

Reparations, Responsibility

 Victimhood in Transitional Societies

More than a Number: Reparations for those Bereaved during the Troubles

Luke Moffett and Kevin Hearty

September 2023

Executive Summary*

Compensation is an essential measure to remedy the harm caused to victims of unlawful killings. Compensation can acknowledge some of the loss and suffering next of kin experience, as well as providing them with some dedicated financial support in moving forward. While there have been efforts in recent years to remedy the harm caused to victims of historical institutional abuse and those seriously injured during the Troubles through compensation, providing similar measures to those bereaved as a result of the Troubles has been more difficult.

It is assumed that compensation during the Troubles to victims was sufficient and 'generous', given that £186 million was paid out in compensation between 1969-1998, with £26 million awarded to bereaved families.¹ However, this misrepresents the experience of victims. Most compensation was paid for property damage, and before 1977 there was no payment for bereavement, only loss of income or funeral expenses. From the data of 1000 compensation cases (55%) during our period (1966-1976), the total paid to bereaved families was £6.9 million. Furthermore, many families were awarded only a few hundred pounds, some less than £50, which was insufficient to compensate for the extrajudicial killing of their loved one. Despite this there has been no comprehensive account of how compensation was made to bereaved victims. This report provides new insights into the inadequacy of compensation to bereaved victims. In particular this stems from compensating for only income, expenses and dependency, instead of also compensation for suffering in the form of a non-pecuniary monetary award.

Now is a good time to revisit these issues, as the UK government is foreclosing victims' ability to seek redress through the courts through the Northern Ireland Troubles (Legacy and Reconciliation) Bill and there has been recent a government commitment to pay £87,500 to army widows, including those killed during the Troubles.² While there are some ongoing compensation settlements for those killed during the Troubles, this is piecemeal and ad hoc, based on inquest, inquiry or court findings into individual or group killings. At the same time, the Victims' Payment Board, established to adequately compensate disabled victims of the Troubles, has awarded compensation to four bereaved family members who were present in the immediate aftermath of an incident that killed their loved one. Compensation for all victims killed during the Troubles is a thorny issue. The recommendation by the Consultative Group on the Past of a recognition payment of £12,000 to all those

* Thanks to Daniela Suarez Vargas and Dr Nikhil Narayan for their research assistance on this report. Thanks to Dr Cheryl Lawther for her comments on an earlier draft of this report as well as to Jennifer C. Cornell for her editorial work and Colin Slack for designing this report. Thanks also to the staff of PRONI and Compensation Services for being so helpful in our archival research, in particular Claire Allen and Catherine Morrow. All errors are the authors' own.

1 Kenneth Bloomfield, *We Will Remember Them*, HMSO (1998) para.5.6.

2 While the campaign by the War Widows Association was for the reinstatement of pension rights for those who remarried, this was not possible for all individuals, so instead the government has committed to provide a flat-rate, single payment scheme by the end of 2023. See Ministry of Defence, Lump sum payment for war widows, Press Release, 17 May 2023 - <https://www.gov.uk/government/news/lump-sum-payment-for-war-widows>

bereaved resulted in all of its recommendations being rejected on the grounds that those who died while being involved in paramilitary groups would benefit from the scheme in the same way as civilians, thereby closing down the conversation on compensation for those bereaved. Yet nearly fifteen years on, the Victims Payment Board is awarding compensation for seriously injured victims, including those with relevant convictions.

We frame these issues as reparations, reflecting victims' right to reparations in international human rights law, alongside their rights to truth, justice and non-recurrence. Unlike truth and justice, which enable society and victims to know what occurred and who was responsible, reparations are measures that directly benefit victims by alleviating their continued suffering and remedying their past losses. Reparations includes measures such as compensation as well as rehabilitation, restitution (land/rights), measures of satisfaction (apologies, investigations, memorials) and guarantees of non-recurrence (institutional reform). While a number of compensation schemes did operate in Northern Ireland to mitigate the cost of the Troubles, none was fit for the purpose of remedying victims' harm, as their primary aim was to keep the economy afloat and enable insurance companies to continue to operate. In particular, these schemes did not remedy victims' non-pecuniary harm, i.e. their bereavement suffered from the killing of a loved one. Articulating a bereaved payment as reparations helps to fix it as a legal entitlement of victims, as well as to contrast previous efforts as inadequate and ineffective in remedying victims' harm.

In our report we draw upon archival and qualitative fieldwork with victims and civil society actors on reparations in Northern Ireland. The research involved interviews with over two dozen individuals, archival work in PRONI and the Linenhall Library, as well as online newspaper archives. In all, 1000 compensation claims for deaths were identified (55%), which allowed analysis in terms of victim status, gender, marital status and age. The report concentrates on the period of 1966-1976, reflecting the onset and height of the Troubles, in which in the space of a few years half of all those killed during the conflict died (1,799-1,866). It also focuses on this period as Northern Ireland in 1968 had just introduced a new compensation law in line with England and Wales, which was later revised in 1977. This later scheme, including a guaranteed bereaved payment for widows, was amended in the 1980s and replaced in 1988 with a new scheme to include a bereaved payment for parents who had lost a child under the age of 18. Importantly, although these later schemes were introduced to correct the shortcomings of those that preceded them, none was applicable retrospectively and therefore did not rectify the inadequacies of past payments.

Our report presents five key findings:

1. Compensation during the height of the Troubles was unequal and inadequate. For incidents in which multiple people were killed, some families were paid £50-90 and others £15,000. The families of women, single people, children and cohabitantes who were killed during the Troubles were paid a pittance, some as low as £43. Over a third of our sample received less than £1500, 100 of whom received less than £150 or no award at all. These were not isolated instances. Rather, they reflect the fact that, for those bereaved victims who were not dependent on their

- loved one's income, the law provided payment of expenses only, i.e. funeral costs. This was later remedied through subsequent laws, but it was only in 2002 that a bereaved payment was established for all those killed as a result of crime. While generally the families of civilians who were killed were unlikely to have access to a work pension unlike those in the security forces, widows of killed soldiers and police officers were often discouraged from claiming or withdrew their claims.
2. Compensation had a strong gendered dimension. Although women account for only 10% of those killed during the Troubles (1966-1976), they were the main claimants of compensation. The families of women who were killed disproportionately received lower awards than men, and cohabitantes were ineligible for claiming for the loss of their partner. Sixty-four of the 90 women in our sample (71%) received less than £1500, while a third (31) received £150 or less. There was also discrimination in how women were treated by courts, receiving lower awards due to their age, "good looks" or the brevity of their marriage to the deceased.
 3. While most claims went through the courts, those involving deaths by the army were dealt with through the Ministry of Defence, whose policy was to reach a settlement rather than go to court where they would likely have to pay victims two or three times the amount of compensation otherwise offered. The policy of settling with victims was also used to avoid cases being heard before the European Court of Human Rights in an effort to avoid censure from Strasbourg and to maintain army morale.
 4. There is a growing divide between those recent cases that have clarified the fate of those killed during the Troubles and the responsibility of the state through inquiries and inquests, and other victims who do not have access to such a process. The outcomes of these inquiries and inquests have enabled family members to bring civil litigation against the UK government and as a result secure compensation settlements. In the past five years, these settlements include payments ranging from £75,000 to £625,000 for deaths of family members in the early 1970s. Some bereaved family members are also benefiting through payments from the Victims' Payment Board based on them suffering serious injury amounting to disablement from being present in the 'immediate aftermath' of an incident in which their loved one was fatally injured. While this number is small (four cases so far), it is an arbitrary distinction and based on the chance of a bereaved family member finding the family member injured after a bombing or shooting, leaving other family members ineligible who do not meet this criterion.
 5. The UK government's proposed Legacy Bill will shut down the civil litigation avenue for those bereaved seeking adequate compensation. Given this direction of travel a complementary bereavement payment scheme should be opened to victims who lost a loved one during the Troubles. This would be a counterpart for the work already being carried out by the Victims Payment Board on behalf of seriously injured victims by compensating the bereaved. In addition, given the unlikelihood of there being further prosecutions or sufficient evidence to conclusively provide a complete account of how a loved one died, a

compensation payment could provide some consolation and official recognition of the loss suffered.

Given the demonstrable inadequacy of previous efforts to remedy bereaved victims' suffering, we recommend the establishment of a bereavement payment scheme. Although this scheme will likely cost £90 million to £250 million in awards alone, this is around the same as was budgeted for the institutions proposed by the Legacy Bill, only in that case the money will go to staff and lawyers, not victims. We do not propose the bereavement payment scheme as a means to pay off victims, but rather as a way to ensure that all those who suffered receive some individual acknowledgement and remedy, which the proposed *Independent Commission for Reconciliation and Information Recovery* (ICRIR) is unlikely to deliver. A single payment of either £20,000, or £75,000 or a fixed-term pension amounting to £50,000 to the closest relative(s) could be appropriate. It would be up to the payment body to determine the appropriateness of paying this amount to all eligible victims. We outline four options of apportionment: a fixed sum for all those killed and split between victims in one or more categories of eligible next of kin (for instance spouse/partner and children); an equal split sum for those in the same category (spouse/partner/child/parent/sibling); a baseline sum that allows multiple claimants; or a graded approach wherein each category has a fixed amount of compensation. Consideration should be given to offer those eligible a choice between seeking a lump sum or a monthly pension. To guarantee its delivery, compensation should have a statutory footing, either in the form of a new payments body or by an amendment to the Victims' Payment Regulations, as the assessment process required is likely to be considerable and too great for the Victims and Survivors Service to undertake. It is also worth exploring through consultation with victims and survivors whether other forms of reparations, such as a letter of acknowledgment, should accompany a compensation payment, and the role any future legacy body should play in their delivery.



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Introduction

Reparations for those bereaved as a result of the Troubles remains an outstanding legacy issue.³ The £12,000 recognition payment proposed by the Consultative Group on the Past was rejected in many quarters and derailed the discussion around compensation for those killed during the Troubles. Some victims we interviewed saw the recognition payment as a 'non-starter' because it equated killed civilians with dead terrorists. One person said such money was a contest over who was a victim and a 'war by another means'. Others were less concerned about who received payment than they were about those who sought to 'divide' victims by 'trying to ruin what was going on and trying to highlight their own personal [agenda]'. Despite this, in recent years a number of claims related to high-profile deaths during the Troubles have been settled and the Troubles Disablement Payment Scheme, which deals with injured civilians, former paramilitaries and members of the security forces, has been created. For victims we spoke to who had been compensated during the Troubles, the common response was that it was an 'insult', a 'pittance', 'arbitrary' and 'inhumane'. Compensation was even considered a 'dirty word', by some, because people associate it with 'blood money' or view families pursuing claims as doing so for financial gain. As our reparation demonstrates, compensation for those killed during the Troubles was inadequate, unfair and biased. For families, compensation is often the only means to seek disclosure of the facts and to clear the name of their killed family member.⁴ In short, it is a complex issue.

We frame compensation in line with international standards as reparations, in that it is a financial award intended to acknowledge the harm caused to victims of gross violations of human rights and to remedy their suffering.⁵ As such, compensation is a means to assert a victim's experience that they should not have been killed and to recognise the serious, long-term impact their death has had on their loved ones. Compensation has been used for millennia to remedy or alleviate damage or loss suffered by victims through the wrongdoer paying them money.⁶ In numerous societies emerging from mass violence, compensation has been often been implemented to acknowledge and redress a range of harms caused to victims of disappearances in Argentina,⁷ Nazi persecution⁸ and historical victimisation,⁹ and in some cases, such as the Iraq-Kuwait UN Claims Commission, to resolve inter-state

3 Relatives for Justice and Wave Trauma Centre have in recent years called for a bereaved payment, see their 2020 and 2021 reports respectively.

4 As stated by one widow for her husband shot dead in 1973. £1,500 for widow of shot man, Belfast Newsletter, 1 June 1979.

5 See the Belfast Guidelines on Reparations in Post-Conflict Societies available here: <https://reparations.qub.ac.uk/belfast-guidelines-on-reparations-in-post-conflict-societies/#:~:text=These%20Guidelines%20are%20designed%20to,societies%20affected%20by%20armed%20conflict.>

6 See Fernanda Pirie, *The Rule of Laws*, Profile Books (2021).

7 José María Guemba, *Economic Reparations for Grave Human Rights Violations: The Argentinean Experience*, in P. de Greiff (ed.), *The Handbook on Reparations*, OUP (2006), 21-47.

8 Christian Pross, *Paying for the Past: The Struggle Over Reparations for Surviving Victims of the Nazi Terror*, John Hopkins University Press, (1998).

9 James Gallen, *Transitional Justice and the Historical Abuses of Church and State*, Cambridge University Press, (2023), p196-222.

conflicts.¹⁰ Compensation has been traditionally practiced in a number of cultures around the world to settle disputes and ease demands for retribution or blood feuds amongst families, clans and communities. In private law, compensation in the form of damages to an injured party is a common remedy; as Dutch jurist Hugo Grotius said, ‘money is the common measure of valuable things’.¹¹ Compensation can enable victims to manage their suffering by spending it on private health services, investing it in a business or pursuing further education for themselves or their family. As such, compensation can allow victims a ‘freedom of choice’ to spend the money as they see fit.¹² Such flexibility enables compensation to be used to respond to a range of violations in countries emerging from authoritarianism or conflict.

Compensation has a long history on the island of Ireland, going back well over a thousand years as a means to resolve grievances.¹³ Changes in the late 1960s sought to bring Northern Ireland more into line with emerging good practices of compensation for criminal injuries in New Zealand and England and Wales. However, with the onset of the Troubles, these rules soon became inadequate and were not fit for purpose for dealing with sustained and widespread political violence. Within the first few years of the Troubles, the courts were inundated with claims, peaking at over 500 per week, leading to delays and overburdening the judicial system.¹⁴ As a result, new laws were introduced in 1977 and 1988, with amendments in 1982, to improve the scheme and deal with the volume of cases. A minimum bereaved payment was guaranteed to widows only in 1977, to parents of minors in 1988 and to all those bereaved in 2002—yet by 1977 more than half of all those who died during the Troubles had been killed. This meant that most bereaved victims did not benefit for these rule changes and the finality of their award could not be reopened under the criminal injuries compensation scheme.

Compensation for bereaved families is an increasingly pressing issue in light of the Northern Ireland Troubles (Legacy and Reconciliation) Bill, which is in the final stages of approval at the time of writing. If it becomes law in its current form, the Legacy Bill will close down the civil litigation route for many victims. At the same time, some victims are benefiting from new settlements being made as a result of inquests and inquiries; others are eligible under the Troubles Permanent Disablement Payment Scheme administered by the Victims’ Payment Board. This report aims to restart and inform the debate on a payment for those bereaved as a result of the Troubles. Lessons can be learnt from the tenacious and challenging advocacy of seriously injured victims of the Troubles who campaigned for nearly two decades to see the Troubles Permanent Disablement Payment Scheme come into operation.

10 See Luke Moffett, *Reparations and War: Finding Balance in Dealing with the Past*, OUP (2023).

11 Opinion in the *Lusitania* Cases, 1 November 1923, *Recueil de sentences arbitrales*, Vol. VII, p32, at 35.

12 Truth and Reconciliation Commission of South Africa Report (1998) Vol. 5, p179.

13 See Desmond Greer, *Compensation for Criminal Injury*, SLS, 1990.

14 HIA/.....MS/3558. In comparison in 2021-22 there were in total 3,707 compensation cases (71 per week), and 4,266 cases (82 per week average) in 2022-23. See Department of Justice Annual Report and Accounts for the year ending 31 March 2022, (2022), p136 and 31 March 2023 report (2023), p144.

As the years pass, however, those bereaved as a result of the Troubles do not have the time for a lengthy campaign. A bereavement payment scheme should therefore be introduced as a matter of urgency.

This report is split into two parts. The first outlines the compensation contexts and findings from our data collection. The second part explores what a bereaved payment scheme could look like and entail.

Methodology

This report is the final output of the Arts and Humanities Research Council funded ‘Reparations, Responsibility and Victimhood in Transitional Societies’ project that began in 2017. While during the project we continued our work on advancing a payment scheme for seriously injured victims, the issue of a bereaved payment arose on a number of occasions. Ethical approval was made through the School of Law at Queen’s University Belfast, in line requirements around confidentiality, consent, data protection and retention. As part of this project we interviewed over two dozen key individuals in Northern Ireland, Ireland and the UK about compensation, including the experiences of those bereaved and their receipt of compensation in the past. This was complemented with fieldwork in five other countries (Colombia, Guatemala, Nepal, Peru and Uganda), during which over 300 individuals were interviewed. Our interviews were completed in February 2020 before the Covid-19 restrictions were imposed. In writing up the final guidelines of the project and book in 2021-2022, the issue of bereaved victims in Northern Ireland became more apparent, especially following analysis of the practice of reparations for conflict-related killings in other jurisdictions. In 2021 we began trawling through the Public Records Office of Northern Ireland (PRONI) and newspaper archives to identify cases where compensation was paid to families of those killed during the Troubles. This involved seeking access from the Department of Communities and the Northern Ireland Office to most of the closed files in county court records in PRONI. The staff in PRONI were very helpful in assisting us to identify the relevant folders in this regard.

In 2023, with authorisation granted and Covid-19 restrictions eased, we started working through the closed records, which comprised tens of thousands of general compensation applications to the county courts. We focused our research on the period of 1966-1976, reflecting the onset and height of the Troubles, a period in which, in the space of a few years, half of all those killed during the conflict died (1,799-1,866).¹⁵ In 1968 the Northern Ireland Assembly also introduced a new criminal injuries compensation law based on income and dependency, in line with England and Wales; this was subsequently revised in 1977. Concentrating on a specific time period also made the project feasible, given the time it takes to work through the volume of applications to identify those involving bereavement.

The information in the records often comprised only the person’s name, court record

15 The Sutton Index gives 1,799 for this period out of a total of 3,532 killed between 1969-2001. Lost Lives gives 1,866 with a total of 3,637 between 1966-1999, and the RUC database records 1,699 in this period and in total 3,289 deaths between 1969-1998. All records up until the end of 1976 support that this period amounted to half of all those killed during the Troubles.

number, amount of compensation paid, and the date of the incident, with some references to the beneficiaries; other records were merely a payment register for an individual. We triangulated the data we collected with other sources such as the Sutton Index and *Lost Lives* to work out a person's age, marital status, location of incident and whether they were a civilian, paramilitary, security forces etc. From the PRONI and newspaper archives, we identified 363 compensation claims for deaths (20%), which allowed analysis in terms of victim status, gender, marital status and age. This initial research was shared with the Commission for Victims and Survivors and the Victims and Survivors Forum in June 2023, with the intention of finalising the report by September 2023.

