



**QUEEN'S
UNIVERSITY
BELFAST**

The Victims' Payments Regulations and the politics of definitions

Lawther, C. (2020). The Victims' Payments Regulations and the politics of definitions. Committee on the Administration of Justice.

Document Version:

Publisher's PDF, also known as Version of record

Queen's University Belfast - Research Portal:

[Link to publication record in Queen's University Belfast Research Portal](#)

Publisher rights

Copyright 2020 the Author.

General rights

Copyright for the publications made accessible via the Queen's University Belfast Research Portal is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

The Research Portal is Queen's institutional repository that provides access to Queen's research output. Every effort has been made to ensure that content in the Research Portal does not infringe any person's rights, or applicable UK laws. If you discover content in the Research Portal that you believe breaches copyright or violates any law, please contact openaccess@qub.ac.uk.

The Victims' Payments Regulations 2020 and the politics of definitions

Dr Cheryl Lawther, Senior Lecturer, School of Law, Queen's University Belfast

The Victims' Payments Regulations 2020 came on to the statute book in January 2020. Known as the 'Troubles Permanent Disablement Payment Scheme', the regulations provide for the payment of a pension to victims and survivors who were injured and disabled as a result of a conflict related incident. According to the legislation, the purposes of the scheme are to "(a) acknowledge the harm suffered by those injured in the Troubles, and (b) promote reconciliation between people in connection with Northern Ireland's troubled past".

At first glance, the Scheme appears to settle the longstanding campaign for a pension for those seriously injured as a result of the conflict and responds to the historical inadequacy of the Criminal Injuries Compensation Scheme. It is also a practical response to the simple fact that with the passage of time, many of those injured have found their disability increase and financial security simultaneously decrease. However, the issue of who is eligible for a pension under the Payments Regulations has become a site of controversy. Under the Victims and Survivors (Northern Ireland) Order 2006, the legal definition of a victim in Northern Ireland is anyone 'who is or has been physically or psychologically injured as a result of or in consequence of a conflict-related incident', a care giver to the above, or someone 'who has been bereaved as a result of or in consequence of a conflict-related event'. As an inclusive definition of victimhood, the order includes all those affected by the conflict – civilians, members of the security forces, former members of paramilitary organisations, and their families. The order does not distinguish between how someone came to be injured or bereaved and takes the individual experience of suffering as its starting point.

Perhaps in an effort to avoid the controversial scenes and charge of creating 'moral equivalence' between civilian victims and members of paramilitary organisations, which accompanied the Consultative Group on the Past's (CGP) 2009 recommendation of a 'Recognition Payment' of £12,000, payable to all victims of the conflict, the Troubles Permanent Disablement Payment Scheme has adopted a narrower definition of victimhood. Under Regulation 6 it explicitly excludes any individual who "(a) has a conviction (whether spent or not), and (b) that conviction was in respect of conduct which caused, wholly or in part, that incident". Those who injured another person and received a conviction of 30 months or more can apply to the Board which will administer the scheme to have their application for a pension assessed. The



Board will have the discretion not to make a payment where a 'relevant' conviction would make payment inappropriate. The guidance makes clear that the category of 'inappropriate' will apply to anyone responsible for causing serious harm, such as murder, attempted murder or grievous bodily harm.

This move has pleased those who have campaigned on behalf of 'innocent' victims and who have advocated for a strict division between 'innocent' victims and 'guilty' perpetrators. The First Minister and leader of the Democratic Unionist Party (DUP), Arlene Foster, is, for example, on the record as stating, "It is right and proper that victim makers are not able to avail of this pension. It would be wholly wrong for bombers to be awarded a pension". Of course, many victims of violence and human rights abuses are innocent victims, both in respect to their non-combatant status and where individuals and communities had violence visited upon them without any morally or politically justifiable reason. However, cleaving to such a reductionist account of conflict is to mask the messy reality of violence and human rights abuses, and the complex range of harms that may result. In the Northern Ireland case, this means failing to acknowledge the experience of those individuals who do have convictions but who have, for example, also sustained physical and/or psychological injuries during imprisonment, as a result of torture or who were targeted by rival paramilitary factions or state forces.

From a rights-based perspective, the 'Troubles Permanent Disablement Payment Scheme' therefore excludes certain variants of victimhood and the needs and rights of those individuals. Appearing to designate some victims as more 'worthy' or 'deserving' of support than others, the scheme easily reignites questions around the existence of a hierarchy of victims. Such a position is neither human rights compliant or in keeping with the legal definition of a victim. Furthermore, it is contrary to the scheme's objective of promoting acknowledgement and reconciliation. Looking more broadly, the Payment Scheme may also have opened the door for such exclusionary calibrations of victimhood to stray into, and take further root, in the wider legacy debate in the coming months.