

Annex A: Consultation questions

Name	Axel Schmidt
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Email (if applicable)	info@uhrw.org.uk
1. Are you responding as an individual or representing the views of an organisation? If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.	
Details of organisation (if applicable)	Ulster Human Rights Watch (UHRW)

Question 1: Do you agree with the proposed purpose of the scheme?	Yes	No
	X	
To provide acknowledgement and recognition to victims injured through no fault of their own.		

Question 2: Do you agree with the underpinning principles set out above?

Yes

No

X

2.1. The Secretary of State for Northern has indicated that the interpretation of a victim provided in the Victims and Survivors (NI) Order 2006 is not applicable in the context of the present proposed scheme. This is because this particular scheme will be administered by the Government and not by the Commission for Victims and Survivors.

2.2. The Government has insisted that it wants to provide additional support for seriously injured victims of the Troubles. The scheme would be made available to those living with permanent physical or psychological injuries which can be demonstrated to have been caused by a documented, Trouble-related incident.

2.3. The Government decided that the guiding principle for the scheme should be that it is open to individuals who were injured through no fault of their own. For example, terrorists who injured themselves as a result of carrying out acts of terrorism should be excluded (eg.: the bomber convicted for his part in the Shankill Road Bombing on 23 October 1993 and who injured himself while carrying the bomb into the shop should not be awarded a payment under this scheme).

2.4. The first principle mentioned by the Government states that the scheme should be victim-centred (para. 35). Although this appears to be commendable, the Government has not provided a definition of who will be considered a victim under the proposed scheme. It is therefore submitted that for the proposed scheme the Government should use the definition of victim provided in Section 29 of the Justice Act (Northern Ireland) 2015 which reads as follows:

“29. - (1) Subject to subsections (3) to (6), in section 28 “victim” means an individual who is a victim of criminal conduct; and, in relation to a victim, references to “the criminal conduct concerned” are to be construed accordingly.

(2) In determining whether an individual is a victim of criminal conduct, it is immaterial that no person has been charged with or convicted of an offence in respect of the conduct.

(8) “Criminal conduct” means conduct constituting an offence.”

2.5. In line with the victim-centred principle, the Government should avoid the re-traumatisation of innocent victims in making the scheme equally available to individuals who were actively engaged in criminal conduct such as acts of terrorism.

2.6. The Government sets another principle, for the scheme: it should be transparent in order to classify who will benefit from the scheme. In line with the definition of victim in the Justice Act (Northern Ireland) 2015 the Government should make it clear that only victims of criminal conduct, Particularly victims of terrorism will benefit from this scheme.

2.7. The Government has also laid down as a principle that the scheme will not be opened to “those injured through fault of their own”. The interpretation of the exclusion is extremely limited since it only applies to individuals who were injured as a result of their involvement in the orchestration of the relevant incident, as evidenced by a relevant criminal conviction.” (paras. 35 and 59). In practical terms the exclusion is likely to be weak and ineffective due to the criminal conviction evidence criteria attached to the proposed exclusion.

2.8. There is no requirement for the Government to apply such a restrictive interpretation of the exclusion which would open the scheme to individuals injured while actively engaged in criminal conduct, mainly acts of terrorism, for which there is no evidence of a conviction.

2.9. This principle should be amended in order to address the limitations of this exclusion, in compliance with Section 10(3) (d) of the Northern Ireland (Executive Formation etc.) Act 2019, which makes provision for eligibility criteria for payments that may relate to “whether or not a person has been convicted of an offence”.

2.10. The range of circumstances in which individuals engaged in criminal conduct, such as terrorists, may have been responsible for incidents causing their own injuries do not automatically presume that a criminal justice outcome would have been possible or realistic. The proposed exclusion as it stands makes this presumption, and for this underlying reason must be amended. Failure to address this will inevitably lead to recipients of the scheme being individuals responsible for criminal conduct, namely terrorists, and media coverage of this. This will then retraumatise innocent victims and eventually destroy wider confidence in the scheme for many of the victims it is designed to help. Such an outcome will also be contrary to the spirit of both the scheme and the government’s declaration on exclusion.

2.11. In order to make the wording of the exclusion more robust, we have identified groups of injured individuals who should be excluded in line with

the spirit of the legislation, and the clear intention of the government's declaration, but who would remain unaffected by the current wording requiring criminal conviction. These are:

- **Members of paramilitary organisations injured in punishment beatings by the organisation they were a member of or by another paramilitary organisation;**
- **Self-inflicted injuries where the incident perpetrated failed in its intent or was caused in preparation for an incident;**
- **Injuries inflicted on individuals engaged in criminal activities by security forces acting to prevent a terrorist incident.**

2.12. We therefore propose the following additional wording for the exclusion:

- ***Individuals who were injured as a result of their involvement in criminal conduct, as evidenced by a relevant criminal conviction;***
- ***Individuals who were injured as a result of their involvement in criminal conduct, as evidenced by the circumstances of the incident;***
- ***Individuals involved in criminal conduct who were injured by paramilitary organisations which they were actively a member of, or by another paramilitary organisation;***
- ***Individuals involved in criminal conduct who were injured as a result of the lawful use of force by Security Forces in defence of any person from unlawful violence.***

2.13. The Government should reconsider its approach so as to ensure that individuals injured as a result of their involvement in criminal conduct, particularly terrorist activities, whether convicted or not in relation to an incident, should be excluded from the scheme.

2.14. Those eligible for the scheme should be individuals who never engaged in any form of criminal conduct and who were injured as a result of criminal conduct by someone else. The scheme should also be open to those who were not involved in any form of criminal conduct and who were injured as a result of the use of force by security forces in defence of any person from unlawful violence (para. 57).