In July 2023, Compensation Services in the Department of Justice reached an agreement with Professor Moffett regarding data protection and usage, allowing access to their records on compensation during our period of 1966-1976. While these records contain only rudimentary information on the name of the individual, the amount and date awarded, they provide a more comprehensive account of compensation that was paid during the Troubles. As a result of this access, a further 810 compensation claims were identified and then triangulated with the relevant databased. The addition of this wider pool of data did not substantively change the preliminary findings, though they did lower the average compensation amount from just over £9,000 in the smaller sample to £6,917. There was some overlap with the two data sets (173), leaving 1000 (55%) compensation cases for identifiable individuals who were recorded in the Sutton Index and/or *Lost Lives*. Effort was made to check that there were no duplications of claims, and any divergence in the amount of compensation between the PRONI record and Compensation Services records was resolved in favour of the latter, given that they were not simply court awards/applications, but payment ledgers.

There are limitations to this data. While we do make reference to a handful of cases in England and the Republic of Ireland, the vast majority of data comes from claims that were made within the jurisdiction of Northern Ireland, some of which include deaths that occurred elsewhere.¹⁶ The data itself also has limits. Only a few court records and decisions still exist, and most of the information reduces those killed down to numbers, as many supporting and explanatory materials, including decisions and transcripts, are no longer available. Variations in the way victims' personal details were recorded (e.g. full name or initials, inclusion or omission of middle names, different spellings) made it difficult to identify data in some cases. We relied upon those names, dates and other identifying information that could corroborated be with the register of deaths and heart attacks around the Troubles to have reliable information. We did not attempt to make a geographical or year representation comparable to the records of deaths in the Sutton Index or *Lost Lives*, given the difficulty and time-consuming nature of searching each name.

16 92.7% of deaths during our period occurred within Northern Ireland, with 68 deaths in the Republic and 64 in Great Britain. Six of the data points were for deaths in England and two in Dublin (0.08%).

We often went by what records we could locate and those noted in the ledgers as involving deaths, such as those naming personal representatives or 'dec'd'. That said, the data is roughly comparable. While accounting for only 55% of the deaths during our period, it captures almost half of the female deaths during this period (90/191), and yearly capture is comparable.¹⁷ One notable gap in the data concerns killed paramilitary members, who accounted for 276 deaths; we were able to identify only 61 individuals, with no record of any claim made by the family members of dozens for whom we searched.¹⁸

Dillenberger and Keenan have argued that the inability to 'understand' how or why death occurred can inhibit bereaved victims from processing conflict-related bereavement.¹⁹ This has a particular relevance to many of the deaths covered in this report, especially those in the earliest days of the conflict. Early on in the Troubles, violent deaths were sometimes the result of, or in response to, sporadic violence breaking out in particular areas as communities defended themselves and then sought to retaliate.²⁰ It has also been suggested that in some of the earliest cases a clear motive is difficult to identify, with personal grievance, mistaken identity and retribution entering the equation.²¹ To further complicate matters, some deaths, like those of the Disappeared, were shrouded in silence or misinformation, allowing rumour and conjecture to replace truth.²² In some cases the organisation responsible denied responsibility so as to avoid a public backlash.²³ Yet this would have frustrated families bringing timely claims, evidencing that a crime had occurred and that the person was dead.²⁴ In other cases, particularly those involving state killings like that of Trooper Hugh McCabe in August 1969,²⁵ official accounts were contested by local eyewitness testimony. The use of agents provocateurs, black flag operations, and undercover units dressed in civilian-style clothing further obscured the truth in many early cases of state violence.²⁶ The failure to award adequate compensation in many of these early cases might then have unhelpfully compounded the already difficult position that bereaved victims found themselves in.

17 1966 (1 out of 3), 1969 (10 out of 16), 1970 (10 out of 26), 1971 (90 out of 171), 1972 (309 out of 480), 1973 (148 out of 255), 1974 (147 out of 294), 1975 (187 out of 260), and 1976 (98 out of 297) – going by the Sutton Index.

18 This may reflect that the law requires cooperation with the police in the circumstances of their death and reporting it to them within 48 hours. Some notorious individuals had a yellow card in their records that prevented locating the compensation record for them as it has removed the code identifier for the relevant ledger.

19 Karola Dillenburger and Mickey Keenan, *Bereavement: A D.I.S.C. analysis, Behaviour and Social Issues*, 14 (2005) 92-112.

20 Andrew Sanders and Ian Wood, *Times of Troubles: Britain's War in Northern Ireland*. Edinburgh University Press, (2012), p6.

21 Edward Burke, *An Army of Tribes: British Army Cohesion, Deviancy and Murder in Northern Ireland* (Liverpool: Liverpool University Press, 2018), p.viii.

22 See Lauren Dempster, *Transitional Justice and the 'Disappeared' of Northern Ireland: Silence, Memory, and the Construction of the Past*, Routledge (2019).

23 Sanders and Wood, p53.

24 From our data some claims for compensation were paid once the remains of the victim were found, months, even years, later.

25 Sanders and Wood, p5.

26 Bill Rolston, 'An effective mask for terror': Democracy, death squads and Northern Ireland, *Crime, Law, Social Change*, (2005) 44(2) 181-203.

As Damien McNally notes, it is important to understand how the political, social and cultural response to particular deaths impacted on victims' ability to process their bereavement.²⁷ However, these were fluid circumstances, which changed in tandem with the "ebb and flow" of the conflict. How the Troubles were framed, and indeed fought by, the relevant actors often determined the changing political, social and cultural response to conflict-related deaths. That is, not only did it have a material impact on the level of death, the location of death, and who was targeted for death, but it also had an impact on how this death was interpreted and presented.

It is important to bear in mind Kenneth Bloomfield's observation that most of those killed during the conflict were 'the many "little people" caught up in violence, often in relatively isolated incidents too soon forgotten outside the immediate family'.²⁸ Especially, though not exclusively, in the earliest years of the conflict, the grim reality was that death intruded into the everyday contexts without victims having to seek it out. One's thoughts might naturally turn here to 9-year-old Patrick Rooney who was killed by a stray RUC bullet in August 1969 while sitting in the living room of his Divis home, to the patrons killed in McGurk's Bar while enjoying a drink, or to the Belfast city centre shoppers caught up in the Bloody Friday bombings. The photos used for the cover of this report are from a memorial in the centre of Belfast that itself reflects on the scale of the first 1500 deaths during the Troubles, marking each incident by the number of persons killed. The scale of the loss on the individual, family and societal level is devastating; even reading the small excerpts on each death in *Lost Lives* gives only a snapshot of the human cost of what was lost during the Troubles.

This is the backdrop against which the compensation payments critiqued in this report were made. It has often been said that during times of conflict 'life becomes cheap'.²⁹ In acknowledging the contextual importance of 1966-1976, this report unpacks the factors that made life 'cheap' both *figuratively* and *literally* through compensation for Troubles-related bereavement. In the following sections the report will further dissect how gender, class, age, circumstances surrounding death and the actor responsible for death all impacted on the payment of compensation in much the same way that it did on the political, social and cultural responses to those deaths. The report also interrogates how these factors fed into the process used to determine whether or not compensation would be awarded to families bereaved during the conflict and how much this would be. In short, it takes a critical lens to how the state, through statutory compensation, valued the lives of different individuals during the period 1966-1976.

The reaction of victims is also critically examined. This is of central importance if we are to gain an insight into the role that compensation can, and even should, play in providing reparation to those bereaved through conflict-related violence.

27 Damien McNally, The significance of social and political context: A qualitative study of adults bereaved during childhood and adolescence due to the Northern Ireland Troubles, *Quest* 5, (2007) 30-46.

28 Kenneth Bloomfield, *We Will Remember Them: Report of the Northern Ireland Victims Commissioner*, Sir Kenneth Bloomfield, NIO (1998), para.5.15.

29 Raman Kapur and Jim Campbell, *The Troubled mind of Northern Ireland*, Routledge (2018).

As is discussed in subsequent sections of this report, quite often the compensation system failed to meet victims' expectations on compensation, leading to a consensus that the State did not value their loved ones or regarded them as blameworthy for their own demise. Granted, there will always be some victims who refuse to accept any amount of 'blood money',³⁰ but in other cases compensation payments that might have alleviated the socio-economic disadvantage resultant from bereavement were not forthcoming. This was particularly pronounced in the cases of ordinary people from working-class communities who often felt at a disadvantage in comparison to the financial support seemingly available to the families of killed security force members.³¹ At the same time, however, some of the recipients of compensation felt that there was a stigma attached because many in the close-knit communities where they lived believed that they had benefitted financially from being victimised – in some cases erroneously believing that compensation had set the victims up for life.³²

Part I - Compensation Context

This report focuses on compensation for Troubles-related bereavement during the period of 1966-1976. While we accept that there were many significant challenges in the nature and the reality of claims-making during that timeframe, it is important to outline the schemes at this opening juncture, before providing a fuller rationale for choosing this timeframe. The focus on this early period of the Troubles/conflict in and around Northern Ireland reflects that it was not until the late 1980s that new compensation laws were introduced that moved towards paying awards to bereaved family members on the basis of grief rather than the income of the deceased. It was only as a result of political and media pressure placed on the UK government to improve the plight of widows that from 1976 onwards a baseline discretionary payment system was put in place, and only from 1988 onwards that a bereavement payment became available for parents of children who were under the age of 18 when they were killed. However it was not until 2002, following Kenneth Bloomfield's critical review of compensation provision in Northern Ireland, that a bereavement support payment was introduced for relatives of all killed victims.³³ Importantly, all these provisions were for victims who died after these dates, meaning that the families of most victims killed during the Troubles (1966-1976) were ineligible for compensation.

In our sample of compensation awards (N=1000), the lowest award was £43 to cover the funeral costs of a female victim caught up in a bombing.

30 Claire Moon, 'Who'll Pay Reparations on My Soul?' Compensation, Social Control and Social Suffering, *Social and Legal Studies* 21(2) (2012) 187-199.

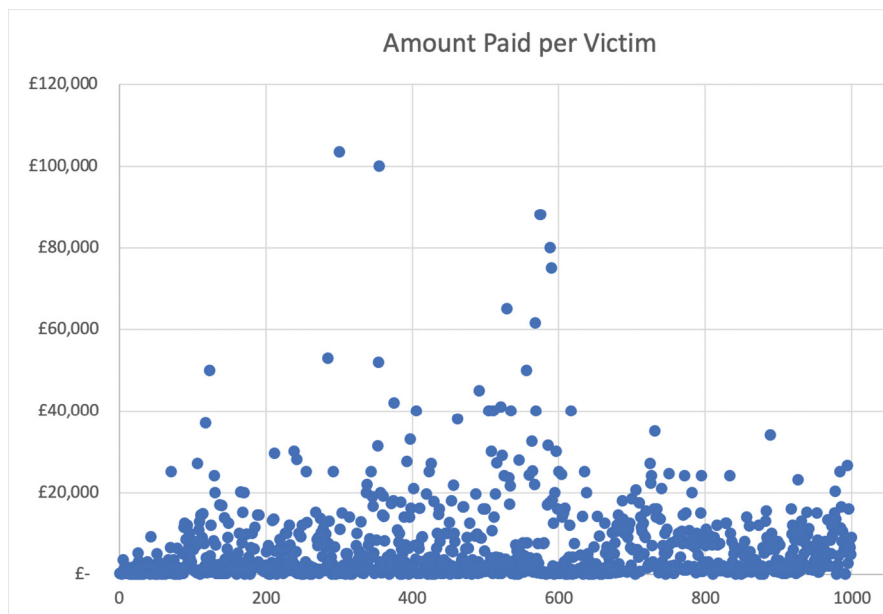
31 Marie Breen-Smyth, *The needs of individuals and their families injured as a result of the Troubles in Northern Ireland* (Belfast: WAVE, 2012), p34; Luke Moffett et al, *The adequacy of services for injured victims of the Troubles in light of the right to remedy and reparations* (Belfast: QUB Human Rights Centre, 2017), p76.

32 Breen-Smyth *ibid.*, p33.

33 Bloomfield et al., *Report of the Review of Criminal Injuries Compensation in Northern Ireland*, HMSO (1999).

The highest involved two separate incidents in which the families of two businessmen were awarded £100,000 and £103,000, respectively, for their deaths. Of the 1000 victims killed in our sample, the average amount awarded was £6,917 and the median £2,712.³⁴ In total, £ 6,896,699.94 was made to 983 victims; 14 were awarded nothing and 3 abandoned their claims. Well over half of our sample (60%), equating to six hundred and three (603) victims, saw their families awarded less than £5,000 for their death. Of that number, 363 (36%) received less than £1,500, with 272 receiving between £3,000-£10,000 (27%), 166 receiving £10,000-£25,000 (16%), and only 44 (4.4%) receiving more than £25,000.

Figure 1

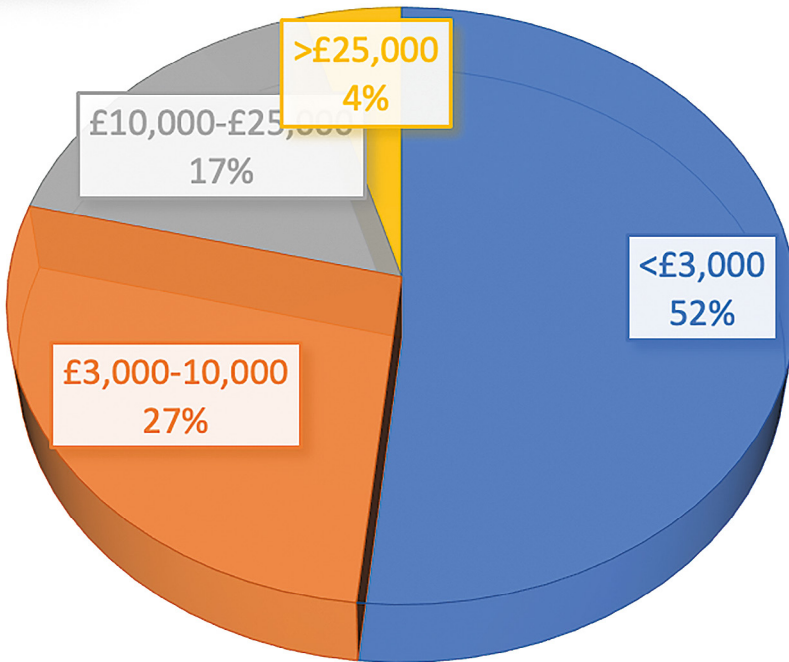


As Figure 1 shows, those paid over £25,000 are the outliers. In all, 130 families (13%) received awards of less than £300, effectively to cover funeral expenses. What this means is that the value placed on a life lost was unequal, and that a large proportion of victims were awarded a pittance (Figure 2).

34 Nine awards were of undisclosed amounts.

Figure 2

Compensation for Families



In terms of more detail on the law itself, compensation for injuries caused to the person were at the outset of the Troubles dealt with through the 1968 Criminal Injuries (Compensation) Act.³⁵ Individuals who suffered loss as a result of violence caused during the Troubles were required to report it to a police constable or station within 48 hours, provide the county court with a notion of intention to bring a claim, and make an application within three months of the commission of the crime that gave rise to the injury.³⁶ Claims by family members of those killed were primarily by the victim's spouse on behalf of themselves and any children as dependants, or where there was no spouse by the personal representatives of the deceased person's estate.³⁷ For spouses or dependant relatives of the deceased victim claiming compensation, the court could only award pecuniary (economically assessable) damages (i.e. income) losses and direct costs (such as funeral expenses). Pecuniary damages were only available to spouses and dependants, which meant that for the relatives of those single people, children or elderly killed, compensation was often just funeral costs.³⁸

35 For a history of the law, see Desmond Greer and Valerie Mitchell, *Compensation for Criminal Injuries to Persons in Northern Ireland*, *Northern Ireland Legal Quarterly* (1976).

36 S.1(3)(e) and s.2(1)

37 S.2(3).

38 This is discussed further below in section C1a. This followed legalisation around fatal accidents.

Compensation was calculated as the annual income of the deceased victim.³⁹ In other words, this placed a cap on the total amount that could be claimed by victims.⁴⁰ However, where an 'unlawful assembly' or 'unlawful association'⁴¹ was involved in the injury that caused their death, then the amount of compensation was at the discretion of the judge. Compensation awards were also subject to deductions, whereby the court could take into account the deceased person's behaviour which 'contributed directly or indirectly, to the criminal injury' as well as pension or benefits paid to the dependants on the death of their loved one.⁴² Until 1977, the compensation scheme was mostly court-based, with the main avenue for claims being through criminal injuries compensation.⁴³

The 1977 Order placed the court-based claims under the 1968 Act on an administrative footing, requiring all claims to be submitted to the Secretary of State and adjudicated by the criminal injuries compensation scheme. One notable change is that the 1977 Order (amended in 1982 and 1988) included a discretionary payment for bereaved spouses and children of £5,000 and £500 respectively for those who died before 10 December 1981, or £10,000 and £1,000 for those who died after this date.⁴⁴ This meant that bereaved families whose compensation for a lost loved one had amounted to less than £5000 or £10,000 after deductions, received a fixed payment from the discretionary fund that brought them up to this level.⁴⁵ This discretionary scheme was introduced on the 11 January 1977 to counter criticism of the lack of support to widows who were left impoverished.⁴⁶ The 1977 Order also sought to reduce the ability of people who witnessed violence to claim for nervous shock by raising the claim threshold to £1,000. Such claims accounts for over 4,000 of the 9,500 claims for personal injury in 1976, most for a few hundred pounds each.⁴⁷

The rest of this section begins by outlining the basis on which a person was deemed eligible to claim for bereavement compensation, namely, dependence and income. The discussion then turns to the gendered impact of compensation on women, which occurred on a number of levels including lower payments, no provision for cohabitating couples and outright discrimination. The third subsection examines how members of paramilitary groups who were killed were treated under the scheme, noting that despite the perception that they were excluded, in a number of cases their families were compensated for their loss.

39 For non-sectarian violence this was limited to 104 times the weekly industrial earnings applicable at the time of the injury.

40 This claim ceiling was roughly around £2,000 per annum in the 1970s.

41 This was the historic terms for collective sectarian violence in Ireland, with the unlawful assembly involving 'three or more persons...assembled with a common object forbidden by law' or assembly with a common object but with conduct that causes 'firm and courageous persons in the neighbourhood reasonably to fear that ... [they] will commit a breach of the peace' or provoke others to do so. An unlawful association is any association declared unlawful under statutory provision. S.4(7).

