

Troubles Permanent Disablement Payment Scheme (TPDPS)

(also referred to as the Victims' Payment Scheme)

(07-09-2020)

(The person must be permanently disabled.

Disablement can be physical or mental caused by an injury, whether mental or physical)

Regulations and guidance were made by the Secretary of State according to the Northern Ireland (Executive Formation) Act 2019.

Some part of the regulation should have come into force on 24th February 2020, particularly the designation by the Northern Ireland Executive of the Department that should exercise the administrative functions of the Victim's Payments Board. The decision to designate the Department of Justice (DOJ) to administer the scheme was finally made on **24th August 2020**.

The remaining provisions of the regulations making it possible to apply for the scheme should have been in place on 29 May 2020. It should have been the case for this part of the regulations to be implemented by the end of November. However, the Justice Minister said on 7th September that the scheme will not be available before **March 2021**.

Purposes of the Victims' Payment Scheme (Regulation 5 (6) and Secretary of State guidance):

- Acknowledge the harm suffered by those in the Troubles (Regulation 5 (6));
- Promote reconciliation between people in connection with Northern Ireland's troubled past (Regulation 5 (6));
- 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 (Secretary of State guidance).

The Victims' Payments Board (the Board):

The Board is established to make decision on applications.

The Northern Ireland Judicial Appointments Commission will appoint the Board's members (Schedule 1) made of:

- Legal members (members of the Bar or solicitors);
- Medical members (registered medical practitioners);
- Ordinary members (with appropriate knowledge or experience).

In addition, the Lord Chief Justice of Northern Ireland will appoint a person as President of the Board (a judge).

Staff members:

- The number of staff required for the Board will be determined with the approval of the Executive Office. There will be a Secretary of the Board and a deputy secretary of the Board.

For certain decisions a panel will consist of:

- One legal member or three members, including at least one legal member and one ordinary member.

Advisors may be appointed by the Board.

An annual report will be sent by the Board to the Executive.

Principles applying to the Victims' Payments Board (Regulation 4):

The Victims' Payments Board must, depending on the context:

- Prioritise cases where required;
- Be responsive to the needs of victims of the Troubles-related incidents;
- Communicate effectively with the public and victims;
- Implement a scheme that is straightforward and simple to navigate;
- Determine applications without delay;
- Deal with personal data sensitively.

Entitlement to victim's payments (Regulation 5):

A person is entitled to the victims' payments in respect of injury caused by a Troubles-related incident if:

- The injury is permanent disablement;
- The assessed degree of relevant disablement amounts to not less than 14%;
- The troubles-related incident took place in the UK or anywhere in Europe when the applicant was a British Citizen or was born in Northern Ireland or was outside the UK in the service of the Crown or was an accompanying close relative of a person serving outside the UK in the service of the Crown (ex. spouse or child);
- The Troubles-related incident took place on or after 1 January 1966 and before 12 April 2010.

Causation of the injury (Regulation 7):

The person's injury will be considered if the person:

- was present at a Troubles-related incident;
- Was present in the immediate aftermath of a Troubles-related incident in which a loved one died or suffered injury;
- Responded in the course of employment to a Troubles-related incident, in which a person reasonably believed a loved one had died or suffered significant injury.

Exclusion from the scheme (Regulation 6):

- **General consideration:** where a panel considers that the application of the scheme would undermine the purposes of the scheme (Regulations 5 (5)).

- **Total exclusion:** a person who has a conviction and that conviction was in respect of conduct which caused wholly or in part the incident. The guidance from the Secretary of State does not apply in this case because those injured by their own hands are not eligible for this scheme.