2.15. The scheme should be open to primary victims who were directly involved in the incident and secondary victims who witnessed the incident. The secondary victims of closely related victims who were murdered in a traumatic terrorist incident, in particular parents who lost their child(ren) or children who lost their parent(s) in acknowledged terrorist bombings should not have to demonstrate that they were physically present at the incident to be able to access the scheme (para. 58).

2.16. In order to assess application with regard to exclusions, a panel should be appointed to act as a tribunal to independently adjudicate if exclusions apply to applications where necessary. This panel and approach, as far as possible, should model the process legislated for in the Historical Institutional Abuse (Northern Ireland) Act 2019, and possess an associated appeals mechanism.

Question 3: Does the proposed approach to payments - including scaling awards in proportion to the severity of injury, level of awards, and adopting degrees of disablement methodology - seem fair and appropriate?	Yes	No
N/a	X	

Question 4: Based on the examples set out, do you consider 14-20% degree of disablement to be an appropriate entry point for the ongoing support to be provided through the scheme?	Yes	No
N/a	X	

Question 5: Do you agree with the proposed approach to backdating initial awards to the date of the Stormont House Agreement?	Yes X	No
N/a		

Question 6: Do you agree with the proposed approach to providing a lump sum option?	Yes X	No
N/a		

Question 7: Do you support the arrangements for the payments to continue, for ten years following the death of the injured person, to a nominated spouse, civil partner, cohabiting partner or registered carer?	Yes X	No
N/a		

Question 8: Do you agree that we should allow applications from surviving spouses/carers who would have been provided for if the scheme had been established in 2014?	Yes X	No
N/a		

Question 9: Should the suggested time frame be those injured 1 January 1966-10 April 1998?	Yes	No X
9.1. The proposed date for closure of the scheme excludes significant incidents (eg. Omagh Bomb 15 August 1998) which should be included. A more appropriate closing date would be 23 December 2014 as the date of the signing of the Stormont House Agreement.		

Question 10: Do you agree with the proposed approach to who will benefit from the scheme?	Yes	No X
10.1. In order to make the wording of the exclusion more robust, we have identified groups of injured individuals who should be excluded in line with the spirit of the legislation, and the clear intention of the government's declaration, but who would remain unaffected by the current wording requiring criminal conviction. These are: <ul style="list-style-type: none"> • Members of paramilitary organisations injured in punishment beatings by the organisation they were a member of or by another paramilitary organisation; • Self-inflicted injuries where the incident perpetrated failed in its intent or was caused in preparation for an incident; 		

- Injuries inflicted on individuals engaged in criminal activities by security forces acting to prevent a terrorist incident.

10.2. We therefore propose the following additional wording for the exclusion:

- *Individuals who were injured as a result of their involvement in criminal conduct, as evidenced by a relevant criminal conviction;*
- *Individuals who were injured as a result of their involvement in criminal conduct, as evidenced by the circumstances of the incident;*
- *Individuals involved in criminal conduct who were injured by paramilitary organisations which they were actively a member of, or by another paramilitary organisation;*
- *Individuals involved in criminal conduct who were injured as a result of the lawful use of force by Security Forces in defence of any person from unlawful violence.*

10.3. Those eligible for the scheme should be individuals who never engaged in any form of criminal conduct and who were injured as a result of criminal conduct by someone else. The scheme should also be open to those who were not involved in any form of criminal conduct and who were injured as a result of the use of force by security forces in defence of any person from unlawful violence (para. 57).

10.4. The scheme should be open to primary victims who were directly involved in the incident and secondary victims who witnessed the incident. The secondary victims of closely related victims who were murdered in a traumatic terrorist incident, in particular parents who lost their child(ren) or children who lost their parent(s) in acknowledged terrorist bombings should not have to demonstrate that they were physically present at the incident to be able to access the scheme (para. 58).

10.5. In order to assess application with regard to exclusions, a panel should be appointed to act as a tribunal to independently adjudicate if exclusions apply to applications where necessary. This panel and approach, as far as possible, should model the process legislated for in the Historical Institutional Abuse (Northern Ireland) Act 2019, and possess an associated appeals mechanism.

Question 11: Do you agree with the proposed approach based on residency and location of incidents?	Yes	No X
11.1. Residency in the United Kingdom should not be an eligibility factor, as was the approach taken by the Remembrance Fund in the Republic of Ireland.		

Question 12: Do you agree with the proposed approach to evidence and assessment?	Yes X	No
N/a		

Question 13: Do you agree with the proposed approach of taking account of other compensation/payments?	Yes X	No
N/a		

Question 14: Do you agree with the proposed approach to disagreeing with or reviewing decisions?	Yes X	No
N/a		

Question 15: Do you support the proposed support arrangements?	Yes X	No
N/a		

Question 16: Have you any other comments you wish to make about the proposed approach to the scheme?

16.1. The proposed scheme raises very serious concerns in relation to eligibility and exclusion.

16.2. The Government should reconsider its approach so as to ensure that:

- **Those eligible for the scheme are individuals who did not engaged in any form of criminal conduct and who were injured as a result of a criminal conduct by someone else or as a result of the use of force by security forces in defence of any person from unlawful violence;**
- **Individuals injured as a result of their involvement in criminal conduct, particularly terrorist activities, whether convicted or not in relation to an incident should be excluded from the scheme.**

16.3. If this is not done the scheme will fail to provide acknowledgement and recognition it was meant to deliver to innocent victims and particularly victims of terrorism.

If possible, we would be grateful for this form to be returned to us electronically as an email attachment. The email address for responses or queries is: vpconsultation@nio.gov.uk

Postal responses can be sent to:

Victims Payments consultation
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