting process to all services available to individuals under threat. The Department of Justice has advised that, in the event of an emergency, where someone has an immediate concern about a threat, they should contact the PSNI immediately on 999. In all other circumstances the person should contact the local PSNI Station. The PSNI can then arrange for a Crime Prevention Officer to provide advice.

The Housing Executive also has a statutory duty to assist homeless people, including people who have become homeless as a consequence of intimidation. The Department for Social Development has told us that the Housing Executive will arrange for temporary accommodation to be made available in the first instance and will provide permanent re-housing if required. Under the Emergency Grant Scheme a payment can be made (currently £754) to help people who have been forced to relocate as a consequence of intimidation with the relocation expenses. Where a homeowner can no longer occupy their home as a consequence of intimidation, the Housing Executive can purchase the house at market value under the Scheme for the Purchase of Evacuated Dwellings (SPED).

The VSS can currently provide support to individuals under the Individual Needs Programme in the form of Chronic Pain, Respite Break, Mental Health and Wellbeing, Carers, Disability Support and Education schemes. However, it is not clear whether individuals under threat also presented as a victim and survivor of a definite conflict related incident as set out under 2006 order.

The Commission is also aware that victims groups which previously specialised in supporting individuals under threat are no longer eligible to apply for funding under the VSS Victim Support Programme for this work.

## Legal Advice

The Commission sought legal advice regarding whether individuals under threat and intimidation can be classified under the legal definition of a victim and survivor as set out in the Victim and Survivor Order (NI) 2006.

The Commission's legal advice has stated:

"The Commission for Victims and Survivors for Northern Ireland has sought an opinion on the interpretation of "victim and survivor" in the Victims and Survivors (Northern Ireland) Order 2006 ("the 2006 Order").

The 2006 Order was amended by the Commission for Victims and Survivors Act (Northern Ireland) 2008. However, the definition of "victim and survivor" was not affected by the 2008 Act and therefore I will refer throughout this opinion to the 2006 Order.

Article 3 of the 2006 Order contains the interpretation of "victim and survivor" and states as follows:-

3. (1) In this Order references to "victim and survivor" are references to an individual appearing to the Commission to be any of the following— someone who is or has been physically or psychologically injured as a result of or in consequence of a conflict-related incident;

- a) someone who provides a substantial amount of care on a regular basis for an individual mentioned in paragraph (a); or
- b) someone who has been bereaved as a result of or in consequence of a conflict-related incident.

(2) Without prejudice to the generality of paragraph (1), an individual may be psychologically injured as a result of or in consequence of—

- a) witnessing a conflict-related incident or the consequences of such an incident; or
- b) providing medical or other emergency assistance to an individual in connection with a conflict-related incident."

Article 2 of the 2006 Order interprets the term "conflict - related incident" as follows:-

2. -"conflict-related incident" means an incident appearing to the Commission to be a violent incident occurring in or after 1966 in connection with the affairs of Northern Ireland;"

One of the key considerations is whether or not the Commission should consult and/or equality screen any guidance or policy it might issue as to the general meaning of "conflict-related incident". A great deal will turn on

whether the Commission wishes to produce a Guidance paper or policy on this matter. If it does then I believe consultation would be prudent. One of the duties of the Commission under Article 6 (5) is "to take reasonable steps to ensure the views of Victims and Survivors are sought concerning the exercise by the Commission of its function". It is therefore arguable that any general interpretation should be consulted upon by the Commission. No doubt this could lead to challenge.

In conclusion I believe the definition of victims and survivors is broad. In my opinion, it would be potentially unreasonable for the Commission to consider that the conflict stopped on a particular date or dates. The breadth of the interpretation clause would in my opinion make this difficult to sustain. I do not believe it would be reasonable to have a "cut off" date. Thus any dissident activities that create Victims and Survivors are likely to be covered by the general interpretation. Whilst I also believe that "a violent incident occurring in or after 1966 in connection with the affairs of Northern Ireland" could be more broadly construed to cover any number of violent incidents (eg G8 protests, anti-abortion protests) it may be reasonable to take a purposive interpretation of this and in general terms relate it to the "Troubles".

Whilst the definition of victims and survivors may be broad the Commission can to set its own strategic priority areas provided this is in accordance with the statutory remit."

In summary, the commission has drawn the following key conclusions from the legal advice:

1. The intention behind the 2006 Order was to have a broad definition that did not draw distinctions or narrow down the scope of the Order.
2. There is no cut-off date for the creation of victims back to the date of the Belfast/Good Friday Agreement in 1998.
3. In deciding on whether a violent incident is conflict-related the Commission would have to consider each specific incident and make a determination whether the individuals present as a victim and survivor.

## **Conclusion**

Whilst the definition of a victim and survivor is broad the Commission can set its own strategic priority areas provided this is in accordance with its strategy remit laid out as both legal duties and discretionary powers. This distinction is helpful not only to enable the Commission to prioritise its limited resources, but also to consider the policy implications and resource constraints of OFMDFM for victims funding administered through the VSS.

If OFMDFM wish to consider a formal policy position on this issue the Commission would be legally required to consult and equality screen on the general meaning of “conflict-related incident”.

It is apparent from the issues identified above that regardless of the preferred course of action this issue will not be resolved quickly. Therefore in the interim period it is essential that a central signposting process to all services available to individuals under threat is put in place and communicated to all stakeholders.

## **Recommendations**

In the interim period and/or in the absence of any policy position on individuals under threat:

1. To establish a central sign posting process to all services available to individuals under threat and to ensure that this is clearly communicated.
2. To continue with current process of the Commission determining on a case-by-case basis whether individuals under threat present as victims and survivors and therefore gain access to services and support through the VSS and other statutory agencies.

At the request of the First and deputy First Minister, the Commission can progress formal policy advice and in doing so would propose in the following order:

3. Seeking legal counsel’s opinion on the matter in view of the sensitivities and potential legal challenge.
4. Consulting with the Victims and Survivors Forum and take formal advice prior to progressing.
5. Consulting extensively within the victims sector in order to conduct a full equality impact assessment of a definite policy position on the matter.
6. Consider alternative policy area for funding this issue, including Good Relations and potential alignment with the work of ‘Together: Building a United Community.’