

## **COMMISSION FOR VICTIMS AND SURVIVORS RESPONSE TO PIP - INDEPENDENT REVIEW OF THE ASSESSMENT PROCESS (MARCH 2018)**

### **1. Background**

1.1. The Commission for Victims and Survivors for Northern Ireland (CVSNI) was established in June 2008 under the Victims and Survivors (Northern Ireland) Order 2006, as amended by the Commission for Victims and Survivors Act (2008).

1.2. CVSNI is a Non-Departmental Public Body of the Executive Office with the principal aim of promoting awareness of the interests of victims and survivors of the Troubles. It has a number of statutory duties that include:

- Promoting an awareness of matters relating to the interests of victims and survivors and of the need to safeguard those interests;
- Keeping under review the adequacy and effectiveness of law and practice affecting the interests of victims and survivors;
- Keeping under review the adequacy and effectiveness of services provided for the victims and survivors by bodies or persons;
- Advising the Secretary of State, the Executive Committee of the Assembly and any Body or person providing services for victims and survivors on matters concerning the interests of victims and survivors;
- Ensuring that the views of victims and survivors are sought concerning the exercise of CVSNI's functions; and
- Making arrangements for a forum for consultation and discussion with victims and survivors.<sup>1</sup>

1.3. CVSNI welcomes the opportunity to provide a response to the Department for Communities (DfC) review of how the Personal Independence Payment assessment is working in Northern Ireland.

1.4. This response has been informed by engagement with individual victims and survivors, the Victims and Survivors Forum and feedback obtained by the Victims and Survivors Service from organisations funded to deliver welfare advice.<sup>2</sup>

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<sup>1</sup> The functions of the Commission relate to those set out in the Victims and Survivors (Northern Ireland) Order 2006 as amended by the Commission for Victims and Survivors Act (Northern Ireland) 2008.

<sup>2</sup> The Victims and Survivors Service issued a survey to funded service deliverers seeking feedback to inform their consultation response. CVSNI would encourage DfC to note the insights from the organisations funded to deliver welfare advice contained in the appendices as an indication of the experiences of victims and survivors engaged in the PIP assessment process.

## 2. Contextual Understanding

2.1. It is recognised that many years of violence has created a society where much work needs to be done to deal with the legacy issues. This is no more clearly manifest than in meeting the needs of victims and survivors; those whose lives have been disproportionately affected by conflict-related incidents.

2.2. The impact of the Troubles on Northern Ireland society cannot be underestimated:

- 3,720 conflict-related deaths between 1966 and 2006<sup>3</sup>;
- 40,000 injured<sup>4</sup>;
- 213,000 experiencing significant mental health problems<sup>5</sup>.

2.3 Behind each statistic are individuals; many impacted through bereavement, physical and/or psychological injury or by providing care for a loved one.

2.4 It is well documented that the conflict has had a harmful impact on the social and economic health of our society. Victims and survivors are doubly affected as ordinary citizens living in a society that has been socially and economically damaged by conflict and violence and as individuals who have been directly impacted by violence.

2.5 It is recognised that compensation payments made during the conflict did not meet the needs of many victims and survivors.<sup>6</sup> In addition, there are a number of financial needs which are a direct consequence of individuals becoming victims and survivors. These include loss of income, loss of pension provision, the extra costs of disability and dependency and the cost of building and maintaining social support and resilience as a consequence of injury or bereavement.<sup>7</sup> Recognising the profound financial impact of conflict-related incidents, CVSNI has submitted advice to government in relation to a pension for those who were seriously injured during the Troubles.<sup>8</sup> This reparation proposal remains a priority for

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<sup>3</sup> McKitterick et al (2007) *Lost Lives*, Edinburgh: Mainstream Publishing.

<sup>4</sup> Smyth et al (1999) *The Cost of the Troubles Study – Final Report*: p.37.

<sup>5</sup> CVSNI (2015) *Towards a Better Future: The Trans-generational Impact of the Troubles on Mental Health*, Belfast: CVSNI.

<sup>6</sup> CVSNI (2011) *Analytical Review of Compensation*, Commission for Victims and Survivors Northern Ireland.