42 S.4(6).

43 Though some for Troubles related road traffic accidents could claim under the Fatal Accidents Act 1957 and 1976.

44 Article 8, 1977 Order as amended by 1982 NI 22 and 1988 NI 4.

45 In real terms this would amount to £24,500 or £45,000 today.

46 Diary of Events, *Fortnight* No.141, 4 February 1977.

47 Claims crackdown! *Belfast Newsletter* 2 July 1977.

The fourth subsection outlines the impact of the compensation scheme on widows of the security forces, who suffered their own hardships and exclusions with the scheme. The fifth subsection concerns the Ministry of Defence (MoD) policy of using settlements with the families of those shot dead by the army as a means to deflect attention and publicity away from their killing, which also resulted in lower compensation amounts. The final subsection outlines the growing divide between past compensation and new awards to bereaved families.

1. Dependence and Income Based Compensation

Compensation offered during the earliest stages of the Troubles was based on income rather than need. As a result, many who were compensated in the 1970s have been left disadvantaged and deprived today.⁴⁸ This income-based approach, as opposed to a need- or harm-based approach, caused large variations in compensation paid per victim. Using income as a measure of compensation reflected the goals of the scheme to ensure that victims were not left economically worse off when the breadwinner of their home was killed, yet it left victims feeling that the amount they received was an 'insult' and 'disgusting'.⁴⁹ This dissatisfaction is rooted in the provisions of the criminal injury compensation schemes, which sought to alleviate only the economic loss suffered by a family, not the moral harm or loss of society that follows the death of a loved one. As former interim Victims Commissioner Bertha McDougall noted, up until 1988 compensation was 'only for loss of earnings with no consideration of the emotional pain of bereavement'.⁵⁰ As such, this approach is insufficient to satisfy the legal obligation on the State to ensure an adequate remedy for extrajudicial killings during the Troubles.

Importantly, under international human rights law, victims of extrajudicial killings have a right to remedy which includes adequate compensation for both pecuniary (income/property) loss and non-pecuniary or moral harm,⁵¹ that is, mental or physical suffering as a result of the violation, including the failure to adequately investigate. Bereaved families were compensated only compensated for their pecuniary loss, however, not their non-pecuniary loss, a failure which subsequent bereavement payments sought to redress from 1977 onwards. To give a better picture of their impact on families and the awards they received, in particular the need for claimants to show dependency on the income of the deceased and the amount of income they made, these provisions are outlined in more detail below.

48 Marie Breen-Smyth, *The needs of individuals and their families injured as a result of the Troubles in Northern Ireland* WAVE (2012), p177.

49 Claim by Army widow rejected, *Belfast Newsletter*, 19th May 1975.

50 *Support for Victims and Survivors Addressing the Human Legacy*, CVSNI (2007), p48.

51 *Aksoy v. Turkey*, (Application no. 21987/93), 18 December 1996, para.113; *Tagayeva and Others v Russia*, Application no. 26562/07, 13 April 2017, para.649; *Mapiripán Massacre v Colombia*, Judgment, 15 September 2005, para.282. The Inter-American Court has recently stated that non-pecuniary harm is presumed for extrajudicial killings as 'it is human nature that every person who suffers a violation of his or her human rights should experience suffering' - *Case of Members and Militants of the Patriotic Union v. Colombia*, Preliminary Objections,, Merits, Reparations and Costs. Judgment 27 July 2022. Series C No. 455, para.625. Non-pecuniary claims were permissible in certain circumstances under the 1968 Act, such as suffering nervous shock of being involved in a violent incident or witnessing a loved one being killed. 'Pain and suffering' was claimable for injured victims, but not for family members for the death of their loved one. The 1977 Order sought to limit the volume of nervous shock claims by raising the threshold claims over £1000 – Article 6(4).

1.1 Dependency and Age

Under the 1968 Act and 1977 Order, claimants for compensation had to show that they were dependant⁵² on the victim who died in order to be able to claim for losses. Those who were not dependants, such as siblings or parents, could claim only for costs that directly resulted from the victim's death. This meant that funeral costs would only be paid on bereavement of a loved one. For instance, in the case a Queen's University student shot on the outskirts of Belfast on his way home in 1974, his family were initially awarded £1582, but the court reduced this to funeral costs of £82 only on the basis that his parents were not dependant on his income.⁵³ One army widow was denied compensation on the basis of the judge not finding her sufficiently dependant after 9 weeks of marriage, as she still lived with her parents.⁵⁴ Similarly, a woman who had moved out of the family home and lost both parents and sister when the IRA planted a firebomb in their shop below the flat where they lived said,

I received £750 in compensation for the death of my parents and sister. I wasn't looking for a huge lump sum – no matter how much I received it would never change the fact that they were dead. I felt like giving the money to an animal shelter – it meant nothing to me.⁵⁵

Similar amounts were paid to the next of kin of whole families that were killed in incidents, such as the wife, husband and baby killed in a loyalist petrol bomb attack on their home, whose next of kin were paid £99 for each of the three, or the couple shot dead in their home in a case of mistaken identity, whose next of kin were paid £135 for them both. There were also substantial variations in family members killed in similar incidents. The family of one victim killed in a bombing in 1972 was awarded £464, another £2,012, another £5,500 and the fourth victim's family £28,000. Following the abduction and subsequent execution of two civilians suspected of being undercover military intelligence agents, the family of one was awarded £19,519 and the other £92.

Even without a complete dataset, it is evident from the stated procedure for bringing claims that the age and marital status of the victim were factors in determining who was able to claim as a dependant and who was deemed simply a relative and therefore eligible only for funeral costs. Regarding age, the younger the victim, the less likely it was that a family member would be dependent on them, as the deceased would be less likely to have been married or to have children, or else had been a child themselves. More than a third (35.6%) of those killed during the Troubles (1966-1998) were under the age of 25. During the period 1966-1976, people this age were less likely to have established careers with a high income and were likely to have few dependants, which meant that their families were often awarded only

52 Defined as 'relatives of the victim as were wholly or substantially dependant upon his income at the time of his death', this included those children conceived prior to the death, but born after - Article 2(2) 1977 Order, the s.2 1968 primarily stipulates the spouse, with the county court rules allowing other dependants to claim.

53 Lost Lives, p454.

54 Claim by Army widow rejected, *Belfast Newsletter*, 19th May 1975.

55 SEFF, *Uniting Innocent Victims*, (2020), p13.

funeral expenses.⁵⁶ In our sample, compensation awards for victims aged 25 or younger (396 victims, ~ 40%) averaged £3,396, less than half of the average for the sample as a whole (£6,917). This is apparent in a number of cases, in particular those involving children, whose family members, namely parents, were awarded only funeral costs. In one case, the parents of a child killed in a bombing were awarded more in compensation for their child's clothing destroyed in the incident than the £58 assigned for their child's funeral. In another case, a woman was held at gunpoint in her bedroom by a group of loyalists who raped her and shot her son, who had learning difficulties, three times on the bed beside her; she was awarded £115 for his death. In 1988 a bereavement payment of £3,500 was made payable to parents of those killed under the age of 18,⁵⁷ but as no backdating was allowed, this equated to only 35 (6%) of the 539 children killed throughout the Troubles. For those over the age of retirement (i.e. >64), the average compensation was £1,848 (26 individuals), on the grounds that they were unlikely to earn any further income and would instead benefit from a pension. We found a number of cases of elderly victims whose families were paid either only funeral costs or nominal amounts, such as the widow of a retired school crossing patrolman who was awarded £95.⁵⁸

A more accurate indicator of whether a bereaved relative would be considered dependant or non-dependant is the person's marital status. Special provision was made from 1977 onwards to ensure that widows, whether civilian or security forces, received a minimum award (£5,000 for the widow, £500 for each child). However, those who were single account for a large proportion of those killed, mainly because they were in the security forces, or were members of paramilitary groups or civilians caught up in civil disturbance or were targeted because of their age and assumed to be involved. From 1966 to the end 1976 going from *Lost Lives* of the 1866 killed, 674 of them identified as single (36%), 363 unknown, and 829 married (44%) with 14 widow(er)s. In our sample, we could identify 180 single victims, in which one hundred and sixty (88.9%) of their families were awarded less than £5,000.⁵⁹ Marital status a key indicator on the amount of dependence and thus we can say that it indicates a broader trend in the compensation scheme that over a third of those killed would have received nominal compensation awarded (i.e. less than £2000). For instance the families of two priests shot dead by the army received £1082 and £125.

Accordingly, being single and young, which describes a large proportion of all those killed during the Troubles, often resulted in their families receiving a low award.

56 According to the Sutton Index, 128 children (defined as those aged 0-16, though the UN Convention on the Rights of the Child states that a child is anyone under the age of 18), 610 individuals between the age of 17-19, and 337 people between the age of 20-24 were killed during the study period (a total of 1075 out of 2,837). Of course, many individuals married between the ages of 18 and 25 or were working and supporting their parents and/or younger siblings.

57 Article 3(3)(b) and 9(3)(b)

58 ARM 6/3/8/23.

59 Out of the 413 killed individuals who had their marital status identified, 230 were married, 180 were single, 3 were widow(er)s already. The average for those married in this sample was £12,103, compared to £2,266 for those who were single.

As was explained in a newspaper article at the time, 'When a young man or girl is killed, the award could be only one or two thousand pounds because of the assumption that although at the time they may have been contributing to the weekly income of the house, this would not have continued indefinitely because of the probability of marriage.'⁶⁰

1.2 Income

Dependants could claim only for 'pecuniary' losses, that is, loss of income from the victim who died.⁶¹ To illustrate how compensation for pecuniary damage was calculated, Greer and Mitchell refer to the case of William Staunton, a magistrate who was killed in an IRA bomb in 1975.⁶² At the time of his death, he would have had an annual income of £11,750; minus deductions of tax and national insurance contributions and personal expenses left his annual dependency amount at £4,567, with £500 awarded to cover tax on the compensation interest, it was then multiplied by 13 (his retirement age), giving a total of £52,871⁶³ The complex nature of the application process and indeed of the Criminal Injuries (Compensation) Act (1968) itself necessitated the use of solicitors by bereaved relatives bringing such claims, as substantial legal knowledge was required to navigate both the rules in the Act and the corresponding county court rules. Such expenses were paid by the relevant ministry or secretary of state in later compensation schemes.⁶⁴ The 1977 Order moved to an administrative scheme that did not require court litigation except on appeal, but the legal process remained complex.⁶⁵ Having legal advice enabled victims to challenge initial settlement offers. In one case a survivor of the Shankill Butchers acting on legal advice rejected an initial offer of £750 and was subsequently offered £5,000.

Basing compensation on income had a divisive impact among victims, with inconsistencies in the levels awarded leading to a certain degree of resentment among those who received less than others.⁶⁶ Differences in the perceived material worth of certain lives meant that material hierarchies of victims emerged. This experience was felt by those whose relatives were killed in the same incident, similar incidents, and even in incidents greatly separated in time, as in the case of one family who was awarded a few thousand pounds in compensation but whose cousins received tens of thousands a decade later.

These variations stem from differences in the income of the deceased person, their rank or seniority in their work, and the number of their dependants.

60 Robbie McKee, Compensation callousness, Newsletter, 2 December 1976, p4.

61 Non-pecuniary losses include grief or loss of society, in these cases the personal loss felt by next of kin due to the absence of the loved one in their lives.

62 *Staunton v. Secretary of State for Northern Ireland*, Unreported Judgment 2 May 1975 in Greer and Mitchell (1976), p105-106.

63 Greer and Mitchell *ibid*. The judge had included a further 10% increase for future inflation, but this was discounted by the Court of Appeal. The 1977 Order more clearly sets this out in Article 7, where one-fifth is deducted for the deceased victim's expenditure on themselves, income tax, social security contributions and superannuation contributions (if relevant).

64 S.9, 1968 Act.

65 Tom Hadden, *Anyone for Compensation? Fortnight*, 18 February 1977, No. 142, p7.

66 Susan McKay, *Bear in mind these dead*, Faber & Faber, (2009), p268.

With regard to income, compensation was calculated on the basis of what the deceased person would likely earn in the future, with some leeway for inflation. This meant that in certain instances, such as bombings which caused multiple casualties, there were often clear discrepancies in the amount of compensation paid. For instance, in the case of one bombing that had multiple casualties, one victim's family was awarded £90 and another over £15,000.⁶⁷ In another bombing, one bereaved family was awarded £44.62, another £9,000 and an injured victim £35,000.⁶⁸ In relation to the Narrow Water IRA bombing outside of Warrenpoint in 1979, in which 18 soldiers were killed, over £250,000 in compensation was paid out to five of the families including those of high-ranking officers, after they refused the initial offer of compensation from the Northern Ireland Office (NIO).⁶⁹ In contrast, the families of three non-commissioned soldiers killed in a bombing a few years earlier were awarded £8,000 in total, including premiums for two children.⁷⁰ Similarly, the families of the nine civilians killed in a large-scale bombing were awarded only £45,000 in total, with two families receiving only £58 and £90 in compensation to cover funeral costs.⁷¹ Likewise, only £51,000 was awarded to eight of the ten families whose loved ones were killed in the Kingsmill massacre in 1976,⁷² whereas the widow of businessman, kidnapped and killed by the IRA in 1973, was awarded £100,000 by the NIO.⁷³ The widow of a married man in his twenties who was shot dead was awarded £12,800 (despite the efforts of the NIO to reduce her award to a fraction of this amount on the ground that her weekly expenditure was only £2-3 per week; in fact, it was £12-15). In the aftermath of that shooting, upon hearing the news of his son's death, the dead man's father had a heart attack and died; as he was retired, his widow was awarded £350. All these discrepancies stem from the valuation of a person's life based on their material worth rather than the emotional, moral and/or social cost of their death for their family.

Under an income-based system, the families of victims from middle-class backgrounds with professional jobs were able to access higher levels of compensation that would help secure their financial future in a way that those from working-class backgrounds – the demographic that most of those killed during the conflict belonged to – often could not.⁷⁴ For example, the widow of a senior doctor killed in a 1975 IRA bomb attack was awarded £40,000 in compensation.⁷⁵ While the widow frankly acknowledged that 'nothing will bring my husband back', she nonetheless recognised how the compensation awarded to her by the court, along with proceeds from the sale of her family home after she decided to downgrade, would allow her to secure her children's financial future.⁷⁶

67 LOND6/3/1/8.

68 LOND 6/3/3/5

69 £250,000 for families, *Belfast Telegraph*, 21 December 1982.

70 TYR/6/5/12.

71 LOND/6/3/1/8-6/3/1/9.

72 Minibus Massacre, *Evening Echo*, 27 November 1976.

73 Body now identified, *Irish Independent*, 15 March 1980.

74 Marie Fay et al, *The cost of the Troubles Study: Report of the Northern Ireland Survey: the experience and impact of the Troubles* (INCORE, 1999).

75 '£40,000 for 'bomb' widow', *Irish Examiner*, 21 October 1976.

76 '£40,000 for widow of murdered specialist', *Irish Press*, 21 October 1976, 3.

Likewise, the family of a victim described in court by counsel as a 'thrifty, well-doing' man who worked for the Department of Agriculture, owned a pub that he ran with his brother, and had a small farm, were awarded £21,000: £10,000 for his widow, with the remaining £11,000 being invested on behalf of his five young children.⁷⁷ At the same time, those from working-class backgrounds were disadvantaged under an income-based approach, given that, as the Troubles continued, high unemployment ensued, making it difficult for the families of those killed to show that their loved one earned sufficient income to warrant a claim. One interviewee spoke of the compensation system being 'skewed against working-class people, particularly those who were unemployed'.⁷⁸ They noted that this was particularly relevant for those young men who worked in the construction trade, given that many people in this trade became temporarily unemployed over the Christmas period and during the summer holidays. If a victim happened to be killed during one of these holiday periods when they were temporarily "laid off", they would be designated unemployed for the purposes of compensation, thus reducing any award made to the family.⁷⁹ Another interviewee commented that the compensation received by the families of the unemployed amounted to only 'a bit of help with the funeral and that would be about it'.⁸⁰

Children, too, were seen as 'not economically active',⁸¹ leading to offers for derisory amounts in these cases. The parents of three children killed in a high-profile incident in which an IRA getaway car ploughed into the family after the driver had been shot dead by the British Army, for example, were informed that they were only entitled to funeral expenses, and not compensation for the deaths.⁸² There are also a number of cases involving siblings who were killed in the same incident, but whose families received different amounts of compensation for each. In one shooting in which two brothers were killed, the widow of the one who was married with two young children received over £5,000, whereas for his single brother, the family received only £112 for his funeral costs.⁸³ In another case involving two single brothers who were shot dead by unknown assailants, their mother, with whom they were living at the time, received £2,800 for both of them. One toddler who witnessed the death of both his parents in a shooting and was left covered in their blood was awarded £5,750. Such cases demonstrate the very unequal and somewhat arbitrary nature of compensation for killings during the Troubles, when the value of life was determined by the deceased's income rather than need or suffering experienced by families from the loss of a loved one. This inequity is further exacerbated by the gendered nature of compensation.

77 '£21,000 award to widow and children'

78 Interview NI02, April 2018.

79 Interview NI02.

80 Interview NI01.

81 Interview NI01.

82 David McKittrick, 'Mother found dead', *Irish Times*, 22 January 1980.

83 *Belfast Newsletter*, 27 November 1976.

2. Gender

A gender perspective is important to shed light both on how little value was placed on killed women and girls when awarding compensation and on their dominance as the main claimants, and the power dynamics therein. As O'Rourke and Swaine found, the criminal injury compensation scheme gave 'less value to the loss of women's lives' due to gendered equalities in earnings.⁸⁴ Some women who received compensation for the death of a loved one noted that the amount was 'offensive' and that 'derisory payments had undercut the acknowledgement of loss that compensation was supposed to facilitate'.⁸⁵ Pablo de Greiff, the UN Special Rapporteur on Truth, Justice, Reparations and Non-Recurrence, noted in his 2016 report on Northern Ireland that in the aftermath of violence,

the hardships faced by women, many of whom have raised their families single-handedly with limited resources, have been exacerbated [and] the State has not engaged in a thorough analysis or sustained effort to address the gender-related dimensions of violations and abuses.⁸⁶

Deaths caused during the Troubles had a number of gender dimensions. The vast majority (90.9%) of those killed during the Troubles were male; only 9.1% were female. During our period of 1966 to the end of 1976, 89.4% (1,611) of those killed were male and 10.6% (191) were female. This imbalance is reflected in tendency of women to be the main claimants of compensation for the loss of their loved ones. Although women account for just 8.8% of victims killed in our sample, they represent 72% (721) of recipients of compensation.⁸⁷ Mostly of these were widows with children, but some were mothers, sisters or daughters of those killed. Following the killing of a loved one, women were often forced to be the main breadwinners, carers and advocates for redress, often having to forego their own careers and aspirations to look after family members. In our sample, 90 of the 1000 people killed during the 1966-1976 period were female, accounting for 47% of all women who died during this period of the Troubles. In terms of their status, 86 were civilians, two were members of the UDR, one was a police constable and one a member of Cumann na mBan. In only 11 of these 90 cases did the families of the women killed receive more than £5,000, with £13,000⁸⁸ and £25,000⁸⁹ being the highest amounts awarded. More than half of the 90 (58%, N=52) were awarded less than a £1000, giving an average of £1,742 (Figure 3).