- **Other exclusions:**
 - The person has a **relevant conviction** that makes entitlement to the victims' payments inappropriate:
 - A relevant conviction is a conviction in respect of which a sentence is excluded from rehabilitation;
 - The Board and the President must have regard to the guidance provided by the Secretary of State (on 14 August 2020): convictions excluded from rehabilitation are conviction carrying sentences of longer than 30 months and so cover the most serious crimes that have been committed.
 - The test to be applied is whether the seriousness of the relevant conviction is outweighed by mitigating circumstances and relevant factors.
 - The starting point is that where the applicant has a conviction in respect of conduct which caused serious physical or psychological injury to another person, such a conviction would ordinarily make victims' payments inappropriate.
 - Evidence of continuing disregard for the law should also ordinarily lead the Board to consider entitlement inappropriate.
 - The Board may, even having considered mitigating circumstances and evidence of positive behaviour, still consider that the nature of the relevant conviction is such that entitlement to victims' payments is inappropriate.
 - In reaching decisions the Board and the President must have due regard to the stated purpose of the scheme: 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.
 - A list of factors and the approach to the factors that may be relevant to the consideration of whether a person's relevant conviction makes payment inappropriate has been provided by the Secretary of State.

 - The **exceptional circumstances** of the case make entitlement to victims' payments inappropriate:
 - The Board and the President must have regard to the Guidance provided by the Secretary of State (on 14 August 2020):
 - The exceptional circumstances are:

- Recent terrorist activity, as evidenced by the applicant having a terrorism-related conviction which has not been spent (but which is not a conviction excluded from rehabilitation);
- If the person caused, wholly or in part, the incident in which they were injured, as evidenced by a case or action proven to a civil standard.
- The Board may, even having considered mitigating circumstances and evidence of positive behaviour, still consider that the exceptional circumstances are such that entitlement to victims' payments is inappropriate.
- In reaching decisions the Board and the President must have due regard to the stated purpose of the scheme: 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.

Process:

- The President of the Board may determine the **procedure** in relation to the discharge of any of the Board's functions (this should be done before the scheme is open for applications to be made).

Making an application (Regulation 8):

The application:

- Must be made to the Victims' Payments Board in writing on a form approved by the Board;
- Include information as determined by the President;
- Be signed by or on behalf of the President of the Board;
- The time for making application will be five years.

Priority of applications (regulation 11):

The Victims' Payment Board may decide the order of priority in which application will be determined and to that end will take into consideration:

- The evidence provided by the applicants to assess whether it is likely to allow the application to be determined quickly;
- The age of the applicant;
- The health of the applicant.

Priority will be given taking into consideration whether the applicant is terminally ill.

Determination by the Board (regulation 12):

A panel appointed by the President of the Board will consider the application and determine whether the applicant is entitled to victims' Payment.

If there are more than one Troubles-related incident the panel will determine in relation to which of the incidents the applicant is entitled to victims' Payments.

Where the applicant has a relevant conviction, the panel must consist of three members.

A panel is bound by the assessment by a health care professional of the degree of relevant disablement of the applicant.

Assessment of the degree of relevant disablement (regulation 13):

- If the panel determines that the applicant is entitled to victims' payment the Board must arrange for the applicant to be assessed by a health professional;

The Board makes arrangements for guidance to be issued to the health care professionals regarding the assessment of the degree of relevant disablement, which have to be implemented by them (Schedule 2, 4). Disablement can be physical or mental caused by an injury, whether mental or physical.

- The health care professional must consider whether the condition of the applicant having regard to the possibility of changes in that condition allows the degree of permanent disablement to be assessed.
- The health care professional must:
 - o Assess the degree of permanent disablement and
 - o Make a report to the Board:
 - Specifying the assessed degree of relevant disablement and
 - Reporting the reason for the assessment.

Interim assessment (regulation 14):

Where the condition of the applicant does not allow the degree of permanent disablement to be assessed the health care professional must:

- Make an assessment as to when it will be possible to assess the degree of disablement which is called the interim period (maximum 2 years);
- Make an assessment of the degree of disablement of the applicant during the interim period;
- The Board will make arrangement for the applicant to be reassessed before the end of the interim period.