<sup>7</sup> CVSNI (2012) *Comprehensive Needs Assessment*, Commission for Victims and Survivors Northern Ireland, p.60.

<sup>8</sup> CVSNI (2014) *A Pension for people severely injured in the Troubles*, Commission Advice Paper, 11th June 2014, Commission for Victims and Survivors Northern Ireland.

CVSNI and all the more important considering ongoing strains on public services and the implementation of welfare changes.

- 2.6 CVSNI recognises the important role that welfare support provides to victims and survivors. This is all the more important considering a significant number of victims and survivors are part of an ageing population who have suffered acute psychological and physical health conditions that explain their dependence on welfare support.
- 2.7 CVSNI is acutely aware that many victims and survivors are currently living in fear and anxiety in relation to ongoing and impending assessment processes. This is a view that has been highlighted by the Victims and Survivors Forum and communicated frequently by individuals engaging with CVSNI and organisations advocating on behalf of victims and survivors.

### **3 Assessment Process**

- 3.1 The CVSNI position is that those who have suffered serious injuries as a result of a conflict-related incident, and who have already provided adequate and appropriate evidence of their conditions, should not be subjected to a further full re-examination. CVSNI has consistently advocated, at Ministerial level, for the application of an exemption policy to these victims and survivors to reduce levels of stress and anxiety associated with any assessment process.
- 3.2 CVSNI therefore welcomed the development of the agreed process for information sharing, with consent from the individual concerned, between DfC and the Victims and Survivors Service.<sup>9</sup> This process has been in operation since January 2017 and CVSNI has been advised that communication between the Victims and Survivors Service and DfC has been effective in resolving queries and supporting victims and survivors through the assessment journey, mandatory reconsiderations and appeals processes. Whilst this engagement has proved valuable, for individuals and those advocating on their behalf, CVSNI is mindful that not all victims and survivors are accessing individual support or engaged with funded support services.

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<sup>9</sup> The information sharing arrangement between the Victims and Survivors Service, DfC and Capita was established in relation to individuals registered with the *Support for the Injured Scheme* and known to be in receipt of DLA Care Component as a result of conflict-related injuries, who are making the transition from DLA to PIP.

3.3 CVSNI is aware that many PIP claimants have a limited understanding of the PIP process, how it differs to DLA and the relationship between Capita, DfC and the claimant. In particular, many claimants have a limited understanding of the concept of a functional assessment. In GB, DWP has accepted the need to improve communication with claimants and to improve understanding of the process and of the concept of functional information. DWP has agreed to explore means of doing so e.g. by developing video content, illustrating examples of the types of evidence, etc. CVSNI would welcome DfC committing to simplifying and improving communication methods to provide a clear explanation of claimants' responsibilities, to ensure accessibility and to improve understanding of functional information.

3.4 Whilst reducing the need for a face-to-face assessment is preferred, there will be occasions when contact will be required. It is therefore essential that those conducting assessments have an understanding of the unique nature of conflict-related incidents. Capita should be more thorough in assessing whether the claimant has any particular vulnerabilities/needs, in addition to having been identified as a victim and/or survivor. Furthermore, Capita should be mindful of the legal obligation to make reasonable adjustments to the assessment process and should be sufficiently flexible to accommodate any vulnerability and/or disability.

3.5 GB reviews of PIP have consistently highlighted the issue of specialist assessors: many claimants would feel more confident in the process if they were assessed by a person who has expertise in their particular health condition. In response, DWP maintains that PIP is a functional assessment and that 'matching' disability assessors to particular conditions is not necessary. It is CVSNI's view is that Capita should try and match where feasible. Furthermore, the assessor should do more to reassure the claimant that s/he is fully prepared e.g. is familiar with the case, has read all the supporting documents, etc. In addition, the assessor's questions could be specifically tailored to the medical condition(s) reported by the claimant. This would help alleviate the criticism of many claimants that the assessor 'asked me lots of irrelevant questions' – this perception erodes confidence.<sup>10</sup>

3.6 In order to address this need, CVSNI, Victims and Survivors Forum, Victims and Survivors Service and the Victims Unit of the Executive Office engaged with DfC and Capita Health and Wellbeing's training team in order to highlight the uniqueness of conflict-related injuries and the

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<sup>10</sup> Law Centre NI response to Independent Review of PIP Assessment (NI) Process

necessity for this to be recognised in training and delivery in June 2016.