84 Catherine O'Rourke and Aisling Swaine, Gender, violence and reparations in Northern Ireland: a story yet to be told, *The International Journal of Human Rights*, 21(9)(2017), 1302-1319, p1307.

85 *Workshop Report: Developing Gender Principles for Dealing with the Legacy of the Past*, Legacy Gender Integration Group (2015), p13-14.

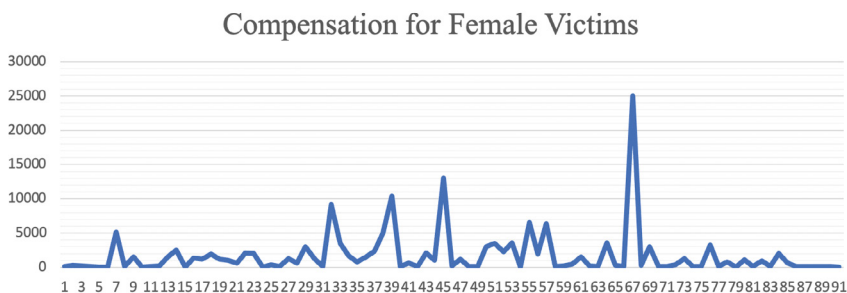
86 A/HRC/34/62/Add.1, 17 November 2016, para.78.

87 146 when the fathers, sons, brother or uncle as personal representatives of the deceased's estate. 133 were unknown.

88 The victim was in the UDR - the larger award reflects that £2,000 was for her mother who depended in part on her, with the rest to her husband, who was present during the incident and her death shortly afterwards, so it likely this amount reflected his personal harm. The victim's father died of a heart attack a few days later.

89 The victim had a well-paid office job.

Figure 3



There were further gender dimensions in the compensation process. Women were often discriminated in terms of both the process itself and the law. In some cases this was compounded by the insensitive attitude adopted by judges in compensation hearings. For instance, in one compensation hearing, a widowed mother of 12 children was told that because her husband had been on sick benefit when he was killed, she was now actually one shilling a week better off on a widow's state pension. The woman was subsequently sent away with no payment.⁹⁰ One interviewee told us that the judge in their case had told their mother that she now had 'one less mouth to feed' since the death of the interviewee's father, and therefore, in the eyes of the court, the family were 'financially no worse off'.⁹¹ These deductions were viewed as justifiable under the law, which held that the State should 'not provide an income which is in effect higher than the victim (or his dependants) enjoyed before the injury' so as to prevent compensation from duplicating the cost to public funds.⁹² This income-focused approach failed to compensate for the harm caused to families. The undervaluing of female victims was often compounded by the sexist approach taken by judges in compensation hearings involving widows. A notable example of this approach is that of a judge who, having told a claimant that she was a young, attractive woman who could marry again, awarded her a small amount in compensation.⁹³ There were few case decisions or transcripts in our data, but the awarding of small amounts of claims involving either women who were killed and those who were young widows is apparent, especially with war widows.

In other cases, an award of compensation had the unhelpful effect of disqualifying people from benefits they would have otherwise been entitled to.⁹⁴ From the data we collected from ledgers, we found that individuals had their compensation reduced by the county court were they were in rates, rent, gas or electricity payment arrears, with the result that many women received little or no money to support their dependants.

90 Relatives for Justice, *Submission to Special Rapporteur of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, Pablo De Greiff November 2015, (2015), p39.

91 Interview NI05.

92 Desmond Greer, *Compensation for Criminal Injury*, SLS, 1990, p177.

93 Susan McKay, *Bear in mind these dead*, Faber & Faber, (2009), p69.

94 Marie Breen-Smyth, *The needs of individuals and their families injured as a result of the Troubles in Northern Ireland*, WAVE (2012), p10.

For example, one widow was awarded £400, but £350 was deducted for rent arrears and £50 for electricity, leaving her with nothing. In other case, the family of a woman who was killed was awarded £350, with £52.51 deducted for rent arrears to the Housing Executive. In the case of bereaved families whose main breadwinner had been killed, the consequences of this practice were particularly acute, as they often had to wait two to three years for their claim to be awarded, during which time unpaid bills would have mounted up.

The sexism of individual judges was not the only source of the discrimination bereaved wives experienced. Consideration of a widow's prospects of remarriage was explicitly stipulated under the law when calculating compensation. Moreover, unless their husbands had been in the security forces, many women were unlikely to receive a widow's pension. Some of these details have come out during inquest proceedings. At the inquest into the Ballymurphy massacre of 1971, for example, Eileen McKeown, whose father, Joseph Corr, was shot dead by the British Army and had lies spread about him in the media claiming that he was a gunman, spoke of her mother's experience in the aftermath of his death:

Mummy had to go to work after daddy died. She didn't get any financial help whatsoever. She didn't get a widow's pension, she didn't get free school uniforms, or free school dinners for us. I have no idea how she did it. It was so hard for her. Then mummy had a hard life, I was only nine and there were two kids below me as well as the older ones. There was no compensation paid to my mummy. She didn't even get anything from his workplace other than a letter that came from some Shorts workers not long after daddy died which said 'May your subhuman husband and his pals rot in hell.'⁹⁵

For the families of unmarried or single mothers who were killed, the situation was particularly cruel, as they typically received very little in compensation. In one case the family of a single mother in her twenties who was killed in a bombing was only awarded funeral costs. In another case, involving a single mother who was tortured to death by female members of the UDA, the family was awarded only received £149. As her daughter explained years later, 'because I didn't apply for compensation at the time there is no requirement for the government to pay out. But I was only a child'.⁹⁶ In other cases for unmarried mothers, them being ineligible meant that they could only show that their child was a dependant on their deceased father, such as 20-year-old man who was killed in a bombing of a bar in 1972, whose son was born four months after his death and was awarded only £1,250.⁹⁷

Common law spouses of those who were killed are another group of victims who were denied compensation until the 1988 Order. There are at least 20 cases of cohabitating partners and their children being denied compensation because the

95 In the Matter of a Series of Deaths that Occurred in August 1971 at Ballymurphy, West Belfast, Incident 4 The Deaths of John Laverty and Joseph Corr, KEE11475, 11/05/2021 para.14.

96 Ciarán Barnes, "I heard mum beg for mercy", *Sunday Life*, 7 February 2010.

97 Illegitimate child gets £1,250, *Irish Press* 16 November 1973.

1968 Act and the 1977 Order stipulated that only married spouses could claim.⁹⁸ Likewise, the cohabiting partner of a victim who was shot dead by the UDA during the loyalist workers strike in 1977, who had lived with him for seven years and raised their children, had her claim for compensation denied because they were unmarried.⁹⁹ In another case, the NIO paid compensation to the two sons of a businessman who was shot by the IRA during a one-day visit to Northern Ireland but not to his partner, on the grounds that, as a common law wife, she was not entitled to it, despite having lived with him for 11 years.¹⁰⁰ This was the position until the 1988 Order, which was expanded to include cohabittees.¹⁰¹

As victims, too, women were particularly undervalued by the compensation schemes. In one case a judge turned down a compensation claim from the husband of one of the Bloody Friday victims yet acknowledged that had the Criminal Injuries to Persons (Compensation) Act 1968 been worded differently, he would have awarded him £17,500. The NIO would subsequently amend the system for awarding compensation to the families of women killed in the Troubles following political criticism.¹⁰² Indeed, as one interviewee pointed out, the approach taken to compensating the families of those killed in one particularly high-profile attack naturally worked to the detriment of female victims. In this case, the interviewee highlighted how the compensation process factored in that young women were likely to get married, move away from home and provide no support to their parents. On this basis, compensation awards to their families were duly limited.¹⁰³ Another interviewee opined that 'women were not seen as wage-earners at all', flagging up a case in which the family of one housewife was sent a cheque for a nominal amount to cover funeral expenses.¹⁰⁴ As one husband said,

Because she was a housewife, she had no monetary value, as opposed to someone who worked 80 hours a week. She looked after our children, she was their mother. If she had been a solicitor, or a teacher, they would have given money out from she was 39 years old until she was 65 years old, for what she would have earned. But because she was a housewife, she was treated like garbage. At the end of the day, it is not about money – it is about fairness for all.¹⁰⁵

This had a long-term impact on families, as one daughter described:

My mother had to bring up two children and had to give up work. She was bad with her nerves and had post-traumatic stress disorder after being shot at herself. The whole thing took a toll on her.

98 Their men, shot dead, women get no compensation, *Irish Independent*, 3 July 1975. Section 2(3), 1968 Act, and Article 4, 1977 Order.

99 Ibid.

100 £80,000 for sons of victim, *Irish Independent*, 21 December 1982.

101 Section 2(2).

102 'Changes in system of compensation', *Irish Times*, 3 March 1975.

103 Interview NI19.

104 Interview NI02.

105 Leona O'Neill, What's the price of a life? Troubles relatives on the inequalities of compensation, *Belfast Telegraph*, 6 October 2018.

That money that she got was ludicrous. Life was very difficult for us growing up. We had no money. We lived for my mother's widow's pension coming in every week and we didn't have a fridge until I was 11 years old.¹⁰⁶

While women made up only a fraction of those killed, as the majority of claimants they faced discrimination and other gender biases that made the schemes unfair and unequal.

3. Complex Victims

Complex victims are those who are responsible for causing harm to others, but also suffered harm themselves.¹⁰⁷ Under the 1968 Act, criminal injuries compensation schemes designated certain victims killed during the Troubles as 'uncompensable' by excluding them for the schemes or reducing their award.¹⁰⁸ From early in the conflict, there was persistent difficulty with awarding compensation to those who were, allegedly at least, engaged in fringe illegality at the time of their death or injury.¹⁰⁹ Judges had shown a willingness to reduce and refuse compensation in cases where the victims were claimed to have been involved in riotous behaviour or political violence.¹¹⁰ Because the 1968 Act was aimed only at criminal offences, the families of those killed in accidents or through negligence had little recourse beyond going through the courts to seek a legal remedy.¹¹¹ This had implications for the compensation paid for victims of accidental shootings, such as the soldier accidentally shot by the RUC, whose widow was awarded only £1,600.¹¹² One British soldier who was mistaken for a sniper by another soldier, had his claim dismissed under the 1968 scheme.

Under the 1968 scheme, compensation was paid to the families of 61 individuals from our sample who were members of a paramilitary organisation when they were killed.¹¹³ Of these, 25 were members of the Provisional IRA, five were members of the Official IRA, two were members of the INLA, seven were members of the UVF and

106 Ibid.

107 See Luke Moffett, Reparations for 'Guilty Victims': Navigating Complex Identities of Victim-Perpetrators in Reparation Mechanisms, *International Journal of Transitional Justice*, 10(1)(2016), 146-167; and Kevin Hearty, Problematising Symbolic Reparation: 'Complex Political Victims', 'Dead Body Politics' and the Right to Remember, *Social and Legal Studies*, 29(3)(2020), 334-354.

108 David Miers, Looking beyond Great Britain: The development of criminal injuries compensation, in S. Walklate (ed) *Handbook of victims and victimology*, Routledge (2007), 337-379. The 1968 Act allowed the court to 'have regard to all such circumstances as it considers relevant and, in particular, to any provocative or negligent behaviour of the victim which it is satisfied contributed, directly or indirectly, to his injury or death.' Section 1(2).

109 David Miers, Compensation and the victims contribution to his injury, *Northern Ireland Legal Quarterly*, 24(4)(1973) 533-539.

110 For example see the decision of McGonigal J to reduce compensation to a man injured in a riot by a third in *McDaid v The Ministry of Home Affairs*, unreported: High court of Justice in Northern Ireland, 10 May 1973, McGonigal, J.

111 Such as through the Fatal Accidents Act (NI) 1959 and the Fatal Accidents (Northern Ireland) Order 1977.

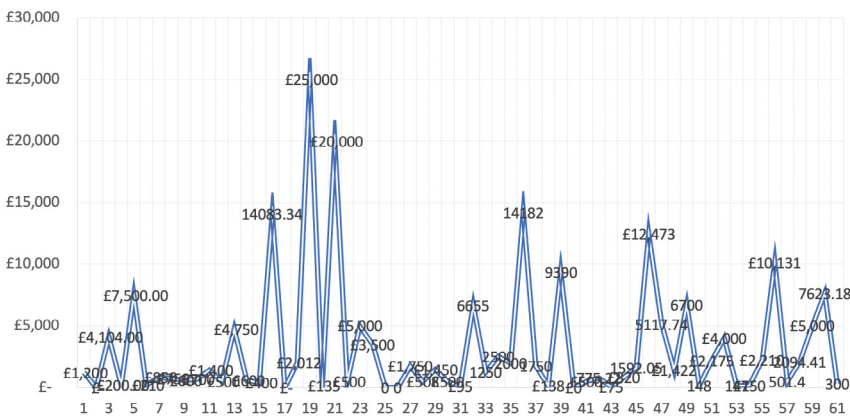
112 No legal redress for 'error killings', *Belfast Newsletter*, 10 March 1975.

113 617 were civilians, 80 members of the police, 173 British soldiers and 53 UDR, with 16 status contested or unknown.

22 were members of the UDA. More than £200,000 was paid to the families of 56 individuals, who on average received £3,392. The other five claims were dismissed or abandoned. Twenty-eight families were compensated less than £3,000 and seven were compensated more than £10,000, with two families receiving £20,000 and £25,000 respectively (Figure 4). Both of these higher awards were made to the families of individuals who were killed either walking home or in their workplace, and whose names were added to IRA rolls of honour only a few years later.

Figure 4

Compensation for Deceased Members of Paramilitary Groups



Some of the deceased in these cases were involved in active gun battles, while others were killed outside their homes as part of feuds or assassination campaigns by other paramilitary groups. While the amounts awarded were lower than those awarded for civilian deaths, they were higher than simply funeral costs, which at the time were usually between £45-£150. This would suggest that the compensation awarded to the families of killed paramilitary members was less than what their income would have been, but more than the expense of a funeral. This is consistent with the 1968 Act, which allowed compensation to be deducted on the basis of the victim's negligence or provocation.¹¹⁴ One family was awarded only £75 in compensation for the loss of their husband and father who blew himself up while transporting a bomb. The father of a man involved in a riot, who was unarmed when he was shot at point-blank range by a soldier while trying to take a helmet that another soldier had dropped, was awarded £415. In reaching his decision, Justice Gibson placed 'blame equally between the victim and the soldier who shot him' on the grounds that the victim was responsible for contributory negligence.¹¹⁵ Under human rights law, the use of lethal force to stop a person taking a helmet would be considered disproportionate. Moreover, blaming the victim rather than critically challenging the

114 See also Article 5(2), 1977 Order.

115 Lost Lives, p75.

way lethal force was governed and acknowledging the consequences for the victim and their family diminishes the value of the life lost.

In one case, a pregnant woman opened the door to an IRA gunman who shot her husband dead; a year later she killed herself after denying in court that he had been a member of a paramilitary group. A personal representative of the woman was later awarded £150 for his death. In another case, a family whose mother was killed in a gun battle in 1972 saw her son shot dead in the INLA/PIRA/ORIA feud in 1975 and another son killed as part of the feud a few months later. The family was compensated £122 for the mother, nothing for the first son killed, and £1,422 for the second son. By contrast, the families of two civilians killed by British army gunfire in the same gun battle were awarded £7,586.25 and £2,700, respectively. When an uncle of the two deceased sons was killed in 1974, his family was awarded £20,000.

In the case of an individual who was shot dead at a British army checkpoint, the judge awarded £2,500 to his mother after finding that the soldiers had failed to signal sufficiently that the car should stop, the force used was excessive and the unlawful behaviour of the victim was unconnected to the use of lethal force.¹¹⁶ In one case, compensation was paid to families to cover the cost of funerals for those who blew themselves up,¹¹⁷ while in another case a family was awarded £750 for an IRA member who died in a premature bomb explosion. The family of a leading loyalist leader who was shot dead outside his home by members of his own organisation was awarded £473; although he was never convicted, it was alleged that he was involved in a number of murders, including two notorious bombings. The parents of a UDA member who was beaten to death in Long Kesh internment camp were compensated £508 for his death.

There also were divergences between claims made under the 1968 Act and the 1977 Order. In one case the widow of a member of the UDA who was killed in a drunken loyalist fight was awarded £4750. The family of another UDA member who was shot after getting into a fight with members of the UVF was awarded £700, because he was single. In another case, the family of a UDA member who was kidnapped, gagged and shot in the head by the IRA was awarded £14,000. This variation reflects differences in the victims' income, number of dependants and, in case involving fights, the nature of the victim's involvement. Compensation for these individuals was not reduced on the basis of their membership in the UDA, however, as it was not a proscribed terrorist organisation until 1992. The 1977 Order sought to prevent any further members of paramilitary groups from being awarded compensation by giving the Secretary of State having discretion to reduce or refuse an award. For instance, a widow whose husband, a member of the UDA/UFF, was shot dead by the IRA, had her compensation reduced from £6,000 to £5,000 because he was a member of such an organisation, even though it was not then proscribed.

116 *Lost Lives*, p205.