Assessment by a health care professional (regulation 15):

The Board will provide the health care professional with any relevant information in possession of the Board.

The health care professional must assess the degree of relevant disablement by:

- Considering any relevant information provided by the applicant or the Board;
- Carrying out an examination of the applicant;
- Considering the report of another health care professional who has carried out an examination of the applicant;

Where a health professional considers that an examination is necessary for the purpose of assessing the degree of relevant disablement, the health professional may request that the applicant attends or submits to an examination.

Only care professionals with experience and training in disability assessment medicine will carry out assessments.

Assessment of disablement: posthumous applications (regulation 16):

The Board must arrange for the assessment to be carried out by a health care professional and provide him/her with any relevant information.

The health care professional must assess the degree of relevant disablement of the deceased before death, considering any relevant information provided by the applicant or the Board and considering the report of another health care professional who has considered any relevant information or carried out an examination of the deceased.

The health care professional will make a report to the Board specifying the degree of relevant disablement and reporting on the reason for the assessment.

Notification to the applicant (regulation 17):

The Victims' Payment Board will notify the applicant in writing.

Determination of amount of victims' payment (regulation 18):

The Board will determine the amount of victims' payments payable to the applicant.

The amount will be:

- The appropriate rate subject to any adjustment made in accordance with regulations 19 and 20.
- The appropriate rate is the rate specified in column 2 of the table in Part 2 of Schedule 1 to the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(a) corresponding to the applicant's degree of relevant disablement.

Adjustment (regulation 19):

Payments of victims' payments to a person are to be reduced of the relevant payments received by that person:

- In respect of the same disablement to which the victims' payment relate and
- While the person is entitled to victims' payments.

Relevant payments are for example: disablement pension under the Social Security Contributions and Benefits Act 1992; any retired pay, pension awarded under the Naval Military and Air Forces Service Pensions Order 2006 in respect of disablement; payments under the Armed Forces and Reserve Forces Order 2011; pension under the Police Service of Northern Ireland and PSNI Reserve in respect of injury received in the execution of duty.

Adjustment in respect of past compensation (regulation 20):

The amount of victims' payment will be adjusted taking into consideration compensation that has previously been paid to the person in respect of disablement.

Making of payments (regulation 23):

Payment will be made monthly unless the Board considers the facts of a particular case justify other arrangements.

Lump sums (regulation 24):

A person is entitled to receive a lump sum if:

- The person is over the age of 60 or the person is terminally ill.
- The lump sum would be the amount that would be payable to the person over a period of ten years.

Transfer of entitlement on death (Regulation 9):

On the death of a person entitled to victims' payments (the beneficiary) a nominated person is entitled to such payments for the period of 10 years. Only one person can be nominated.

- The person must be:
 - o The spouse or partner or
 - o A person who is or used to be regularly or substantially engaged in caring for the beneficiary
 - This can be established if the person satisfies the conditions for entitlement to a carer's allowance;
 - A panel appointed by the President of the Board considers it is equitable in all circumstances to treat the person as having regularly and substantially engaged in caring for the beneficiary.

Posthumous applications (Regulation 10):

This regulation applies on the death of a person who would have been before death entitled to victims' payments.

An application may be made by a person who the deceased could have nominated under regulation 9(2). If there are several people applying under this regulation a panel, appointed by the President of the Victims' Payment Board, must determine who the panel reasonably considers would have been nominated by the deceased had the person deceased made an application.

Payments will be calculated as follows:

- In the case where the deceased died on or before 23rd December 2014 for the period beginning with 23rd December 2014 and ending 10 years after the date of death of the deceased;
- In any other cases for the period of 10 years beginning with the date of the deceased.

Power to require information by notice (regulation 29)

The Board may by notice require any person to provide the Board with any specified records, documents or other information for the purpose of determining whether a person is eligible for the victims' payments, determining the amount of the victims' payment or otherwise.