Guidance on decision-making for the Victims' Payments Scheme

Issued by the Secretary of State for Northern Ireland on 14 August 2020

Legal context

1. This guidance is issued by the Secretary of State for Northern Ireland in exercise of the power under regulation 6(4) of the Victims' Payments Regulations 2020, which says that the Secretary of State may issue guidance regarding the circumstances in which a relevant conviction or exceptional circumstances makes entitlement to victims' payments inappropriate.

2. Regulation 6(2) of those Regulations provides that a person is not entitled to victims' payments where the Board considers that the person's relevant conviction (defined as a conviction excluded from rehabilitation) makes entitlement to victims' payments inappropriate. Convictions excluded from rehabilitation are generally convictions carrying sentences of longer than 30 months and so cover the most serious crimes that have been committed. Regulation 6(3) additionally provides that a person is not entitled to victims' payments where the President of the Board considers that the exceptional circumstances of the case, having regard to material evidence, make entitlement to victims' payments inappropriate.

3. In taking decisions as to whether a relevant conviction or exceptional circumstances make entitlement to victims' payments inappropriate, the Board and the President must have regard to this guidance, as required by regulation 6(5).

4. This guidance does not apply to decisions where the applicant has a conviction in respect of conduct which caused, wholly or in part, the incident in which they sustained an injury. In accordance with regulation 6(1), those injured by their own hand are not eligible for this scheme.

Guiding principles for decision-making

5. This guidance is designed to support the Board and President in exercising their discretion to decide that entitlement to victims' payments is inappropriate (a "relevant decision").

6. Given the passage of time since the Troubles, Northern Ireland's contested history and other peacebuilding measures, the serious nature of relevant offences being considered, and the potential for mitigating factors and circumstances to be relevant, the Regulations provide that the Board will make

a case by case determination. In deciding whether entitlement is inappropriate the test to be applied is: whether the seriousness of the relevant conviction is outweighed by mitigating circumstances and relevant factors. The Board should take as its starting point 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.

7. Evidence of continuing disregard for the law should also ordinarily lead the Board to consider entitlement inappropriate.

8. The Board and President may, even having considered mitigating circumstances and evidence of positive behaviour, still consider that the nature of the relevant conviction or the exceptional circumstances are such that entitlement to victims' payments is inappropriate.

9. In reaching decisions the Board and 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 acknowledgment of the acute harm which they have suffered.

An applicant has a relevant (serious unspent) conviction

10. The following table contains a non-exhaustive list of factors that may be relevant to the consideration of whether a person's relevant conviction means entitlement to victims' payments is inappropriate. Against each factor is the intended approach to the factor. Not every factor will be relevant to every case; they should be considered only to the extent they are relevant. The weight to be given to these factors will be a matter for the Board to determine.

Factors to consider	**Approach**
The harm caused to someone else by the offence for which the applicant has a relevant conviction.	Where the applicant has a conviction in respect of conduct which caused serious physical or psychological injury to another person that will ordinarily mean that entitlement to payments would be inappropriate.

The specific nature of the offence and length of sentence	Continuing disregard for the law, as evidenced by a recent relevant conviction, would ordinarily mean that entitlement to payments would be inappropriate. Any mitigating circumstances or considerations taken into account by a judge in deciding sentence should be taken into consideration by the Board in determining whether entitlement is inappropriate - for example, where a Judge has referenced evidence of coercion in a sentencing decision, the board should ordinarily not decide that entitlement is inappropriate.
Age at the time of offence	An offence committed when the applicant was under the age of 18 should ordinarily be disregarded for the purposes of this determination.
The passage of time since that offence and the individual's behaviour since, including: ● any evidence provided of remorse, restitution or positive behaviour since the conviction; and ● any evidence of a continuing particular disregard for the law, evidenced by number, nature and recentness of any subsequent convictions	Offences may be disregarded where the applicant demonstrates remorse, restitution or positive behaviour since the time of that conviction. Where a continuing disregard for the law is shown as evidenced, for example, by recent convictions for offences other than minor ones, entitlement would be inappropriate.

Possible mitigating factors, including: ● the extent to which a medical adviser appointed by the Panel considers that vulnerability of the individual due to mental incapacity or brain injury contributed to subsequent offences, offending patterns etc.	In those circumstances, a panel should ordinarily not decide that entitlement is inappropriate.

Exceptionally in other circumstances (having regard to material evidence).

11. The exceptional circumstances (other than serious conviction) which make entitlement to victims' payments inappropriate are:

    a. 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).

    b. 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

12. In paragraph 11(a), a terrorism-related conviction means one of the following:

    a. A conviction for a terrorism-related offence within the meaning given by section 27 of the Counter-Terrorism Act 2008.

    b. A conviction where a court determined that that the offence had a terrorist connection under sections 31, 31 or 32 of the Counter-Terrorism Act 2008 or, in the case of offences committed before the coming into force of those sections, an offence where the findings of the court would, had the offence been committed after the coming into force of those sections, have justified a determination that the offence had a terrorist connection.

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