117 One loyalist received £75.

The widow of another senior UDA/UFF commander who was shot dead by his own organisation was only awarded funeral costs of £135.¹¹⁸ In some cases it was not until after compensation was awarded that the deceased person's membership in a paramilitary group became apparent. In one case an IRA commemoration was organised locally for a man whose widow had been awarded £20,000 a couple of years earlier, leading some local unionist politicians to question his compensation award.¹¹⁹



Generally, early disquiet about the prospect of suspected “terrorists” and their families being compensated more handsomely than their victims was expressed by and through the British media. For example, Conservative MPs made early protests that victims of the IRA bomb attack on the Old Bailey had received only a fraction of the sum paid out to those subjected to ‘deep interrogation’ methods that ultimately amounted to torture and ill-treatment. While the 100 victims of the Old Bailey bomb had received £38,000 among them, the ‘Hooded Men’ had received £90,000. A contrast was drawn between the £301 paid to 75 of the Old Bailey victims and the £16,000 paid out to one of the Hooded Men. The fact that one of the Hooded Men had escaped from prison and was ‘on the run’ at the time of their award further fuelled such misgivings. According to one Conservative MP at the time, the disparity showed that the Criminal Injuries Compensation Board in England had failed to ‘strike a more equitable balance between those awards and the IRA damage awards’, with the result that ‘the contemporary scales of justice are tilted against victims of outrages’.¹²⁰

The issue of compensation being awarded to those allegedly involved in political violence was brought into the public light when leading Belfast republican Tom Cahill had his £20,000 award withheld following an appeal to the courts by then Secretary of State Merlyn Rees. Cahill was compensated for injuries sustained during a gun attack by the Official IRA in March 1971. Rees’ appeal was upheld by Lord Justice Gibson on the basis of the range of evidence and the behaviour of Mr Cahill, which led him to conclude that Cahill was a Provisional IRA member ‘at all material times’ during his injury, and that he was a fairly high-ranking officer at the time. Lord Justice Gibson further held that:

The applicant was injured as a direct result of that connection [to the Provisional IRA] and I cannot think that Parliament ever contemplated or that I should countenance the idea that such enemies of society should be awarded compensation out of public funds for injuries received because of their criminal associations directed towards the destruction of the state itself.¹²¹

118 UDA man's widow has award cut, *Irish Press*, 20 April 1977.

119 £20,000 to murdered man's widow queried, *Fermanagh Herald*, 24 April 1976.

120 ‘Compensation protests by Tory M.P.s’, *Irish Times*, 12 March 1975.

121 ‘Cahill loses £20,000 award’, *Irish Times*, 9 November 1976.

Legal sources at the time regarded the decision as a 'test case' for the sensitivities around awarding compensation to those involved with illegal organisations.¹²²

The Criminal Injuries (Compensation) (Northern Ireland) Order 1977 was seen to close the 'Cahill gap' by expressly prohibiting past or present members of proscribed organisations from receiving compensation.¹²³ The provision gave the Northern Ireland Secretary of State the discretionary power to reduce or refuse compensation to which an applicant was otherwise entitled.¹²⁴ The prohibition debarring anyone who had been involved in an illegal organisation 'at any time whatsoever' from receiving compensation would prove challenging, however, as it excluded those who may have been previously involved in illegality but were not so engaged at the time of their death. By way of illustration, the family of a man shot dead by the IRA were refused compensation because the victim had previously been convicted of membership of Na Fianna Eireann – the IRA youth wing – when he was 16. Although the family maintained that the victim was not connected to any illegal organisation at the time of his death, the fact that he had been previously kneecapped in a punishment shooting by the IRA further worked against them.¹²⁵ This is the difficult nature of compensation in cases of complex victims, where the reliability of evidence used to deny compensation is questionable, given the harm suffered by their loved ones. This is further problematised by the use of internment and the unsafe nature of some convictions, which have been overturned in recent years through the Criminal Case Review Commission. As Kenneth Bloomfield noted in his 1999 review, to exclude or reduce compensation in such cases would be to expose the dependants of any such victim to 'long-term economic hardship' through no fault of their own.¹²⁶ Denying compensation in cases where a victim had indeed been engaged in violence was, as David Miers suggested, fraught with the danger of penalising dependants for the 'sins of their fathers'.¹²⁷ The fact that most victims of the conflict – whether civilian or fighters – came from working-class backgrounds heightened the financial hardship any such denial or reduction of compensation would cause. The practice also had an impact on bereaved families claiming compensation. As reported at the time, one widowed mother of five whose husband was killed by the IRA during widespread rioting in Belfast chose not to challenge a settlement offer rather than go to court and risk receiving what, in light of the Cahill case, she feared would be a reduced amount or nothing at all. For her, the compensation process 'left [her with] a bitter taste in her mouth' and regretful that she

122 Niall Kiely, 'Lawyers study implications of decision', *Irish Times*, 9 November 1976.

123 Desmond Greer and Valerie Mitchell, *Compensation for criminal injuries to persons in Northern Ireland: supplement to first edition*, *Northern Ireland Legal Quarterly* (1976), p96.

124 Article 6(3) prevents compensation for any person who has been engaged 'at any time whatsoever' in acts of 'terrorism' from obtaining compensation from a criminal injury, whether or not their membership or participation in 'terrorism' contributed to their injury. Article 8(4) gave the Secretary of State (SoS) discretion to pay compensation to such a person 'if he considers it to be in the public interest to do so'. Article 3(2)(d) further gave the SoS the power to withhold compensation where the victim did not fully co-operate with the police to help identify and apprehend the assailant. This would prove to be particularly problematic in a context of political violence where victims may not have had the requisite degree of trust in criminal justice agencies necessary for co-operation or where victims may have been threatened or otherwise intimidated into withholding co-operation.

125 'Family of murdered man denied compensation', *Fermanagh Herald*, 19 April 1980, 13.

126 *Ibid.*

127 David Miers, Compensation and the victims contribution to his injury, *Northern Ireland Legal Quarterly* 24(4) (1973) 533-539.

had not pushed for more compensation for her children.¹²⁸ This is an issue we return to in Part II of this report.

4. Compensation for widows of the security forces

There is a perception that because members of the army fought for the State their widows would be well looked after, and from a civilian perspective, their war pension looked better compared to what little support civilians received. However, in reality the picture is more complex, with many war widows, particularly in the early years of the Troubles, being inadequately compensated for their loss. By mid-1974, up to £925,550 had been paid out to the dependants of British soldiers killed in the conflict.¹²⁹ Indeed, between 1969-76 an estimated £5 million in compensation had been paid to members of the British Army and their dependants, with a further £1.5 million paid in compensation to police officers and their dependants.¹³⁰ This amount included payments for both deaths and injuries, for which there were thousands of claims, as those in the security forces were regularly exposed to harm such as riots, shootings and explosions.

In the early 1970s, concern was raised about the adequacy of payments made to the widows of British soldiers, given the 'long years of widowhood which may be in front of them', as Lord Shepherd put it in 1973.¹³¹ This unease was heightened by media reports of cases in which British Army widows were turned down for compensation. For example, one newspaper report from 1976 was critical of the refusal to pay any compensation to the widow of a bomb disposal expert because her financial position had improved since his death.¹³² Another widow who had been married for over a year was awarded £1000, with the low amount justified on the basis that she was in receipt of a £40 state and army pension.¹³³

It is important to note that many of the soldiers killed during the Troubles were under the age of 25, and many of them were single. This meant that their families, whether parents or siblings, were ineligible for a war pension. Indeed, in most cases we found that the parents of single soldiers were awarded a small amount, typically £500-£1500, because they were not dependant on their income. Of the 226 families in our dataset who claimed compensation for British Army and UDR soldiers killed, 72 (32%) received £1500 or less. Likewise, of the 80 claims for RUC constables and reserve RUC killed, 17 (21%) were awarded £1500 or less. Forty-two army families (18.6%) and 33 families of police officers killed (41%) received awards of £10,000-£35,000.¹³⁴

128 Robbie McKee, 'The father who will not be home to say Happy Birthday', Newsletter, 1 December 1976.

129 '£925,550 paid to dependents of troops in N.I.', *Irish Times*, 16 May 1974.

130 Desmond Greer and Valerie Mitchell, *Compensation for criminal injuries to persons in Northern Ireland, Northern Ireland Legal Quarterly*, (1976), p23.

131 'British Army success in N.I. role claimed', *Irish Times*, Friday 2 March 1973.

132 Christopher Walker, 'Legislation planned to resolve anomalies in Ulster compensation', 21 October 1976.

133 Widow of soldier awarded £1,000, *Belfast Newsletter*, 20 December 1974.

134 This can be partially explained by those constables being killed were on average 33 years old, whereas soldiers were on average 27 years old.

The average award paid to families of soldiers was £5,493, lower than the overall average of £6,917 and lower than the average award of £8,620 paid to families of constables.

As had been the case with compensation payments for civilian injuries and deaths, the compensation afforded to the families of British soldiers was politically used by comparing it with that on offer to those suspected of involvement in political violence. For instance the refusal to award compensation to a British Army widow because she was no worse off financially was contrasted, yet again, with the payment of £11,000 to an 'on-the-run' who had been subjected to 'deep interrogation'.¹³⁵ In other cases, the NIO tried to appeal against compensation awards of £11,000, £18,000 and £20,000 that had been made in favour of the widows of RUC men killed in action on the basis that the sums awarded were out of line with other compensation payments. The NIO subsequently withdrew its appeal after much criticism.¹³⁶

Although the 1968 Act introduced a provision intended to compensate RUC members injured in rioting, it was also open to widows of British soldiers.¹³⁷ This was one source of financial support available to widows of British soldiers killed in action, but often their awards were reduced due to their widow's pension, or else they withdrew their claims on legal advice in anticipation of such an outcome. In terms of both their pension and any compensation to which they were entitled, the amount of money available to and paid out to widows of British soldiers depended on their husband's length of service and rank.¹³⁸ The introduction of the 1977 Order was intended in part to address how 'collateral benefits' impacted on the compensation awarded to the families of security force members and the perceived inadequacy of compensation payments in these cases.¹³⁹ It subsequently allowed for 'discretionary payments' to all spouses, whether civilian or security forces, that would 'top-up' the award otherwise payable under the Order.¹⁴⁰ Under the 1977 Order, Tom Hadden argued that more generous ex gratia payments could be made to those who might otherwise have lost out on compensation due to such payments under the previous system.¹⁴¹ Indeed, it was noted in the media at the time that the change in legislation meant British Army widows who had previously been refused compensation because their benefits exceeded their loss would now be eligible for discretionary 'top up' payments. One case of a widow who had originally been turned down for compensation because her benefits exceeded her loss by £8,000. The then Minister of State Don Concannon said that the case was,

typical of several, particularly involving widows of members of the security forces, where we recognise that the normal assessment of compensation, though quite defensible in terms of strict financial justice, can cause understandable distress by giving awards of little or no value.¹⁴²

135 Conor O'Clery, 'Changes in compensation laws for violence planned', *Irish Times*, 21 October 1976.

136 'January', *Fortnight*, 7 February 1975, p11.

137 Section 11(1)(b), 1968 Act.

138 Christopher Sweeney, 'Few widows of soldiers get army pensions', 21 December 1972.

139 Desmond Greer and Valerie Mitchell, *Compensation for criminal injuries to persons in Northern Ireland: supplement to first edition*, NILQ 1978, p58.

140 Article 8, 1977 Order.

141 Tom Hadden, 'Anyone for compensation', *Fortnight*, 18 February 1977, p7.

142 '£6,000 deal for soldier's widow', *Belfast Telegraph*, 12 July 1977.

Importantly, and in contrast to that of civilians, the plight of widows of soldiers was raised in Westminster and received a response from the Secretary of State for Northern Ireland to the effect that although the widow in this case had submitted her claim before the 1977 Order came into effect, she and her children were able to benefit from the new discretionary payment.¹⁴³

The families of deceased security force members could also avail of a number of schemes such as the NI Police Fund and the UDR Benevolence Fund that provided additional financial assistance.¹⁴⁴ These schemes, at least according to those who ran them, were not in themselves compensation, nor were they intended to be. Rather, they were relief programmes designed to alleviate the financial burden on families until their compensation claims had been settled.¹⁴⁵ These funds were important, as compensation was denied in some cases, such as that of a young, unmarried constable whose parents and sisters the court said were not dependant because he had left the family home permanently at the time of his death and they had already been paid £1,500 by the police.¹⁴⁶

The practice of taking contribution or 'collateral' such as work-based pensions into account when calculating compensation awards remained an issue even after the introduction of the 1977 Order. Using their pension calculation to discount their compensation award could leave widows worse off, depending on their circumstances. Army widows could only access their husbands' war pensions if their spouse had served 12 years as a soldier or 10 as an officer at the time of their death, meaning many were ineligible. Of the first 50 soldiers killed in Northern Ireland, only seven qualified for a pension as most were under the age of 28 when they died.¹⁴⁷ Another difficulty was that police and army pensions normally ceased when the surviving spouse remarried, entered a civil partnership or began cohabitating as 'husband and wife'. This meant that bereaved spouses whose claims were assessed soon after the death of their husband or wife had their pension deducted from any compensation they were awarded,¹⁴⁸ while those who remarried lost their pension and receive little or no compensation. The discretionary award established under the 1977 Order was intended to remedy this, by allowing dozens of police and army widows, particularly those who decided not to claim for compensation because their pension benefit would make it redundant, to apply for £5,000. It was only in 2014 through an amendment to the public pension bill that widows of police constables who died in service, who later lost their pension rights by remarrying, had those rights restored.¹⁴⁹ Recently the War Widows Association for bereaved families of British army personnel, which had campaigned on this issue since 1973, secured a recognition payment

143 Ibid.

144 Luke Moffett et al, *The adequacy of services for injured victims of the Troubles in light of the right to remedy and reparations*, QUB Human Rights Centre, 2017, p76.

145 Sara Bonner and John Winder, 'Ready help for victims of violence in Ulster', 5 February 1981.

146 No award for parents, *Irish Independent*, 16 November 1973.

147 Few widows of soldiers get army pension, 21 December 1972.

148 See Regulation 32, *The Royal Ulster Constabulary Pensions Regulations (Northern Ireland) 1973*.

149 Section 30(2), *Public Service Pensions Act (Northern Ireland) 2014*. For civilian victims their pension was not considered

for bereaved spouses of up to £87,500 for any discounts applied because they remarried. This reflects both the benefit of having an organisation to advocate for such victims and their ability to tap into the media and politicians to obtain tracking and policy change.¹⁵⁰ However, it has been reported that this amount will be taxed, with Scottish widows facing income tax rates on their awards.

5. The Ministry of Defence Use of Compensation as Deflection

While most claims for deaths resulting from the Troubles were brought under the criminal injuries scheme, those involving shootings by security forces, in particular the British army, were often based on civil litigation and settled out of court, given that such deaths did not occur because of a criminal offence or in the course of preventing crime. Reaching settlements with claimants reflected the MoD's policy of using compensation to deflect attention from killings so as to prevent bad publicity, avoid soldiers having to give evidence in court, and avoid giving 'political capital' to opponents if the facts of each case were 'aired in public' and brought before the Europe Court of Human Rights.¹⁵¹ This policy of using settlements as a means of 'keeping a low profile' in the knowledge that the prevalence of killings meant that it was 'very rare' for press coverage of a case to last more than a day is evident in some internal MoD records at the time. According to these memos, there was concern that if a case went to court it would allow the victim to 'have a free hand in Court to relate his often sordid tale, so more or less guaranteeing press interest'.¹⁵² Such claims carried a financial as well as a reputational risk if a case went to court, 'where the scale of damages usually paid would almost certainly be raised (the estimate is perhaps trebled)'. One internal letter by the MoD from 1975 lists the advantages of settling with bereaved families as avoiding 'an admission of liability; it usually costs less; soldiers are not subjected to sometimes hostile and embarrassing cross-examination on the witness stand; and publicity is minimised', all of which can benefit army morale.¹⁵³ Between April 1974 and March 1975, the MoD settled 230 claims amounting to £206,289 (£1.5 million today).¹⁵⁴ In analysing court cases against the British Army during the 1970s, Bennett found a 'striking...incoherent picture' wherein criminal cases against soldiers often fell apart because of lack of witnesses, and numerous civil cases being settled. Worryingly, he concluded that the scale on which claims for fatal and non-fatal injuries caused to civilians were settled indicated an 'attitude adopted by HQ Northern Ireland in attempting to resist legal constraints on their soldiers [which] is an important indicator of a reluctance to operate within the law'.¹⁵⁵

150 For instance the Sunday Times ran a campaign in the mid-1970s for war widows of the Troubles to have the consideration of their support improved. No legal redress for 'error killings', Belfast Newsletter, 10 March 1975.

151 Northern Ireland Civil Litigation Policy, Ministry of Defence, D/C2/AD/1/4/1D 1975.

152 *Ibid.* para.5(a).

153 DUS(Army)/683/75.

154 CJ4/2202.

155 *Ibid.* p297.

At the time commentators in the media noted a 'disturbing attitude' on the part of the State in these cases. This involved the Crown solicitor denying all allegations of wrongdoing 'right up to the door of the court, even in the face of the strongest corroborative evidence', before settling claims at the last minute before they reached the courtroom.¹⁵⁶ This pattern was not seen in other compensation cases, such as insurance claims. The tactic, at least according to legal sources at the time, was to hardball victims by making a paltry initial offer.¹⁵⁷ Others saw the use of settlements as a means to 'methodically evade the scrutiny of the courts' by settling cases with victims out of court with 'offers [of compensation] that impoverished victims and their families find hard to refuse'.¹⁵⁸ According to one more critical observer we interviewed, the State knew that it could 'get away' with offering such derisory amounts to many victims of State violence, given that these people needed the money, could not afford the best legal advice and were not familiar with their rights.¹⁵⁹ The interviewee cited one case which the MoD had deliberately contested despite knowing the victim was innocent, and, having succeeded in bringing the case to court, were able to make a derisory settlement that the family had to accept out of financial necessity.¹⁶⁰

In a context where victims were unaware of their rights, facing dire financial straits, and could not afford the relevant legal advice they often settled for significantly reduced sums. Those who could access and afford better legal advice were naturally better positioned to contest such offers, often leading to increased offers. The impact of having legal advice was, according to one interviewee, 'by and large...incredible',¹⁶¹ while contesting cases in court could significantly increase the amount obtained. It is important to reiterate, however, that not all victims were in a position to avail of such legal advice, nor had all victims the fortitude to endure the further psychological burden of a long, drawn-out legal process after their bereavement. As Kenneth Bloomfield would later observe:

A critical moment comes when an applicant has to decide whether to accept an offer made to him/her. Some felt that they had faced an invidious choice between acceptance of an unsatisfactory award and the consequences of further delay, perhaps leading to a court appearance and the prospect of adversarial cross-examination.¹⁶²

156 Conor O'Clery, 'Compensation is eventually paid, despite long denials', *Irish Times*, 14 June 1975.

157 Niall Kiely, '£750 holds NI law to ridicule', *Irish Times*, 6 March 1979.

158 Liz Curtis, *They Shoot Children: The Use of Rubber and Plastic Bullets in the North of Ireland*, Information on Ireland (1982), p30-31.

159 Interview NI02.

160 Interview NI02.

161 Interview NI01.

162 Kenneth Bloomfield, *We will remember them: Report of the Northern Ireland Victims Commissioner*, Sir Kenneth Bloomfield, (1998), para.5.9.