This was followed by a seminar on 25 July 2016 with organisations funded to deliver services to victims and survivors.

3.7 Both engagements highlighted that many victims and survivors sustained severe and traumatic injuries, which have had long term effects on all aspects of their lives. Their injuries included blast and gunshot damage, loss of limbs and loss of hearing and vision. It was emphasised that many individuals have injuries that are not visible, for example, as a result of embedded shrapnel or gunshot wounds or those suffering from a disabling psychological condition, which continue to cause pain and distress. Those with injuries that are not as visible report a sense that they are suspected of malingering and a lack of sympathy with their condition.

3.8 CVSNI has been advised by Capita that this engagement led to the inclusion of a specific training module on conflict-related incidents for Disability Assessors. CVSNI welcomes the inclusion of a module as an acknowledgement of the nature of conflict-related injury, however feels that a computer-based training module is not reflective of the complexity of conflict-related trauma. CVSNI, in conjunction with the Victims and Survivors Service, would be happy to assist with any development of training in order to ensure that it is reflective of issues and best practice.

3.9 CVSNI would take this opportunity to highlight that any assessment process needs to be victim-centred, victim-led and holistic. In 2015, the Victims and Survivors Forum identified five principles that should be taken into consideration when delivering effective services and these are co-design and collaboration; victim centred; independent and impartial; inclusivity; and fit for purpose. CVSNI believes that these principles apply to the PIP assessment process and would enable an empathy and understanding of the impact of the Troubles on victims and survivors.

## **4 Supporting Information**

4.1 CVSNI has been contacted by a number of service deliverers highlighting concerns regarding what supporting information can be taken into consideration during the decision making process.

4.2 This is particularly relevant in relation to victims and survivors affected by psychological injury and how it may impact on day-to-day functionality. Further, many victims and survivors suffer from multiple injuries. In this sense, further information such as care plans, prescription lists and reports from health professionals other than GPs can be essential. It has been

raised with CVSNI that there appears to be inconsistency with the experiences of claimants being asked for further information to support their claim.

4.3 CVSNI would take this opportunity to highlight the need for awareness that supporting information can be considered from a range of professionals, not just from GPs. Equally, it is evident that it is not clear what further evidence claimants are being asked to provide. CVSNI is aware that different types of evidence can be helpful and that medical evidence is often given more weight by decision makers than other forms of evidence. The difficulty is that there are many barriers for claimants obtaining medical evidence and practices vary considerably across Northern Ireland: some GPs have a policy of not providing any evidence whereas other GP practices do provide evidence but charge fees that can vary between £10 and £75. Such fees may be prohibitive to those already in financially vulnerable positions.

4.4 Another barrier for claimants is the availability of evidence. Claimants who have long-term conditions may require no on-going involvement with their health care professional and therefore it follows that they might have limited access to relevant evidence to support their claim. Another problem is the lack of accessibility to a particular service: claimants may face waiting lists of many months for a diagnostic appointment and therefore may struggle to provide the information deemed necessary to support their PIP claim.

4.5 In addition, claimants often report that companions (carers/family members) are not given an opportunity to make an input at the assessment. The DfC PIP Assessment Guide is largely silent on how they should treat evidence submitted by carers and it seems that any input depends on the discretion of disability assessors. CVSNI consider this to be a missed opportunity: companions are likely to have very valuable information about a claimant's abilities. Indeed, given the purported focus on function, it seems that such information should be integral to the PIP process. In GB, DWP has agreed to work with the assessment providers to investigate how assessments could be better structured to incorporate input from companions.<sup>11</sup> We welcome this and urge DfC to take a similar approach.

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<sup>11</sup> DWP, 'Government's response to the Second Independent Review of the PIP Assessment' (December 2017), Annex A p 25.

