

A LEGAL FRAMEWORK FOR A TROUBLES RELATED INCIDENT VICTIMS PAYMENT SCHEME

CONSULTATION RESPONSE

POLICE FEDERATION FOR
NORTHERN IRELAND



22 November 2019

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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)	<p>The PFNI are the statutory representative body for police officers within the Police Service for Northern Ireland (PSNI). The PFNI have a responsibility to represent the interests of 98% of all NI police officers, from the rank of Constable to Chief Inspector. We have been in existence since 1971 and have therefore represented police officers from both the Royal Ulster Constabulary George Cross (RUCGC) and the PSNI.</p> <p>Whilst our membership is drawn solely from serving police officers, we retain a continued interest in the wellbeing of our retired members. Indeed, we regularly provide legal representation and provide support and treatment for retired police officers and their families. Therefore, whilst this submission is made in representation of our serving members, we are mindful of the impact of the Troubles on our retired colleagues.</p> <p>The PFNI are in regular contact with representatives from various groups who are a part of the wider police family, this include support groups, caring organisations and charities. As such, the views expressed throughout this submission are gathered from the broad range of groups we interact with on a regular basis, including our current and past membership.</p>

Question 1: Do you agree with the proposed purpose of the scheme?	Yes	No
<p>The PFNI agree with the proposals put forward for a Troubles related victims payment scheme. Indeed, we would like to reiterate our support for these proposals which clearly state that any payment would only be made to those who are 'living with a permanent disablement caused by injury through <i>no fault of their own</i>'.</p> <p>If you answered 'no', what would you change or what do you think the purpose of the scheme should be?</p>		

Question 2: Do you agree with the underpinning principles set out above?	Yes	No
<p>If you answered 'no', what principles do you think should be removed, added or amended?</p> <p>Whilst The PFNI broadly agree with the principles outlined within the proposals, we are keen to receive assurances regarding issues of privacy and security for any members of the security forces and their families who may be eligible to receive payment.</p> <p>Furthermore, it is our position that the issue of affordability must be considered from a victim-centred perspective. We believe that the scale of the financial package made available by the Government should be determined based upon a careful assessment of need, rather than strict budgetary limits. It should not be the case that a ring-fenced budget is <i>first</i> identified and the needs of victims made to fit into strict financial parameters.</p>		

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
<p>The PFNI are content with the proposed approach to making payments, however we would like to reiterate our position regarding the need to ensure that no claimants are re-traumatized at any stage of the process. Decisions should be taken by appropriately trained medical professionals and where possible without the need for lengthy discussions regarding details of the incident(s) which resulted in such devastating injuries (both physical and psychological). We would be especially keen to ensure that the process undertaken is simple, streamlined and is carried out as expeditiously as possible.</p> <p>If you answered 'no', what changes do you think would be needed to make the proposed approach fair or proportionate?</p>		

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
<p>If you answered 'no', what would you consider to be an appropriate entry point?</p>		

Question 5: Do you agree with the proposed approach to backdating initial awards to the date of the Stormont House Agreement?	Yes	No
<p>If you answered ‘no’, please tell us what backdating arrangements you would like to see in place.</p> <p>The PFNI do <i>not</i> consider the use of the date of the Stormont House Agreement (December 2014) as a fair or balanced approach for considering the backdating of payments to recipients. Whilst the Stormont House Agreement is undoubtedly an important agreement, the use of this date for this purpose would, in our view, appear to support the political failures of the previous 16 years and give credence to the impact of the failure to reach agreement on this crucial issue much sooner. The very people these proposals seek to support, i.e. the victims of the Troubles, stand to lose out as a direct result of these political failures. This cannot be deemed fair nor balanced.</p> <p>It is our proposal that the watershed moment of the signing of the Good Friday Agreement (i.e. April 1998), should act as the appropriate date for the backdating of payments. Unlike the Stormont House Agreement, the Good Friday Agreement is a legal Treaty, written in legislation and lodged with the United Nations. Contrary to this, the Stormont House Agreement is but a political agreement made between interested parties. This agreement is not reflected in law.</p>		