This unequal bargaining power of victims compared to that of the State sits with broader criticism of the British government's use of lethal force in Northern Ireland, where former human rights commissioner Brice Dickson noted that such compensation practices for deaths caused by the security forces was a means to 'buy off' victims, rather than to ensure non-repetition and remedy of such violations.¹⁶³ Indeed, before the European Commission of Human Rights in the initial hearings of the case brought by Ireland against the United Kingdom for killings by security forces (including Bloody Sunday) and ill-treatment of those interned, the UK government argued that a right to life violation did not arise because victims were able to bring civil claims through the courts or under the 1968 Act, and therefore all domestic remedies had not been exhausted.¹⁶⁴

Some victims struggled against the legal system for recognition of their claim for compensation after initially being denied redress. In one case a widow unable to bring a claim under the 1968 Act for her husband, Thomas McLaughlin, who was shot dead by a British army patrol in Newry in 1971, appealed the case to higher courts. Mr McLaughlin had been taking part in an attempted bank robbery with two others when soldiers waiting to intercept them opened fire, thinking they were planting a bomb. Before the courts, the legal representatives of the widow claimed negligence and trespass to the person for the death of her husband, but this was rejected by the high court and House of Lords, believing the soldiers had acted reasonably in the circumstances.¹⁶⁵ Only when the case went before the European Commission did the UK government reach a settlement of £37,000 in compensation. In doing so the government recognised that Mr McLaughlin's death was an 'unfortunate mistake', but was making an ex-gratia compensation payment on 'compassionate grounds', to terminate proceedings and 'without implying any admission of a violation of the Convention or any reproach against the soldiers'.¹⁶⁶ Today this sort of shooting would be analysed in terms of Article 2 compliance on the use of force, wherein shooting unarmed men who are running away rather than trying to apprehend them could be seen as a violation of the right to life and unlawful in itself, with no need to show negligence.¹⁶⁷ This case highlights the government's policy of using compensation to deflect attention from civilians being killed by the army. Such large awards to settle claims have become apparent once again where the government has agreed to settle unlawful killings or issues of collusion in a number of high-profile cases.

163 Brice Dickson, *Counterinsurgency and Human Rights in Northern Ireland*, in P. Dixon (ed.), *The British Approach to Counterinsurgency: From Malaya and Northern Ireland to Iraq and Afghanistan*, Springer (2012), 291–313, p300.

164 The European Commission struck out the claim around Article 2, finding that there was insufficient evidence to show that killings by British security forces was an 'administrative practice' violating Article 2. Decision of the Commission as to the Admissibility of Applications Nos. 5310/71 and 5451/72, p40.

165 *Farrell (Formerly McLaughlin) v Secretary of State for Defence*, (1980) 70 Cr. App. R. 224. The Court of Appeal decided in favour of Farrell, but this was overturned by the House of Lords on appeal.

166 *Farrell v UK*, Application No. 9013/80, 2 October 1984.

167 For instance see *McCann v UK*.

6. The Growing Divide: Recent Compensation for Troubles-Related Deaths

A final issue we want to address before turning to moving forward, are the range of recent settlements made by the British government to bereaved families as a result of new investigations, civil litigation, inquests or inquiries that affirm the unlawful nature of the killing of their family member and the involvement of state forces. These processes are the result of long-fought campaigns by families seeking acknowledgment of their loss, to uncover the truth and to vindicate their lost loved one's good name; for them, it is not about the money. In highlighting the amount awarded in such cases, it is not our intention to criticise or to suggest that these families do not deserve such awards, but rather to argue that other victims who are unlikely to be able to avail of such new settlements or procedures are being disadvantaged by a hierarchy of victim compensation. Although the vast majority of killings were carried out by paramilitary groups, this inequity is particularly acute in cases involving the use of lethal force by State agents and will only become more so should the Legacy Bill close down such avenues for redress.

Two of the biggest recent compensation payments to those bereaved have involved families who lost loved ones in the Ballymurphy massacre and Bloody Sunday, through the use of unlawful lethal force by British soldiers. In July 2021 that the Ballymurphy inquest finally ruled on the extrajudicial nature of the 11 civilians killed; the Bloody Sunday inquiry ruling was issued in 2010. In both incidents, the subsequent settling of compensation has been an equally arduous and adversarial process for the families. Despite the finding that State forces were responsible for unlawfully killing these civilians, litigation to settle their families' claims has been dragged out. Although the amounts of compensation awarded recently have not been disclosed, the daughter of one Ballymurphy victim observed that initially her mother was offered £350 despite having nine children to support, while in the hearing that preceded hers, the owner of a greyhound knocked down by a car was awarded £700.¹⁶⁸

In June 2022, the MoD settled with nine families bereaved in the Ballymurphy massacre who were awarded a 'significant' damages.¹⁶⁹ In 2018 the MoD settled with the families of the nine unmarried men killed on Bloody Sunday, who were awarded £75,000 each,¹⁷⁰ and paid £625,000 to a married father of eight.¹⁷¹ In 2019 it paid £300,000 to settle with the family of one of the married men who was shot dead.¹⁷² The High Court awarded £264,985 to the family of another victim, plus £15,000 in aggravated damages for the distress caused to the victim as a result of seeing soldiers shoot other victims before he himself was shot in the head. The smaller of these awards was unsuccessfully

168 Connla Young, Authorities originally offered £350 in compensation for the death of Ballymurphy massacre victim, *Irish News*, 14 June 2022.

169 Rory Carroll, Ballymurphy massacre: MoD to pay damages to bereaved relatives, *The Guardian*, 13 June 2022.

170 Bloody Sunday: £900,000 in damages for victims, *BBC News*, 25 October 2018.

171 Bloody Sunday victim Gerry McKinney's widow awarded £625,000 damages, *Irish News*, 1 October 2018.

172 Alan Erwin, Family of man shot dead on Bloody Sunday to receive £300k compensation, *Belfast Telegraph*, 20 September 2019.

appealed by the MoD.¹⁷³ These amounts are more commensurate with those awarded by reparation programmes to redress protracted violence in other countries, but during the Troubles under the 1968 Act most families received £50-£250 to cover funeral costs. As one victim said the payment was an ‘insult’ and felt more like ‘blood money’ to pacify the families as claiming any more would make them look like they were trying to exploit their loved one’s death for financial gain.¹⁷⁴ There have been similar awards in other cases. In December 2021, for example, relatives of two of those killed in the Miami Showband massacre were awarded £375,000 and £325,000 each.¹⁷⁵ Similarly, one widow was awarded £100,000 in 2019 for her husband who was caught up in a riot in 1971 and killed by an army baton round.¹⁷⁶ One man who witnessed the shooting of his grandfather was recently awarded £90,000.¹⁷⁷ That said some cases have been unsuccessful, where despite substantial damages being sought, the passage of time has been ruled to undermine the fairness of the defendant (such as the MoD).¹⁷⁸

The Victims’ Payment Board, while established for the benefit of seriously injured and disabled victims of the Troubles, can also be accessed by some bereaved family members. As of early June 2023, the Board had made four awards to family members who qualify as victims by virtue of being present in the immediate aftermath of their loved one being seriously injured before they died.¹⁷⁹ So far 14 applications have been made on such grounds, of which five have been rejected. There have also been 162 posthumous applications for seriously injured victims who have died, of which only four so far have received an award. To victims, such awards can seem arbitrary and limited to the person in the family who finds their loved one in the moments before their death.

In sum, payments received by bereaved families have often been inadequate, unfair and in the case of recent settlements, limited to a handful of victims. Ad hoc payments have been provided from time to time to bereaved families through the NI Memorial Fund, and subsequently through its successor the Victims and Survivors Service. However, this funding, which is typically distributed as awards of between £500 and £1000, has not operated consistently. Discontinued in 2017 before reopening in 2021, such payments do not amount to reparations; rather, they are a means to remedy and acknowledge victims’ harm without making them feel like ‘beggars’.¹⁸⁰

A bereavement payment scheme would create a more level playing field and enable those who have suffered the loss of a loved one to have their harm appropriately acknowledged and redressed.

173 *Doherty v Ministry of Defence* [2020] NICA 9.

174 Interview NI04.

175 Miami Showband victims receive £1.5m in damages, BBC News, 13 December 2021.

176 Alan Erwin, Army shooting victim’s widow awarded £100k compensation, *Belfast Telegraph*, 19 June 2019.

177 Alan Erwin, Belfast man who witnessed sectarian killing of grandfather Sean McParland to receive £90k damages, *Belfast Telegraph*, 31 March 2023.

178 *Stanislaus Carberry as Personal Representative of the Estate of Stan Carberry (dec’d) v Ministry of Defence* [2023] NIKB 54.

179 FOI\12\23, 19 June 2023.

180 Interview IR06.



HIROSHIMA

Part II - Moving Forward: A Bereaved Payment Scheme

In its latest iteration, the proposed Legacy Bill puts an end to any ongoing civil litigation upon commencement of the bill and prevents any future claims, including private claims for injury arising from any conduct during the Troubles. Even where a judge can disapply the limitation period of an act, the bill overrules such discretion.¹⁸¹ Effectively this means that no future civil litigation can be brought over deaths during the Troubles. Other countries have brought in such laws, but only after a new administrative compensation scheme has been put in place. For instance, Germany's forced labour compensation scheme that ended claims against the German government and German companies provided a few thousand Euros to each victim who suffered forced or slave labour.¹⁸² The South African Constitutional Court ruled that a similar cessation of criminal and civil litigation was lawful on balance to facilitate the work of the Truth and Reconciliation Commission and that reparations would be made to victims. Reflecting on these provisions, Justice Didcott held that the Promotion of National Unity and Reconciliation Act 'offers some quid pro quo for the loss and establishes the machinery for determining such alternative redress.'¹⁸³ The Legacy Bill envisages a different approach to dealing with the past, with no redress scheme for bereaved victims.

In other situations, the European Court of Human Rights has held that while blanket amnesties are seen as unlawful in international law, conditional amnesties as proposed under the Legacy Bill can be permissible if they are part of 'a reconciliation process and/or a form of compensation to the victims'.¹⁸⁴ The foreclosure of avenues to seek redress through civil litigation and the coronial inquest system is unlikely to be human rights compliant if bereaved victims do not receive some form of compensation and clarification of facts.

Part I of this report set out the inadequacy of past compensation efforts for those bereaved during the Troubles, and new compensation payments to certain victims continue to attest to this. A bereaved payment scheme is needed. There are three options through which to deliver a compensation scheme for those bereaved as a result of the Troubles: (1) the Victims and Survivors Service; (2) a new bereavement payment body; or (3) the Victims' Payment Board.

181 Section 39.

182 See Edda Kristjansdottir and Barbora Simerova, Processing Claims for "Other Personal Injury" under the German Forced Labour Compensation Programme, in *Redressing Injustices through Mass Claims Processes: Innovative Responses to Unique Challenges*, Permanent Court of Arbitration, OUP (2006), 109-137.

183 *Azanian Peoples Organization (AZAPO) and Others v President of the Republic of South Africa and Others*, (CCT17/96) [1996] ZACC 16, para.65.

184 *Case of Marguš v Croatia*, (Application no. 4455/10), Judgment, 27 May 2014, para.139.

1. How would a bereavement payment scheme operate?

1.1 Payment through the Victims and Survivors Service

A bereavement payment scheme could be operated through the Victims and Survivors Service. There has been a long practice of providing a small amount of financial support to bereaved families through the Northern Ireland Memorial Fund and its successor the Victims and Survivors Service (VSS). The VSS currently disperses awards of £500 to £1000 to bereaved families. These awards are discretionary, however, dependent on funding provided by the Executive Office; because it has no statutory basis, victims cannot seek enforcement through the courts as a right or legal entitlement when no funding is forthcoming, as some injured victims were forced to do to get the Victims' Payment Board to commence operating. The VSS could consider the best way to apportion a bereavement payment, given that it already has sufficient records of those who are current recipients.¹⁸⁵ To be effective, however, it would need to canvas a large victim population. This would require a substantial increase in the VSS budget,¹⁸⁶ which could not be taken out of other programmes.¹⁸⁷ The former UN Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-Recurrence Pablo de Greiff has found that a dedicated budget line indicates a clearer political commitment to redressing victims, rather than discretionary funding, which is subject to political whims and changing economic circumstances.¹⁸⁸

1.2 A Bereavement Payment Body

A second option is for a new commission or body to be established to deliver a payment to those bereaved. The initial lesson to be learnt from the Victims' Payment Board (VPB) for seriously injured victims is that the scheme has been slow to operationalise and deliver awards to disabled victims of the Troubles. In 2020 the regulations were passed by Westminster, but due to resistance from the Executive Office, victims had to go to the High Court to secure funding for the scheme to be implemented. Since 2021 when the scheme became operational, only a fraction of cases have been determined. It is unsurprising that it would take time to establish a scheme, secure premises, hire staff, train panel members, and standardise assessment criteria. However, the Historical Institutional Abuse Redress Board (HIARB) in Northern Ireland began operating in 2020 and in the three years since then has received 3,848 applications and made final determinations in 3,436 cases, paying out over £69.6 million.¹⁸⁹ The VPB and HIARB have a similar structure made up of a board presided over by a judge and three-member panels that assess applications.¹⁹⁰

185 This is likely to be only a fraction of those eligible. In 2021-2022, 3,596 persons were paid the self-directed assistance payment of whom 713 individuals for additional needs-based payments; these include a parent, spouse/partner and/or a child. See Annual Report and Accounts For the year ended 31 March 2022, Victims and Survivors Service Limited, 6 February 2023.

186 The annual budget of the VSS ranges from £15.8-£18.4 million per year in the last two years. *Ibid.*, p95.

187 There is currently about £2.15 million per year in the budget for self-directed assistance to bereaved victims, which would no longer be needed if a payment scheme was brought into operation.

188 A/69/518, 14 October 2014, para.56.

189 Key Business Performance Summary at 30 June 2023, HIARB (2023).

190 See Historical Institutional Abuse (Northern Ireland) Act 2019; and Victims' Payment Regulations 2020.

While the fact that the VPB was set up after the HIARB may be a contributing factor, differences in the time it takes to assess applications are probably due to the larger volume of applications that come before the VPB,¹⁹¹ the complexity of those applications, and the need to gather a wide range of information regarding the source and extent of the injury in order to make a determination, in addition to supporting evidence from other government bodies such as the police and the Department of Justice regarding past convictions and compensation awards.

Any new scheme is likely to be beset with such start-up delays and incur the additional cost of securing premises, staff etc. As previously mentioned, such a scheme would not require Capita or medical panel members to establish the degree of disability and physical and/or psychological harm arising from a Troubles-related incident. The scheme could be established by an act of Parliament (or Stormont, subject to the Assembly returning), but it would take time to get this onto the legislative calendar. Placing the scheme on a statutory footing would ensure a dedicated budget line for its operation and for payments to victims. In terms of its administrative process, a bereavement payment scheme could be organised on a different basis than the VPB or HIARB. It could take the form of a commission to assess applications rather than a three-person panel engaging in a quasi-judicial process. This would involve more of a paper-based exercise to determine whether a person's death was Troubles-related and to identify eligible victims based on their relationship to the deceased. Most reparation programmes in other countries use an administrative body such as a commission to determine compensation payments, as this approach is more efficient and standardised than individual panels.¹⁹²

1.3 A new pathway for the bereaved through the Victims' Payment Board

A final option would be to amend the Victims' Payment Regulations 2020 to include bereavement as a separate category of claimant. The benefit of this approach is that the administrative process is already established, and the law could be amended by the relevant NIO minister. However, inserting new clauses for bereaved victims would not be an easy task, as the regulations themselves are currently framed around injured victims; separate rules would be needed regarding who is eligible, apportionment, time period, and amount of award payment. Increasing workload and repurposing the scheme could further delay claims already before the Troubles Disablement Payment Scheme. The Board itself would need to consider the impact on its work pathways, training and management of bereavement applications.

That said, it is not difficult to consider new regulations. Under Regulation 5 on entitlement to victims' payment, a new regulation could be introduced as 5A for bereavement victims, defined as a person who is a close relative of a person who died as a result of a Troubles-related incident.

191 For the week ending 21/08/2023 the VPB had received 5,258 applications.

192 See Belfast Guidelines on Reparations in Post-Conflict Societies.

The regulations currently are territorially restricted to the United Kingdom or anywhere in Europe where the person was a British citizen, born in Northern Ireland, was outside the UK in service of the Crown or was a close relative accompanying a person serving outside the UK in the service of the Crown.¹⁹³ Regulation 5A would need to include language providing that Regulations 13-16 do not apply to this category of claimants, as the requirement to assess disablement is not relevant for bereaved victims. An additional regulation, 7A, could be introduced under Regulation 7 on causation of injury to cover causation of death for bereaved victims, wherein a claimant would need to satisfy that their next of kin died as a result of a Troubles-related incident, with no requirement to be present themselves at the time of the incident, in the immediate aftermath or in the course of employment where they reasonably believed a loved one had died or suffered significant injury. The stipulation of a 'loved one' under Regulation 7 and requiring claimants to be present at or in the immediate aftermath of the incident in which injured victims died is inappropriate for a bereaved payment scheme, as it is spatially and temporally narrow and restricts the relationship to the injured victim to parents, children and those who are married, civil partners or living together as such.¹⁹⁴ The current scheme for injured victims stipulates that a Troubles-related incident 'took place on or after 1 January 1966 but before 12 April 2010'.¹⁹⁵ The online Sutton Index notes nearly 100 individuals who have died since 2002, and since 2010 there have been 24 murders which are likely Troubles-related incidents, with a further 10 deaths being uncertain if they are Troubles-related killings since 2010.¹⁹⁶ It would be worth considering whether to leave open for families to apply for those killed after 2010.



In general a bereavement payment scheme should operate on the basis of a number of principles, including being victim-centred, trauma sensitive and gender inclusive. This should mean that any process is responsive to victims' needs and the process itself does not cause any further harm to those coming before it. It would also be tasked with addressing the shortcomings of past compensation schemes, in particular the way in which women and girls were treated. A bereavement compensation scheme would also need to address eligibility, complex victims, causation, apportionment and the form such redress should take. We deal with each of these issues in turn, drawing on comparative practice.

