

GUIDANCE NOTE (GN 01/21): ADJUSTMENT IN RESPECT OF PAST COMPENSATION

AUGUST 2021

Background

1. The Victims' Payments Regulations 2020 (hereinafter referred to as "the Regulations") set out the eligibility criteria for a payment from the Troubles Permanent Disablement Payment (TPDP) Scheme. The Regulations define a "relevant incident" as "*a Troubles-related incident determined by a panel under regulation 12(3)(b) and 12(3)(c) to be an incident in relation to which the applicant is entitled to victims' payments*".
2. Each case will be considered on its individual merits and on a case-by-case basis.
3. In considering any application the Panel shall take into account the specific purposes of the Scheme as outlined at regulation 5(6) of the Regulations 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.*
4. Regulation 20(3) of the Regulations provides that the Board may use discretion in adjusting the amount of victims' payments payable to an Applicant where they have previously received compensation for the same disablement and that compensation exceeds the amount of "exempted compensation." A copy of regulation 20 is annexed hereto at Annex A for convenience.
5. Some levels of previous compensation are exempt from consideration. Where previous payments are not exempt, the Board has been vested with a discretion whether the amount of victims' payments payable to an Applicant should be adjusted where they have previously received compensation for the same disablement and that compensation exceeds the amount of "exempted consideration" and if so; "by how much and for how long."

6. This guidance note sets out how the Victims' Payments Board will apply discretion in relation to past compensation when considering entitlement to a payment under the TPDP Scheme.
7. Under regulation 20(2) of the Regulations, past compensation is defined as the payment of compensation paid out for the same injury or injuries –
 - (a) in proceedings on a claim; i.e. where proceedings were issued before a Court and were subsequently determined by that Court;
 - (b) in settlement of a claim (whether or not proceedings on the claim were actually listed before a Court; or
 - (c) under a scheme established under a Statutory provision. (See Annex B).
8. Where an application involves an Applicant who has received past compensation; the Board will have discretion to consider the amount by which monthly payments should be reduced, how long that reduction should continue for and how it should "taper off." They should consider an Applicant's life expectancy or a fixed period for any reductions, or even possibly a cap on how much the amount would be reduced by. The applicant is responsible to provide details of all payments made to and received by them on foot of any proceedings, settlement or relevant statutory scheme.

Exempted amount of compensation

9. The exempted amount of compensation related to any potential adjustment to payments is calculated as follows, as outlined in regulation 20(5)-(8):

Step 1: Calculate the amount an Applicant would have received had they been entitled to payments under the Scheme; from the date of the relevant incident. This is calculated as **the number of weeks since the relevant incident multiplied by the appropriate rate**¹.

Step 2: The amount of this payment is then adjusted for inflation using the Gross Domestic Product deflator published by HM Treasury² and (a) beginning with the date of the relevant incident and (b) ending with the date of the determination of the person's entitlement to payments under the Scheme.

¹ The appropriate rate means the rate specified from time to time 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) (weekly rates of pensions for disabled members of the armed forces of certain ranks) corresponding to the applicant's degree of relevant disablement.

² Latest information on the GDP Deflators is available from: www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp

Step 3: A final adjustment is then made to the amount calculated under step 1, to reflect the time value of money with reference to the Bank of England base rate³ (as per regulation 20(11)).

10. Where permanent disablement is caused by more than one relevant incident, the amount of exempted compensation is calculated by calculating the total of the sum of calculations carried out for Steps 1 to 3.

11. Under regulation 20(4), the Board is required to account for the following factors when deciding whether the proposed level of payment under the Scheme requires adjustments if in excess of the exempted compensation:

- (a) the amount of previous compensation received;
- (b) the period of time since that compensation was paid; and
- (c) any other factor the Board considers to be relevant.

12. In terms of what else could be considered relevant for the purposes of point (c), this could include use of monies to pay for reasonable adjustments, housing, medical treatment, care and other basic needs, any current financial hardship or monies lost or dissipated due to financial advice or divorce or substance or alcohol abuse or addiction issues, where those matters are features of the Applicant's psychological/psychiatric reaction to any Troubles-related incidents giving rise to the application. This list is not exhaustive.

³ Available from: www.bankofengland.co.uk/monetary-policy/the-interest-rate-bank-rate)

Regulation 20 of the Victims' Payments Regulations 2020

20.—(1) This regulation applies in a case where—

- (a) a person is determined to be entitled to victims' payments in respect of disablement suffered by that person or another person, but
- (b) compensation has previously been paid to the person so entitled in respect of that disablement, and
- (c) the compensation referred to in sub-paragraph (b) exceeds the amount of exempted compensation.

(2) The reference in paragraph (1)(b) to the payment of compensation is a reference to the payment of compensation—

- (a) in proceedings on a claim,
- (b) in settlement of a claim (whether or not proceedings on the claim were brought before a court), or
- (c) under a scheme established under a statutory provision.

(3) The Board may, to the extent that Board considers appropriate, adjust the amount of victims' payments payable to the person in respect of the amount compensation mentioned in paragraph (1)(b) which is in excess of the amount of exempted compensation.

(4) In considering whether, and to what extent, to exercise the power in paragraph (3), the Board must have regard in particular to —

- (a) the amount of compensation referred to in sub-paragraph (b) which is in excess of the amount of exempted compensation;
- (b) the period of time since any such compensation was paid, and
- (c) any other factor the Board considers relevant.

(5) The exempted amount of compensation is calculated by taking the following three steps.

(6) The first step is to calculate the amount a person would have received had they been entitled to victims' payments from the date of the relevant incident, by multiplying together—

- (a) the number of weeks since the relevant incident, and
- (b) the appropriate rate.

(7) The second step is to adjust the amount calculated under step 1 for inflation, using the ratio published by the Treasury and known as the Gross Domestic Product deflator by reference to the period—

(a) beginning with the date of the relevant incident, and

(b) ending with the date of the determination of the person's entitlement to victims' payments.

(8) The third step is to further adjust the amount calculated under step 1 to reflect the time value of money, with reference to the Bank of England base rate.

(9) Subject to paragraph (10), in this regulation "the appropriate rate" has the meaning given by regulation 18.

(10) In a case where disablement is caused by more than one relevant incident—

(a) the amount of exempted compensation is calculated by taking the sum of calculations carried out under paragraph (5) in respect of each incident, and

(b) the appropriate rate, in relation to a particular incident, means the rate specified from time to time 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 corresponding to the assessed degree of disablement attributable to that incident.

(11) The Bank of England base rate means—

(a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, or

(b) where an order under section 19 of the Bank of England Act 1998(21) is in force, any equivalent rate determined by the Treasury under that section.

ANNEX B

A list of the relevant statutory schemes includes:

Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968

Criminal injuries (Compensation) (Northern Ireland) Order 1977

The Criminal Injuries (Compensation) (Northern Ireland) Order 1988

The Criminal Injuries Compensation (Northern Ireland) Order 2002

The Northern Ireland Criminal Injuries Compensation Scheme 2002

The Northern Ireland Criminal Injuries Compensation Scheme 2009

GB Criminal Injuries Compensation Schemes 1964, 1969,1979,1990,1996, 2001, 2008 and 2012

The Northern Ireland Criminal Injuries Compensation (Amendment 2020) Scheme (2009).