Question 6: Do you agree with the proposed approach to providing a lump sum option?	Yes	No
<p>The PFNI agree with the proposals that eligible recipients should be able to apply for a lump sum payment of the equivalent value of 10 years’ worth of payments. However, we are mindful of the complicated nature of such a decision which would reflect changing personal circumstances now as well as in the years to come. We would therefore like to see the addition of free access to personalised financial advice which could be requested by those eligible for the payments. This would help to ensure that recipients were able to make fully informed decisions about the impact of taking a lump sum payment versus a regular monthly payment for life.</p> <p>If you answered ‘no’, what alternative approach would you prefer?</p>		

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	No
<p>If you answered ‘no’, what arrangements would you like to see in place to make provision for those surviving primary beneficiaries?</p> <p>The PFNI are very supportive of the proposal to allow the primary beneficiary to nominate an individual to also receive a payment, on their death. This is an extremely worthwhile element of the proposals which recognises the intergenerational impact of the Troubles and the broader impact of attributable disablement on families and carers.</p> <p>However, following from the proposals outlined in Question 6 (i.e. the ability of recipients to <i>choose</i> to receive a lump sum payment equivalent of 10 years’ worth of payments or monthly payments for life), the PFNI are of the view that such a choice should also be offered to the nominated person. It would be beneficial to the individual to have the choice of the payment at full rate for 10 years or have the choice of a payment, appropriately reduced, for the remainder of the life of the nominated person. The PFNI feel that the inclusion of personal choice within all payments would strengthen the impact of the payment for all recipients.</p>		

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	No
<p>If you answered ‘no’, please tell us what different arrangements you would like to see in place.</p> <p>The PFNI strongly agree with the principle that applications should be allowed by surviving spouses/carers of those victims of the Troubles who have sadly passed away before this important payment was made available. However, as per our response to the previous questions, we do not feel that the date of the Stormont House Agreement is the appropriate timeframe nor do we agree that surviving spouses/carers should be entitled to ten years’ worth of support only.</p> <p>As previously stated, the use of the Stormont House Agreement in 2014 as the timeframe from which consideration will be given to surviving spouses/carers, effectively punishes</p>		

victims for the failures of our political leaders since 1998. As such, the PFNI believe that the spouses/carers of any victim of the Troubles who suffered a permanent disablement and who has sadly passed away should be eligible to receive the full payment which would have been made available had this scheme been in operation since April 1998.

In keeping with our previous response, we continue to believe that personal choice should be central to those receiving any payment, with options for receiving a lump sum payment, or an appropriately reduced payment over the time span relevant to each case.

Question 9: Should the suggested time frame be those injured 1 January 1966-10 April 1998?

~~Yes~~

No

If you answered ‘no’, what alternative dates would you propose to determine eligibility?

In response to this question, we draw upon the definition of a ‘Troubles related incident’ as outlined within the consultation paper i.e.:

“By Troubles related incident we mean an incident involving an act of violence or force for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there”.

Considering this clear definition, the PFNI do *not* agree with the suggested time frame for eligibility to this scheme of the 1 January 1966 to 10 April 1998. First and foremost, whilst this date was undoubtedly a watershed moment in the history of the NI Troubles, it did not mark a *complete* cessation of ‘Troubles related incidents’ and indeed, excludes some of the most heinous attacks, including the Omagh bomb in August 1998. Excluding the victims of this and other key post GFA incidents would be a shameful oversight of this scheme.

Secondly however, using this definition it is clear that this scheme cannot be considered a closed scheme with a definite end point. It is therefore our position that qualification should be on-going, with recipients eligibility determined by their injury as sustained within a ‘national security terrorist incident’. This criteria would ensure that all victims who have been injured since the signing of the Good Friday Agreement in 1998 are eligible for support, whilst also ensuring that victims of mindless criminality, rather than NI related terrorism, are not included.

On a differing point, we would also like to comment upon the eligibility of ‘secondary victims’ of which many will be security personnel who were present at the time of an incident or in its immediate aftermath. The PFNI are concerned by the inclusion of criteria which require secondary victims to have sustained a ‘diagnosable psychiatric injury or

shock caused by direct perception’. Whilst this may be possible in many cases, it is not 100% possible to consider that all security personnel will have been able to attribute the significant levels of psychological trauma experienced to a single event (or to multiple events as is possibly the case for many security personnel). This is especially true given the nature of the policing environment in the latter part of the 20th Century which did not (and in many cases still does not today) necessarily disclose psychological injuries, never mind attribute these to specific events.