2. Eligibility

A starting point on who would be eligible is to consider who is a victim who died for the purposes of the scheme. The Victims and Survivors (NI) 2006 Order defines a 'victim and survivor' for the purposes of the Commission for Victims and Survivors as 'someone who has been bereaved as a result of or in consequence of a conflict-related

193 Section 5(c).

194 Regulation 7(2).

195 Regulation 5(1)(d).

196 See <https://cain.ulster.ac.uk/issues/violence/deathsfrom2002draft.htm>

incident'. While this is not a suitable definition for entitlement to reparations, it is a starting point for considering who might be eligible for such a scheme. The difficulty lies in determining a number of issues, including who died as a 'result of or in consequence' of the Troubles or conflict-related incident (causation), how to address those who also victimised others (complex victims), and apportionment. We address each of these issues in turn.

2.1 Bereaved as a 'result of or in consequence' of the Troubles

A key challenge of a bereavement payment scheme will be identifying those who died as a result of the Troubles. While lists of victims such as the Sutton Index of Death and Lost Lives are detailed, neither of these is complete. As Fay, Morrissey and Smyth note, there are various lists that account for the death toll during the Troubles, but figure they provide varies from 3,400 to 4,000 and they contain numerous 'inconsistencies'; both the Sutton Index and RUC list, for example, exclude 'army vehicle accidents, accidental shootings or deaths due to trauma, brought on by a conflict-related incident'.¹⁹⁷ The authors themselves excluded accidental deaths from their calculation, including those of 29 members of the intelligence community killed in the Mull of Kintyre helicopter crash.¹⁹⁸ Michael McKeown in 1977 noted numerous 'discrepancies' in official and reported death figures, due to disputed facts and different methods of recording deaths at the time of incidents. Indeed, while McKeown reports that between 14 June 1969 and 15 April 1977 there were 1,750 deaths, the Sutton Index documents 1,799 deaths and Lost Lives 1,863. During our own research, we found a number of cases in which civilians, including some children, were murdered and although no one was ever prosecuted as responsible for their deaths, they were assumed to be unconnected to the Troubles.

Although these discrepancies make it difficult to identify a comprehensive list, in some ways a bereavement payment scheme would be easier to administer than a scheme for seriously injured victims, who have to provide evidence that their injury has produced a qualifying degree of disablement. In the vast majority of cases, the details of the people killed during the Troubles are well recorded, in comparison to those injured. There is no need to show that a claimant has been disabled or suffered physical or psychological injury; this is assumed based on their relationship with the deceased person. Nor would a claimant for a bereavement payment need to show that they were in the 'immediate aftermath', as do applicants for the Troubles-related disablement payment. Like other compensation bodies in other jurisdictions, a bereavement payment scheme could develop its own registry of victims,¹⁹⁹ based on the open-source databases already mentioned to assist the application process.

Under the criminal injury compensation schemes, compensation was linked to an injury resulting from a criminal offence, an arrest or the prevention of crime. Given the political nature of the violence during the Troubles and violations committed by State actors, this would not be an appropriate standard for a bereavement payment scheme.

197 Marie-Therese Fay, Mike Morrissey, and Marie Smyth, *Northern Ireland's Troubles: The Human Costs*, Pluto Press (1999), p131.

198 *Ibid.* p132.

199 Jairo Rivas, 'Official Victims' Registries: A Tool for the Recognition of Human Rights Violations', *Journal of Human Rights Practice* 8(1)(2016) 116-127.

The VPB links eligibility to a 'Troubles-related incident', which is defined as 'an incident involving an act of violence or force carried out in Ireland, the United Kingdom or anywhere in Europe for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there'.²⁰⁰ Whether an incident is Troubles-related is for the panel to decide, but the VPB Guidance Note on the issue indicates that such incidents involve an

act o[f] violence or force ... related to one of three things:

- a) the constitutional status of Northern Ireland,
- b) political hostility between people in Northern Ireland, or
- c) sectarian hostility between people in Northern Ireland.²⁰¹

With the aim of preventing future inquests, the Legacy Bill defines a death which 'result[ed] directly from the Troubles' as one which was 'wholly caused by physical injuries or physical illness, or a combination of both, that resulted directly from an act of violence or force' which was itself 'conduct forming part of the Troubles'.²⁰² The VPB Guidance Note is more specific in this regard, but consideration will be needed as to whether paramilitary attacks styled as punishment for antisocial behaviour which resulted in the victim's death should be included. In such cases, a 'but for' test could be applied, in that the victim would not have been shot but for the existence of paramilitary groups, which exist because of the Troubles. There are also a number of cases in which individuals died indirectly as a result of a Troubles-related incident. There are reportedly 28 individuals who had heart attacks at the time or in the aftermath of a violent incident during the Troubles,²⁰³ three of whom are included in our data. All died within three days of a bombing or shooting, and compensation of £350, £1000 and £1350 was paid to their families. Again the 'but for' test for causation could be relevant here, in the sense they would not have died, but for them having been caught up in a violent Troubles-related incident. Relevant medical evidence could be drawn upon to determine the window of time in which this context would be relevant, or the extent to which the personal nature of the incident, such as finding a loved one injured or killed or having their home attacked, is a contributing factor.

In terms of the scope of eligible victims it is also worth considering the territorial reach of such a scheme. A number of individuals were killed outside the UK or were non-UK nationals. In other contexts, Spanish nationals who are victims of terrorist acts abroad are only entitled to economic compensation of 50% if they reside in the country where the terrorist attack occurs or 40% if they do not.²⁰⁴

Moreover, the Spanish government pays the difference if the country where the

200 Section 10(11), Northern Ireland (Executive Formation etc) Act 2019.

201 Guidance Note (GN 04/21): Defining a Troubles Related Incident, August 2021.

202 Under section 40 of the bill which section 16D to be inserted into the Coroners Act (Northern Ireland) 1959.

203 CAIN archive gives details on 20 of these cases <https://cain.ulster.ac.uk/sutton/heart.html> but there are as many as 28 and their families were awarded some compensation. In one case a person died of a heart attack the day after a bombing on their home and was awarded £1,000; this case is not included in our sample. See Noel McAdam, New push to recognise tragic cases of 'forgotten dead' of the Troubles, Belfast Telegraph 18 July 2017 <https://www.belfasttelegraph.co.uk/news/northern-ireland/new-push-to-recognise-tragic-cases-of-forgotten-dead-of-the-troubles/35939676.html>

204 Articles 6(3) and 22, Act on the Recognition and Comprehensive Protection of Victims of Terrorism, Ministerio del Interior, October 2014.

attacks takes place does not provide the victim compensation or at least pays the difference when the award obtained abroad is lower than the Spanish amount.²⁰⁵

Most reparations programmes do not require identification of a perpetrator or responsible actor in order for victims to bring claims. Instead they require victims to evidence that their harm was related to or was a consequence of the armed conflict or political violence. A difficult issue in this regard is the eligibility of those persons who blew themselves up, were lawfully killed in security operations or died in prison. Human rights law provides some guidance on the use of lethal force, but a challenge here is that the use of lethal force strayed into armed conflict military operations, where the use of ambush rather than a police arrest operation took place. Court cases and inquests have dealt with some of these killings, making determinations on the lawfulness of the force used. Under the 1968 Act scheme, even the families of those who blew themselves up were deemed to have suffered loss and so were awarded some amount of compensation. It is worth considering the purpose of a bereavement scheme in remedying suffering caused by loss during the Troubles and determining the extent to which all who died should be compensated, in particular with regard to complex victims.

2.2 Complex Victims

The criminal injury compensation schemes in Northern Ireland usually excluded or reduced the compensation available for those involved in provocative, negligent behaviour, who were members of an unlawful organisation or had a relevant conviction. The experience in other contexts is mixed. In South Africa, for example, family members are able to claim compensation for their unlawful death, while in Peru and Colombia they are not. Under Iraqi law, members of non-state armed groups who have convictions are excluded until 'proven innocent'.²⁰⁶ Other reparation programmes use the term 'civilian' to distinguish payment made to those who did not take part directly in hostilities.²⁰⁷ The difficulty with such terms is that the circumstances in which a person was killed remain disputed in a number of cases. There is further guidance in international law, which stipulates that only those who are directly participating in hostilities should be considered legitimate combatants or fighters who can be targeted.²⁰⁸ That said, human rights law would point to the extrajudicial nature of killings as being unlawful and persons affected as victims of a violation of their substantive right to life, but again this would turn on the facts and circumstances reported and witnessed at the time.



205 Article 22(2), *ibid.*

206 Article 17, Compensation for those Affected by Military Operations, Military Mistakes and Terrorist Actions, Law No 20. 2009.

207 Kosovo Law No. 04/L-054 Article 3(1)(10) - died from enemy forces or as a 'consequence of the war' from unexploded ordnance; Balochistan Civilian Victims of Terrorism (Relief and Rehabilitation) Act 2014, s.2(b) - as not a 'terrorist or a personnel of a law enforcement agency on duty'.

208 This language in international humanitarian law is complicated in its application to Northern Ireland, as it did not reach the threshold of intensity for a non-international armed conflict and the UK did not cede to Additional Protocol II until 1998 (there was no territorial control by rebel groups either).

Providing compensation to all bereaved victims does not resolve what some victims see as an injustice, that those who victimised and killed others are being treated as equivalent to innocent civilian victims. As one victim said,

It's not about money, is right. Whilst I could tell you incidents where people lost their husbands through terrorist atrocities and the pitiful compensation they got for the loss of a life, it was pitiful. My aunt got £5,000 for the loss of her husband and five of a family and was fostering two others. That was it and yet we see terrorists getting 20 times more than that, you know? It's not about the money, it's about the fact of acknowledgment the wrong. But this thing about appeasing terrorism and giving terrorists everything they want...²⁰⁹

The potential exclusion of those engaged in rioting, political violence or otherwise injured 'by their own hand' continues to influence discussions around the issue of compensation in Northern Ireland today. While it has shaped the debate around a standard payment to all victims of the conflict as proposed by the Consultative Group on the Past²¹⁰ and the discussion around a 'Troubles pension' for the severely injured too,²¹¹ it is clear from the above that the difficulty posed by the issue has long pre-dated these discussions. Through its review panel, the VPB offers a more balanced approach to tackling these issues. The human rights law position suggests that those not directly participating in hostilities at the time of their death or who were subjected to unlawful use of force should have some form of remedy to acknowledge the violation of their right to life, no matter their character or background.²¹²

The Consultative Group on the Past's recognition payment was scuppered because compensation was offered to all those bereaved. A bereavement payment scheme could focus on the impact on families/dependants of those killed, rather than the individual's character, background or actions. There may be circumstances and facts that will arise from inquests, inquiries and even the ICIR that will change the official account of an individual's involvement in provocative or illegal behaviour. While there may be good reasons to distinguish between paying all victims and making reparations to those who have suffered unlawful harm caused by another,²¹³ in practice and over time it may be difficult to say with certainty that a person was killed while on active service, or while they were a member of a paramilitary organisation or that they were responsible for their own death. It is permissible under human rights law and civil law to make such distinctions, but it may undermine the purpose of such a scheme, which is to encourage reconciliation and acknowledge the human loss caused by the Troubles.

209 NI18.

210 Bill Rolston, *Dealing with the Past in Northern Ireland: The Current State of Play*, *Estudios Irlandeses* 8 (2013) 143-149.

211 Luke Moffett, *A pension for injured victims of the Troubles: Reparations or reifying victim hierarchy*, *Northern Ireland Legal Quarterly* 66 (2015) 297.

212 See Luke Moffett, *Reparations for 'Guilty Victims': Navigating Complex Identities of Victim-Perpetrators in Reparation Mechanisms*, *International Journal of Transitional Justice*, 10(1)(2016), 146-167.

213 See Moffett *ibid*.

Should the bereavement payment scheme seek to compensate all those who died as a result of the Troubles, or to compensate only those seen as deserving, risking criticism on ground of discrimination and the perpetuation of a hierarchy of victims? There is no simple legal solution. A formulation that includes those who were unlawfully killed by another, rather than only those who died as a result of a criminal offence, would include deaths caused by the security forces while excluding those who died by their hands. Yet there are a number of deaths that occurred at the hands of unknown assailants where it would be difficult to determine who was responsible, and others who died in suspicious circumstances, for example in prison. The issue of whether the families of hunger strikers who died should be eligible would fall into this category. A determination panel in a bereavement payment scheme could consider whether in the circumstances the individual was unlawfully killed as a result of a Troubles-related incident. Other discretionary considerations might include whether awarding a payment to the family of a deceased victim would bring the whole scheme into disrepute, for example, when the deceased is a notorious killer. Such an individual, case-by-case approach risks creating discrepancies, whereby the claims of some families may be accepted and those of others rejected based on the determination of a panel.

2.3 Apportionment

The practice of awarding compensation to closely related family members of the deceased has a long history in Northern Ireland. The Northern Irish criminal injuries compensation schemes traditionally awarded compensation to widows, minors and dependants, splitting the total award between them. Widows/widowers often received the largest share, while children under the age of maturity were awarded a graduated amount based on their age. For instance, the family of one man who was shot dead in 1972 was awarded £21,000 in total, with £16,000 apportioned to his widow, £2750 to their son and £2250 to their daughter. However if the person was single and without dependants, only one of their next of kin could claim.

Other jurisdictions have adopted different practices to ensure that compensation awards are split equitably amongst family members who have lost a loved one during armed conflicts. A number of schemes divide the total award between eligible family members (spouse/children) equally. In Spain, payments are split in half between the spouse/cohabiting partner of the deceased and any children.²¹⁴ Under the Dutch NS Compensation scheme, when the direct victim and their spouse/partner has died, children have an equal share, with compensation paid out in full to the first child who submits an application.²¹⁵ In Chile compensation for disappearance or extrajudicial execution was allocated according to a standard formula whereby a surviving spouse received 40%, a mother or father received 30% in the absence of a surviving spouse, 15% was awarded to the mother or father of the victim's biological children and 15%

214 Article 17(3), Act on the Recognition and Comprehensive Protection of Victims of Terrorism, Ministerio del Interior, October 2014.

215 Article 5(2), Payment scheme Foundation for Individual Compensation for Victims of WWII Transport by NS, 1 August 2019.

was apportioned for each child of a victim.²¹⁶ Apportionment of compensation does not have to follow domestic inheritance law. The Moroccan Equity and Reconciliation Commission (IER) departed from sharia-based inheritance law to give a larger percentage to widows (40% rather than 12.5%) instead of the eldest son. Under the German Forced Labour Compensation Programme, the highest priority is given to surviving spouses and children; where no spouse or child survived, payment could be awarded in equal shares to grandchildren, or if none of them are living, then to siblings.²¹⁷

In Peru equal shares was originally considered the best way to distribute compensation. Initially, the truth commission (Comisión de la Verdad y Reconciliación - CVR) recommended that compensation should be prioritised to the spouse or widow over children and parents of the deceased. Awards were to be split amongst these parties, with the spouse/cohabiting partner receiving not less than 2/5. Another 2/5 was to be divided equally among the children, leaving not less than 1/5 to be equally divided between the parents.²¹⁸ In practice, however, this formula risked causing disputes within families and reducing the amount of compensation available if other siblings later registered a claim, even when half was distributed to the spouse and the other half split equally between the children and parents of the deceased. Instead, the Peruvian inter-ministerial body responsible for implementing the reparation programme (CMAN) awarded a fixed amount of 18,000 soles (£4,500) to the spouse/widow and 4,500 soles (£1,125) to each child and/or parent who was eligible.²¹⁹ These lessons were not learnt in Guatemala, where with the average family size is six, and the practice of splitting the \$3,200 awarded in compensation for the death of a loved one equally among them means that each victim only receives just over \$500. This has caused tensions and divisions within families between those who want to claim the money and those who do not.²²⁰

In the context of Northern Ireland, given that it is now over 50 years since the onset of the conflict, it is likely that many close relatives of those killed in the Troubles have died. The Consultative Group on the Past set out an indicative list of which close relatives would be eligible for compensation, with the money to be split between one or more persons of the same category:

1. Husband or wife
2. Son or daughter
3. Father or mother
4. Brother or sister
5. Grandparent

216 Article 20, Law 19.123, Establishes the National Corporation for Reparation and Reconciliation and Grants other Benefits to Persons as Indicated, Official Gazette No. 34 (188), 8, February 1992.

217 Section 13(1), The Law on the Creation of a Foundation "Remembrance, Responsibility and Future" 2 August 2000.

218 Comisión de la Verdad y Reconciliación (CVR), 27 August 2003, p190-191, available at: <http://www.cverdad.org.pe/ffinal/pdf/TOMO%20IX/2.2.%20PIR.pdf>

219 Cristian Correa, Reparations in Peru: From Recommendations to Implementation, ICTJ (2013), p16-17.

220 Denis Martínez and Luisa Gómez, A promise to be fulfilled: Reparations For Victims Of The Armed Conflict In Guatemala, RRV, August 2019, p28.

6. Grandchild
7. Uncle or aunt
8. Nephew or niece²²¹

This broad approach would ensure that families of most victims who died during the Troubles would receive some recognition payment. Consideration should be given to interpreting these categories in line with civil partners, cohabitees, half-sister/half-brother, step-children and step-siblings where appropriate. Regarding cohabitees, the current 2009 Criminal Injuries Compensation Scheme allows 'an [u]nmarried but long-term partner including same sex who had been living together 2 years before the death' to be eligible as a dependant of someone killed.²²² The Fatal Accidents (Northern Ireland) Order 1977 limits claimants to the wife, husband or civil partner of the deceased, or, where the deceased was an unmarried minor, to his/her parents if they were legitimate or his/her mother if they were illegitimate. Where applicable, an award of £17,200 is to be equally split between parents. However, the Legacy Bill states that cohabitees are eligible to submit a claim provided they were living in the same household for two years prior to the victim's death.²²³

The current compensation for criminal injuries scheme allows multiple dependants to claim. A single claimant is eligible for £11,000; in the case of multiple claimants, each is entitled to £5,500.²²⁴ A bereavement payment scheme for the Troubles could take a number of forms:

1. A fixed sum for all those killed, split (apportioned) between different categories of eligible next of kin. For instance if the bereavement payment is agreed at £20,000, 60% could be dedicated for the surviving spouse/partner/cohabitee (£12,000) with 40% for the next eligible subsequent category (£8,000). By way of example, a person who was killed in 1973 has a surviving spouse and two children. The spouse would be entitled to £12,000 with each child receiving £4,000. It could be argued that widows who benefited from pensions should receive less, and their children receive more, but most schemes do not make such a distinction and in terms of delivery it may be easier to split an award equally. Where there is no spouse the next eligible subsequent category could be eligible for 100%, so children or parents would split the total £20,000 etc.
2. A fixed sum split equally. For instance if the bereavement payment is agreed at £50,000 and there are four surviving children, then each would receive £12,500. The equal split could be across designated categories. For instance, if the mother of the deceased is still alive as are five siblings, then each would receive £8,333. The difficulty with this approach is that it would have a disproportionate effect on large families. For instance, in cases where 8 or 12 children lost a parent, splitting the fixed sum into equal amounts would give each of them only a small portion of the award (£6,250 or £4,166 respectively), whereas a single child

221 CGP (2009), p93. This is in line with the Irish Remembrance Commission.

222 Part 4.18(b). A Guide to the Northern Ireland Criminal Injuries Compensation Scheme (2009), Issue Number Two (02/12).

