



**The Commission for  
Victims & Survivors**

**Commission for Victims and Survivors response  
to the Northern Ireland Office Consultation on  
the Victims Payment Scheme**

**November 2019**

## Introduction

1. The Commission for Victims and Survivors for Northern Ireland (the Commission) 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).
2. The Commission is a Non-Departmental Public Body of the Executive Office. The principal aim of the Commission is to promote awareness of the interests of victims and survivors of the Conflict/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 the Commission's functions; and
  - Making arrangements for a forum for consultation and discussion with victims and survivors.<sup>1</sup>
3. The Commission welcomes the opportunity to provide a response to the consultation on the implementation of a new Victims Payment Scheme (VPS). The Commission has been a long standing advocate for the provision of a payment scheme for individuals severely injured as a consequence of their experience of the Troubles/Conflict.
4. The Commission is pleased to respond to a consultation in recognition of the fact that following the enactment of the Northern Ireland (Executive Formation etc.) Act 2019, the UK Government is currently legislating for a dedicated scheme which will have effect by 31 May 2020.

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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.

## Background

5. The Commissioner has provided two pieces of advice to government in June 2014<sup>2</sup> and May 2019 on the provision of a pension or payment arrangement to individuals who have sustained severe physical and psychological injuries linked to the Troubles/Conflict. The Commissioner for Victims and Survivor's advice paper submitted to the Secretary of State for Northern Ireland earlier this year contains a series of recommendations on various elements of the operation of a pension arrangement for victims and survivors. These include research-informed proposals in the areas of qualifying criteria related to psychological injury, assessment, delivery mechanisms as well as other considerations including backdating and date parameters for the scheme.<sup>3</sup>
6. This response does not seek to address all of the areas and questions contained in the consultation document. There are a number of proposals featured in the document that are congruent with the Commissioner's policy advice paper. Rather, the paper will highlight a number of significant issues that the Commission believes need to be considered by government in the development of the legislation underpinning the Victims Payment Scheme (VPS).

## Eligibility for the Scheme

### *Timeframe of the Scheme*

7. The Commissioner's advice paper was clear that there should be no arbitrary cut-off date in the administration of a new scheme. The paper recommended that any individual who applied to the scheme with a conflict-related injury should be assessed and if they qualify should receive an award regardless of when the injury took place, post 1966.<sup>4</sup> The Commission notes the current proposal to operate the scheme within the date parameters of the 1 January 1966 and the 10 April 1998. While the consultation document acknowledges the need to consider the date parameters for the scheme it is clear that the current proposal that would prevent applications after the Belfast/Good Friday Agreement will cause a deep disappointment and unfairness among many victims and their families.

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<sup>2</sup> June 2014 Advice Paper can be accessed here: <https://bit.ly/2s5U2FB>

<sup>3</sup> May 2019 Advice Paper can be accessed here: <https://www.cvsni.org/media/1981/2019-vaspa-advice.pdf>

<sup>4</sup> CVSNI (2019) *Victims and Survivors Pension Arrangement (VASPA) Advice Paper*, CVSNI: 11.

8. The lives of many individuals and families have been devastated by ongoing paramilitary activity since the signing of the Agreement in April 1998. For them the Troubles/Conflict did not end with the signing of the Agreement. Over 150 individuals have lost their lives to paramilitary violence orchestrated by both loyalist and republican groupings.<sup>5</sup> This includes the many individuals and families affected by the Omagh bombing on 15 August 1998 - the worst single atrocity of the Conflict/Troubles resulting in the deaths of 29 people and injuring hundreds more, many with life-changing physical and psychological injuries.
9. The Commission acknowledges that the establishment of an end date may provide a degree of clarity to the scheme. However the current proposal will only serve to cause hurt and frustration among those individuals and families whose lives were devastated by paramilitary violence two decades after the signing of the Agreement. The proposal to prevent applications for an incident that occurred after 10 April 1998 will exclude a considerable number of people affected by paramilitary violence in the months and years after the Agreement. The Commission would ask that no end date is applied and each application is examined as intended on a case by case basis. Reflecting on the purpose of the scheme which is to support individuals with severe and permanent physical and psychological conflict-related injuries it is likely the number of qualifying applicants would be limited. Further careful consideration on this issue needs to be undertaken before a final decision is taken on the imposition of an end date for the scheme.

#### *Secondary victim*

10. The Commission would welcome further clarity and evidence related to the decision to only make awards to 'secondary victims' who demonstrate close proximity of relationship to a primary victim and were 'physically present at the incident at the time or in its immediate aftermath' and sustained 'a diagnosable psychiatric injury by shock caused by direct perception.'<sup>6</sup> Many bereaved individuals including widows developed life-long trauma-related mental health conditions directly linked to the violent loss of their spouse or loved one.
11. In many instances, these individuals may not have directly witnessed or experienced the conflict related incident. Nevertheless, the deep anguish, loss and enduring pain connected to the bereavement, as well as exposure to subsequent non-conflict-related traumatic events continue to represent significant risk factors to enduring mental health problems. Experiencing these severe traumatic events has resulted in individuals including bereaved widows

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<sup>5</sup> See Nolan, P (2018) 'The cruel peace: killings in Northern Ireland since the Good Friday Agreement, The Detail.