## 5 Mitigation Measures

- 5.1 The commitments made in *A Fresh Start: the Stormont Agreement and Implementation Plan* can be viewed as recognition of the unique circumstances pertaining to Northern Ireland.
- 5.2 CVSNI understands there has been no take up of the additional 4 points available to victims and survivors (relating to mitigation payments and not entitlement to PIP) as per the December 2017 annual report on *Welfare Supplementary Payments, Sanctions, The Operation of Discretionary Support*.<sup>12</sup> Whilst every appeal process is unique, and the additional 4 points for victims and survivors may not be the most appropriate route, CVSNI has noted poor awareness regarding its purpose. CVSNI will continue to watch with interest how this avenue is engaged with during the lifetime of mitigation measures.

## 6 Clarification on Assessments

- 6.1 DfC guidance states that prior to concluding face-to-face consultations, 'disability assessors should give claimants an overview of the findings they have taken from the consultation. Claimants should be invited to clarify any points and ask any questions they have about the assessment procedure'.<sup>13</sup> It should therefore not be a surprise for claimants to later 'discover' that the assessor has recorded that a claimant is /not able to carry out a particular activity. Our view that this does not happen in practice and that claimants come away from assessments without any sense as to the disability assessor's findings.
- 6.2 Disability assessors should follow DfC guidance and provide all claimants with an overview of findings at the end of the assessment and should probe all issues rather than make assumptions. Claimants regularly report not feeling listened to during their face-to-face assessment, that the disability assessor made limited eye contact, that the assessor was focussed primarily on the computer, that the assessment was rushed, etc. Some of these concerns could be allayed fairly simply e.g. if the assessor provided more reassurances and explained why they were keeping notes, etc. Further, the system needs to be amended to include particular protections for vulnerable claimants / exceptional circumstances.

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<sup>12</sup> <https://www.communities-ni.gov.uk/publications/welfare-supplementary-payments-sanctions-operation-discretionary-support-and-standards-advice-and>

<sup>13</sup> PIP Assessment Guide Part One - The Assessment Process (2 Nov 2017)

6.3 CVSNI has also been approached by service deliverers to highlight the issue of audio recording face-to-face interviews. CVSNI believe that audio recording will reduce the prevalence of disputes and will make it easier for all parties to respond to any allegations/complaints. This will improve accountability and confidence in the PIP process. CVSNI is aware that in theory, audio recording is available for claimants however the restrictions and specification of the recording equipment is such that in practice claimants are rarely able to avail of audio recording. In January 2018, the Irish News reported that only 13 claimants in Northern Ireland had been able to do so.<sup>14</sup>

## **7 Ongoing Engagement**

7.1 CVSNI recognises that this call for evidence will be one of several methods used to gather information during the review.

7.2 Since November 2012, CVSNI has engaged with officials to ensure that the impact of welfare changes is minimised where possible on the victims and survivors community. In addition, DfC have made efforts to engage with the Victims and Survivors Forum in order to highlight the lived experiences of those physically and psychologically injured engaging with welfare support. The recent engagement between DfC, Capita and service deliverers funded by the Victims and Survivors Service to deliver welfare advice has been particularly beneficial.<sup>15</sup>

7.3 CVSNI has found this engagement worthwhile and constructive and recommends that this engagement continues in order to ensure that the impact of welfare changes is minimised, where possible, on victims and survivors.

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<sup>14</sup> *Irish News*, 'Stormont tells PIP claimants: Buy your own audio equipment for assessments' (6 January 2018)

<sup>15</sup> The Victims and Survivors Service facilitated meetings on the 23 November 2017 and 1 February 2018.

## **8 Recommendations**

8.1 CVSNI makes the following recommendations in relation to the assessment process;

- Training for Disability Assessors is enhanced to reflect the complexity of conflict-related trauma. CVSNI, would be happy to assist with any development of training;
- DfC to simplify and improve communication methods to provide clear explanation of claimants' responsibilities, ensure accessibility and improve understanding;
- Efforts are made to highlight the importance of supporting information and what further information can be considered;
- Carers should be allowed to input into the assessment process;
- Audio recording equipment should be provided by DfC;
- Continued engagement with the Victims and Survivors Forum, Victims and Survivors Service and funded welfare advisors.

8.2 CVSNI are committed to keeping this issue under review and plan to issue policy advice to government when most appropriate.

**March 2018**