As such, the PFNI request that the inclusion criteria for secondary victims *does not* exclude those who were present at an incident (either at the time of or in the immediate aftermath) and who are suffering from psychological injuries, including PTSD, which may not have been diagnosed *at the time*. Indeed, many of these types of injury are still being diagnosed to this day, and it is important that this delayed diagnosis does not exclude them from receiving this vital financial support.

Question 10: Do you agree with the proposed approach to who will benefit from the scheme?

~~Yes~~

No

If you answered ‘no’, please tell us what alternative approach you would like to see to ensure terrorists injured by their own hand do not benefit from the scheme.

The PFNI are wholly supportive of the proposed approach to who will benefit from this important scheme, however we would like to see one further clarification added to this eligibility criteria to reference a criminal conviction for ‘any other relevant terrorist related incident’. We therefore feel this statement should read:

“We therefore do not intend to make payments to individuals with a criminal conviction directly related to the incident in which they sustained their injury, or a criminal conviction for any other relevant terrorist incident”.

Question 11: Do you agree with the proposed approach based on residency and location of incidents?	Yes	No
<p>If you answered ‘no’, what approach would you like to see taken to location of incident and residency in determining eligibility?</p> <p>The PFNI feel that the criteria set within the proposals relating to residency and location of incidents is too narrow and risks excluding UK citizens who were injured in incidents carried out abroad.</p> <p>As such, we would like to see this criteria widened to allow for consideration of payments for those injured in terrorist related attacks abroad, by groupings associated with Northern Ireland, who were UK nationals at the time of the attack.</p>		

Question 12: Do you agree with the proposed approach to evidence and assessment?	Yes	No
<p>If you answered ‘no’, please tell us how you would amend this approach or an alternative approach you would like to see taken.</p>		

Question 13: Do you agree with the proposed approach of taking account of other compensation/payments?	Yes	No
<p>The PFNI agree with the broad proposals regarding taking account of other compensation/payments. It should not be the case that one group of individuals receives compensation from two different avenues.</p> <p>However, where other compensation/payments have been or are currently being paid, we believe that the recipient should have this payment adjusted to the upper level (i.e. if this new scheme provides greater financial assistance than the payments already received, the recipient should have this payment adjusted to the higher level).</p> <p>Furthermore, as previously stated we believe that this adjustment should be backdated to the Good Friday Agreement in April 1998.</p> <p>If you answered ‘no’, please tell us what approach you would like to see taken to other compensation/payments received.</p>		

Question 14: Do you agree with the proposed approach to disagreeing with or reviewing decisions?	Yes	No
<p>If you answered 'no', what process do you think should be used to deal with disagreements or reviews?</p>		

Question 15: Do you support the proposed support arrangements?	Yes	No
<p>The PFNI are acutely aware of the importance of support networks for those directly and indirectly affected by the Troubles and we are supportive of the proposals put forward within the consultation regarding the continued support for these mechanisms.</p> <p>However, we would request that consideration is given for the increased financial assistance available for these support organisations, in particular relating to the funding available for the current police support structures. This funding is essential to ensure independent support remains available to serving and retired police officers and that the security of our current and past membership is preserved.</p> <p>If you answered 'no', please tell us what additional or alternative support arrangements you would like to see in place.</p>		

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

Further comments:

The PFNI welcome the publication of this consultation and the commitment to ensuring financial support and recognition for victims of the NI Troubles. However, as detailed throughout this response, it is of critical importance that the payment of this support is victim centred and not limited by strict budgetary parameters, timelines and political failure.

In representation of our current and past membership, the PFNI are overtly conscious of the significant issue of psychological injuries sustained by many of those who worked in the security services throughout the Troubles and those who continue to do so today. We are mindful of the importance of the recognition offered through this scheme that many officers and their families continue to suffer as a direct result of singular and often multiple terrorist incidents, many of which targeted the police purposefully. These scars cast a long shadow and can have a significant impact on how lives are lived for many years after the event. Indeed, in many cases the true impact of such trauma has never been formally acknowledged or diagnosed.

The uniqueness of the policing environment during the Troubles era resulted in officers hiding their pain and suffering, as to disclose such psychological effects would have had implications for their career. Whilst society and policing in general have moved on from this era of non-disclosure, such stigma can linger resulting in the delayed diagnosis of psychological trauma. We therefore ask that recognition is given to the unique policing environment and that this is considered within all qualifying criteria.