<sup>6</sup> HM Government (2019) *A Legal Framework for a Troubles-related Incident Victims Payment Scheme – Government consultation*, October: 26.

developing lifelong conflict-related mental disorders including PTSD, clinical depression, complex grief, anxiety and substance dependency. Some of these individuals many in their older years will have been in the routine care of consultant psychiatrists and psychologists for decades. In these instances these individuals who experienced conflict-related bereavement are living with permanent mental disorders that regularly restrict their capacity to work and/or undertake daily tasks.

### *Jurisdiction*

12. The Commissioner's policy advice paper recommended that the scheme should ensure that qualifying individuals should be able to avail of the scheme regardless of where they live. This is in recognition that many individuals sustained serious Troubles-related injuries across the UK, Ireland and beyond. The Commission acknowledges the Government's proposal to 'open the scheme to victims injured in the UK and ordinarily resident in the UK currently or at the time of the injury.' It is also important to recognise that individuals sustained serious physical and psychological injuries during Troubles-related incidents that occurred in the Republic of Ireland and in parts of mainland Europe. The Commission welcomes the proposal that these individuals who were ordinarily resident in the UK at the time of these incidents are eligible to apply to the scheme.

## **Handling claims, previous compensation and disagreeing with decisions**

### *Previous compensation*

13. Under the current proposal the Government will seek to adjust awards taking into account previous compensation over a certain threshold. While the consultation document acknowledges that historic compensation for Troubles-related injuries were not always considered satisfactory, the Commission is concerned that the adjustment of awards based on assessment of previous (often derisory) compensation awards could represent a significant barrier for many deciding to access the scheme. The disclosure of previous compensation awards from Troubles-related incidents many of which occurred in the 1970s and 1980s and evidencing how those awards were allocated will be potentially invasive and difficult for many victims and survivors. The Commission recognises the need to approach the issue of previous compensation in a fair and equitable manner. It is also important to consider the inequities associated with historic Troubles related compensation awards and reflect these considerations in the setting of thresholds for the new scheme.

14. The Commissioner's 2019 policy advice paper recommended that a comprehensive information retrieval process should be established to support the administration of the scheme. This process should be developed by the lead agency administering the scheme and a range of statutory and other public agencies based in the health, justice, welfare provision sectors and elsewhere to ensure all relevant information including medical records are accessed.<sup>7</sup> The Commission acknowledges the importance of gathering and collating all relevant documentary evidence to establish an appropriate standard of proof as part of the effective decision-making within the Victims Payment Scheme. While individual claimants to the scheme will be responsible for providing as much supporting information as possible including medical records the scheme's information retrieval system should equally provide support to claimants to access as much supporting information as possible.

## **Other Considerations**

### *Communication*

15. The Commissioner's policy advice paper recommended that a full communication strategy and action plan be developed to support the implementation of the new Victims Payment Scheme throughout the UK. A carefully planned and thoughtful communication strategy informed by all relevant stakeholders is important to manage expectations among potential applicants relating to the purpose of the scheme, level of payable benefit, qualifying criteria, previous compensation, assessment processes, appeals mechanism and who the beneficiaries will be.

### *Ongoing review of the Scheme*

16. The Commissioner's policy advice highlighted the importance of building feedback from applicants and recipients into the process of implementing the new Victims Payment arrangement. The paper recommended the initiation of a one year review of the scheme so that learning from the feedback of victims, survivors and carers and wider stakeholders is considered and integrated into the future administration of the scheme. The Commission also recommended the establishment of an independent research and evaluation process that can advise government on all medical aspects of the scheme and related matters.<sup>8</sup> The Commission would again recommend that both these measures are implemented to support the effective implementation of the Victims Payment Scheme.

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<sup>7</sup> CVSNI (2019) *Victims and Survivors Pension Arrangement (VASPA) Advice Paper*, CVSNI: 8.

<sup>8</sup> CVSNI (2019) *Victims and Survivors Pension Arrangement (VASPA) Advice Paper*, CVSNI: 11.

## **Conclusion**

17. The Commission very much welcomed the opportunity to respond to this important consultation on the establishment of a new Victims Payment Scheme. Considerable time and effort has been invested by many stakeholders in recent years to impress upon government the importance and necessity of acknowledging and supporting individuals severely injured by their experience of the Troubles/Conflict. The Commission would like to commend the tireless campaigning of the Injured Group at WAVE who have been instrumental in bringing the case for a pension / payment arrangement to our local politicians and at Westminster.
  
18. There are many proposals in this consultation document that if implemented will support the effective operation of a long awaited payment scheme for the severely injured. There are other proposals that clearly require reconsideration and clarification to avoid causing unnecessary anxiety, disappointment and a sense of injustice among individuals who have lived with severe and permanent physical and psychological injuries who would currently not be eligible to apply for the scheme. The Commission hopes that these issues can be addressed within the ongoing process to finalise the regulations for the scheme in the weeks ahead.