223 Clause 1, Schedule 3.

224 A Guide to the Northern Ireland Criminal Injuries Compensation Scheme (2009), Issue Number Two (02/12), p32.

would receive the full £50,000. This may do little to acknowledge or remedy the harm they have suffered.

3. A baseline sum that allows multiple claimants. This would be similar to the current criminal injuries compensation scheme. Using £11,000 as an example, in the case of a single claimant, such as a surviving sibling of the deceased victim, this would be the baseline sum. However, if the spouse, children, siblings and parents of the killed person are also now deceased, it could be split between two grandchildren who would be eligible for £5,500 each.²²⁵
4. A graded approach wherein each category has a fixed amount of compensation. For instance, a spouse/partner would be in the top category and therefore would receive £25,000. Those in the next category, children, would receive £20,000 each, parents £15,000, siblings £10,000 each and so on. Each category would be eligible for compensation only if no one from the category above them made a claim. This graded approach could reflect how close each person is to the deceased victim. While such a scheme could be more complicated to administer, it would also be more equitable in that each person would know when they applied how much they could be eligible for.

While such a scheme could be more complicated to administer, it would also be more equitable in that each person would know when they applied how much they could be eligible for. Compensation should be arranged a way that is victim-centred, so their input in the design of the process is key. At the same time, money can often cause conflicts within families, so a scheme should be transparent and understandable so that it is seen as fairly awarding victims. A further difficulty will be where one family member applies for a bereavement payment but other do not, or other, more eligible family members are not aware of the scheme; for example, a sibling might claim before a spouse does. In such instances it would be up to the payment body to conduct a search of next of kin of those deceased and contact them to see if they want to make a claim or forfeit their right. For individuals in a multiple person category, such as children or siblings, if one individual comes forward to claim compensation, then it would be paid subject to the condition that if any other children or siblings come forward subsequently, the award will be split.

3. What would a bereavement payment look like?

It is worth discussing what shape a bereavement payment would take in terms of how much is adequate and in what form. There are no international standards or human rights obligations which specifically stipulate how much should be paid for extrajudicial killings. Instead, there are vague obligations on States to ensure an adequate, prompt and effective remedy to victims of gross human rights violations. The rest of this sub-section discusses how much would be appropriate for a bereavement payment and other forms of reparations.

3.1 How much?

To distinguish a new bereavement payment from the historic schemes, we need to

²²⁵ The 2009 scheme does not include grandchildren but given the historic nature of deaths during the Troubles, and with near sixty years having passed since the first death in 1966, it is likely that many eligible individuals are now deceased themselves.

move away from assessing individuals based on their income. While we cannot give a sum for the value of a human life, compensation aims to provide acknowledgment of the loss suffered and alleviate some of its consequences to allow new opportunities to develop. International human rights law often uses the formulation that any amount of compensation should not 'enrich or impoverish' a victim.²²⁶ We could create a system based on a person's need by making it means-tested or taxable, but this is counterintuitive to a scheme which intends to remedy victims' harm. Compensation for extrajudicial killings is awarded on the basis of the violation of a person's right to life, reflecting the obligation of the State to ensure an adequate remedy for such a serious breach.

A range of approaches have been proffered in the past. In 2007, former interim Victims Commissioner Bertha McDougall recommended a £2000 per year payment to spouses bereaved before 1988.²²⁷ This was to reflect the hardship they faced, but it would exclude the families of a large number of unmarried victims who died; in addition, spouses had their situation slightly improved with the minimum bereavement payment under the 1977 Order. The Consultative Group on the Past proposed a recognition payment of £12,000 to recognise the loss suffered by those bereaved during the Troubles.²²⁸ The basis for such a payment was on the ground that compensation during the Troubles had been 'inadequate' because, being based solely on income, it 'did not take into account the loss felt by the family'.²²⁹ For the bereaved, 'compensation was not primarily about money but rather a need for recognition of the loss or injury they endured'.²³⁰ The payment was comparable to the Irish Remembrance Commission's 'acknowledgment payment', which provided €15,000 to a family where a person was fatally injured on the basis they were normally resident in Ireland or killed in Ireland.²³¹ Although the recognition payment was only one of thirty recommendations made by the Consultative Group, it proved to be too controversial. It was slammed in the media and by a number of victims as equating the loss of innocent lives with those of the people who took them.

In other societies emerging from protracted violence, the amount of compensation awarded for harm does vary. The 2005 UN Basic Principles and Guidelines on the Right to Remedy and Reparations stipulate that compensation should be 'appropriate and proportional to the gravity of the violation and the circumstances of each case'.²³² Often large administrative schemes offer a fixed amount of compensation to victims

226 *Garrido and Baigorria v Argentina*, Judgment, 27 August 1998, Series C No. 39, para.43.

227 McDougall (2007), p45.

228 CGP p91-93.

229 CGP p91.

230 CGP p91.

231 The acknowledgment payment entitled the spouse to be the primary beneficiary in the first instance, but where they did not survive the award would be divided amongst the victim's surviving children. Where there were no children, the award would be made to the parents of the victim, and if they were not alive, another family member, such as a sibling of the victim, could claim as a relative at the discretion of the Remembrance Commission. The Commission operated from 2003 to 2008, during which time some 309 applicants were awarded acknowledgement payments for 109 victims killed during the Troubles. Orla Drummond and Arlene Robertson, Better Together Reviewing the needs of victims and survivors, CVSNI, December 2021, p33.

232 Principle 18, 2005.

based on their violation or a tariff of injuries to balance large victim populations with limited resources, whereas judicially determined compensation responds to the violation of an individual's rights.²³³ In 1998 the South African Truth and Reconciliation Commission recommended that \$2,700 (£2,160) be awarded for six years to the victims of gross violations of human rights (namely killing, abduction, torture or severe ill-treatment) who came before it, but the government only made a single payment of less than \$4,000 (£3,200).²³⁴ In Colombia, compensation for disappearance, murder, torture or sexual violence is calculated based on 30 or 40 monthly minimum salaries, depending on the seriousness of the harm (\$6,218-\$8,290 (£5,000-£6,630)).²³⁵ In Guatemala, the reparation programme offered Q24,000/\$3,200 (£2,500) for those killed during the armed conflict and genocide, equating to three months of the average salary.²³⁶ Regional and international courts have determined the appropriate amount of compensation based on discretionary amounts of 'equity' or what seems fair, not to enrich or impoverish the victim.²³⁷ In a series of Guatemalan cases, for example, the Inter-American Court has awarded \$20,000-\$120,000 to each victim killed, reflecting the seriousness of the violation of their right to life.

There are indicative examples for compensation for past violations. Those who were seriously injured as a result of a Troubles-related incident, leaving them completely disabled, can expect an initial lump sum of £11,490 annually backdated to 2014, then £11,490 per annum for the rest of their lives. At the lower end, those with 20% disablement (14% rounded up) will receive £2,298. Not to detract from the suffering of the bereaved, but those who experienced life-changing injuries as a result of the Troubles struggle with that legacy on a daily basis, and compensation for injured victims is particularly tailored to their needs and demands for redress (i.e. financial security in old age, given that they were unable to return to work or build up a pension, and can face discrimination in the workplace). If victims die before their claim is processed by the VPB but after the scheme came into being in 2021, their carer or next of kin is allowed to claim. Historical institutional redress schemes in Northern Ireland offer awards of £10,000 up to £80,000.²³⁸

233 Report by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/69/518, 8 October 2014, para.4.

234 Promotion of National Unity and Reconciliation Act, No. 34 of 1995. TRC Vol.5, Chapter 5, p184-6.

235 Article 149, Decree 2800 of 2011.

236 Denis Martínez and Luisa Gómez, A promise to be fulfilled: Reparations for Victims Of The Armed Conflict In Guatemala, RRV, August 2019, p27.

237 *Garrido and Baigorria v Argentina*, Judgment, 27 August 1998, Series C No. 39, para.43; *Case of Varnava and Others v Turkey*, 18 September 2009, para.224; and *Prosecutor v Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728-tENG 17-08-2017, para.191.

238 This is limited to those who suffered abuse as a child within an institution in Northern Ireland between 1922 and 1995, but died between 28 April 1953 and 1 March 2018 – sections 2, 3(2) and 6, Historical Institutional Abuse (Northern Ireland) Act 2019.

For a bereaved payment scheme, a single payment could be made to their closest relative(s). In terms of the amount, the extent to which any amount of money can be considered adequate for the loss of a loved one is debateable. However a payment is not intended to fully redress the loss and harm suffered by those bereaved, but to acknowledge and to remedy it as far as possible. In terms of how much would be a sufficient for this purpose, there are a range of options. Three of these are presented here to reflect comparable practice: a £20,000 lump sum; a £75,000 lump sum; or a £10,061 annual payment.

At the lower end of the scale, a bereavement payment of £20,000 is roughly equivalent to the initial £12,000 recognition payment recommended by the Consultative Group on the Past and the Irish Remembrance Commission's acknowledgment payment of €15,000. With inflation, this amount would be worth £18,225 today.²³⁹ Under the Fatal Accidents (Northern Ireland) Order 1977 currently, the bereavement payment amount is £17,200 for a spouse/civil partner or parent(s) of a minor.²⁴⁰ If £20,000 was the amount agreed upon as appropriate for this scheme and there was only one eligible claimant, they would receive this amount. However, if there were multiple eligible claimants in a category, for example, five children of the deceased, then they could get baseline amount of £10,000 each.

At the higher end of the scale, a £75,000 lump sum would not be out of line with other awards or schemes. The payment for war widows who remarried will be £87,500, though this is subject to tax.²⁴¹ As discussed above, court-awarded compensation for Troubles-related deaths in recent years has ranged from £75,000 to £625,000. An amount of £75,000 reflects the lower range of payments made recently for Troubles-related deaths. The VPB, which runs the Troubles Permanent Disablement Scheme, draws on the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 to determine appropriate amounts of compensation.²⁴² At the top end of the scale, a spouse/partner receives a pension of £10,061 per annum under this scheme.²⁴³ In addition, the historical redress schemes award up to £80,000 for those who are now deceased. However, this scheme was established to remedy the harm experienced by traditionally marginalised victims whose suffering had never been compensated. Most of those who were killed during the Troubles received some form of compensation, with the exception of those who withdrew their claims or were rejected.

It could be argued that £75,000 is a fair amount to pay to those bereaved, but the extent to which past compensation should be deducted from any award will need to be considered.²⁴⁴

239 Bank of England Inflation Calculator.

240 Section 3(A)(3).

241 Such war widows whose partners died during the Troubles would also be eligible for the bereavement payment, though it would be exempt from tax and benefits, or they may forfeit their claim and allow their children or another next of kin to apply for the bereavement payment.

242 Regulation 18(3), The Victims' Payments Regulations 2020.

243 Schedule 2, Part II.

244 In terms of inflation, an award of £10,000 in 1972 would today be worth nearly £74,000.

The Victims' Payment Regulations for seriously injured victims only take into consideration past compensation that can be exempted by calculating the number of weeks since the relevant incident, multiplied by the appropriate rate, then calculated with reference to the gross domestic product deflator and the time value of money with reference to the Bank of England base rate.²⁴⁵ In simple terms, this involves calculating the amount to which a person should have been entitled from the date of their injury in light of changes in prices and interest rates. As a rough example using a similar calculation for bereavement to the method used by the VPB and the Naval, Military and Air Forces etc. pension scheme, take the case of a person killed in August 1975. Their next of kin would be entitled to 2,496 weeks of pension payment, which today is £167 per week; their exempted amount therefore would be £416,832. In this case, even if the claimant had received £15,000 in May 1976 for the killing, amounting to £96,000 today, and were awarded £250,000 in a court case in June 2023, they would still be entitled to £70,832 of a £75,000 bereavement payment. In the case of individuals who have received large recent settlements that would reduce their exempted amount to zero, a guaranteed residual minimum exempted amount of £10,000 should be paid to their next of kin as an official acknowledgement of their bereavement. Some bereaved family members have benefited from the pension scheme for the seriously injured, but only if they were present at the Troubles-related incident or in its immediate aftermath. Yet other family members may not have benefited so their total sum award should not be discounted for any bereavement calculation. Regarding widows of service personnel, while efforts to redress the discontinuation of their pensions after remarriage have increased, as outlined above many were not adequately compensated under these schemes. It would be worth considering whether they should be eligible for a baseline payment under a bereavement scheme, and if so, whether they should receive the full amount or a new pension reimbursement payment which is partly deducted from the taxable amount of £87,500 as currently proposed.

The third option for a pension payment could be similar to the approach taken under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006, which provides for a pension of £10,061 per annum in the event of death. This could be limited to a specific period of time, such as five years (equating to just over £50,000). A monthly pension can allow some financial security over a longer period of time. Given that the deceased are likely to have more than one eligible close relative, it could be argued that awarding a lump-sum bereavement payment rather than a pension as in the case of injured victims, is preferable because it is easier to divide a lump sum than recurring payments made over a period of years.²⁴⁶ However, it would not be difficult to arrange for the total payment to be split then distributed to each eligible claimant in the form that suits them; in this way, one child who lost their parent could receive £25,000 as a lump sum while their sibling could receive

245 Regulation 20, The Victims' Payments Regulations 2020. See VPB, Guidance Note (Gn 01/21): Adjustment in Respect of Past Compensation, August 2021.

246 For instance an award of £75,000 split between three children would amount to £25,000 each, but if this was to be paid over a five year period it would amount to £416.67 a month.

it as a monthly payment of £417 over five years. Ultimately, with the aim of their agency, it may be best to offer close relatives a choice of how they want the money to be delivered to them, as a lump sum or a monthly payment over a number of years.

Some individuals may have suffered the loss of multiple family members, and there are a few instances of children losing both parents, people suffering the loss of two or more siblings and parents having two or more children killed. In such instances an enhanced award above £75,000 could be made of to reflect this loss, with £10,000 paid for each additional close relative up to a maximum of £100,000. There are also a handful of cases in which couples without children were killed or only children were killed whose parents are now likely deceased themselves. In other contexts, in particular that of the Holocaust in which no close relatives survived, reparations were made collectively to benefit the group, such as through memorials, education and cultural activities. In these cases, it may be an option to approach a local victim group with the consent and participation of relatives to create a memorial, educational scholarship or publication in memory of the deceased.²⁴⁷ Alternatively, victims eligible for a bereavement payment may reject any payment, perceiving it as “blood money” or as cheapening the loss of their loved one, or as a means to buy their silence with the ICIR. In such cases, victims should have the option of forfeiting their right to either allow another category of eligible family members to apply or for the money to be given to a charity or a victim organisation, with a portion of it to be designated for used in remembrance of their lost loved one, for example to purchase a memorial chair, create a book or documentary about their loved one, or establish a bursary in their name.



3.2 Other forms of reparations?

Regarding the form reparations for the bereaved should take, international human rights law and practice in other contexts suggest that compensation and other measures are needed. The seriousness and gravity of losing a loved one during a period of political violence or armed conflict often means that their death was not a singular, isolated killing, but part of a broader context of violence in which individuals were targeted because of their perceived or actual identity, occupation, location or gender. Reparations for extrajudicial killings during protracted violence and armed conflict require a range of measures to adequately and appropriately remedy the harm caused.

The 2005 UN Basic Principles on the Right to Remedy and Reparations outline five main reparative measures that are necessary to remedy the serious harm caused by extrajudicial killings: restitution; compensation; rehabilitation; measures of satisfaction; and guarantees of non-repetition. These measures are intended to be used in combination with each other to respond to the range of harm caused by such killings.

247 This could be a fixed amount of £5,000-10,000 per victim.

Of particular relevance to bereavement as a result of the Troubles are compensation and measures of satisfaction.²⁴⁸ With regard to the latter, measures of satisfaction are intended to acknowledge the wrongfulness of a victim being killed and to vindicate their rights and good name. This can take the form of apologies, public acknowledgments of responsibility, dignification and memorials of victims. More specifically measures of satisfaction can accompany compensation awards. For example, in Colombia letters were sent to entitled victims recognising the harm that they have suffered and acknowledging that they deserve such reparations as a result. Such practices are already in place in Northern Ireland through the Victims' Payment Board, which provides applicants to the injured pension scheme with a letter acknowledging that they were victims of certain Troubles-related incidents and are therefore entitled to a financial award. Efforts to move forward in dealing with the past in Northern Ireland should consider providing public acknowledgment of the loss of all those killed, no matter their background, accompanied by apologies from representatives of relevant organisations. In some case, these individuals may need to be specific individuals if bereaved families so request. However, any compensation awarded in recognition of the harm caused to the bereaved cannot be used to 'buy people off',²⁴⁹ by forgoing investigations and acknowledging those responsible for causing such harm. Ideally compensation for those bereaved would accompany a truth-recovery process and, where there is sufficient evidence, a criminal trial of those responsible. The Legacy Bill muddies the water in this regard, as it remains unclear if any information will be forthcoming under the ICRIR, in comparison to the effectiveness of inquests, trials and inquires.

While it is important to provide direct and individualised reparations to victims bereaved during the Troubles, reparations also need to be publicly facing to remind society of the loss that we suffered. One way to do this is through a public memorial which includes the names of all those killed or a monument to all those killed in the Troubles which does not name anyone specifically. This is not to glorify those who fought for the different belligerents during the Troubles, but rather to express that as a society, Efforts to move forward in dealing with the past in Northern Ireland should consider providing public acknowledgment of the loss of all those killed, no matter their background, accompanied by apologies from representatives of relevant organisations. In some case, these individuals may need to be specific individuals if bereaved families so request. Memorials serve an important role as public physical structures that confront us with the past. Public memorials are common in other societies emerging from protracted violence, such as South Africa, Nepal, Colombia and Peru. This does not mean that they are not political contentious. The memorial to all those killed in the Peruvian conflict (over 70,000), which includes the names of killed members of the rebel groups the Shining Path and MRTA, has been repeatedly attacked, even though the sun has bleached their names away.

248 It could be argued that rehabilitation is provided through support through victim groups and the Victims and Survivors Service, with a range of institutional and organisation reforms along with disarmament and demobilisation of armed groups already carried out as guarantees of non-repetition of violence.

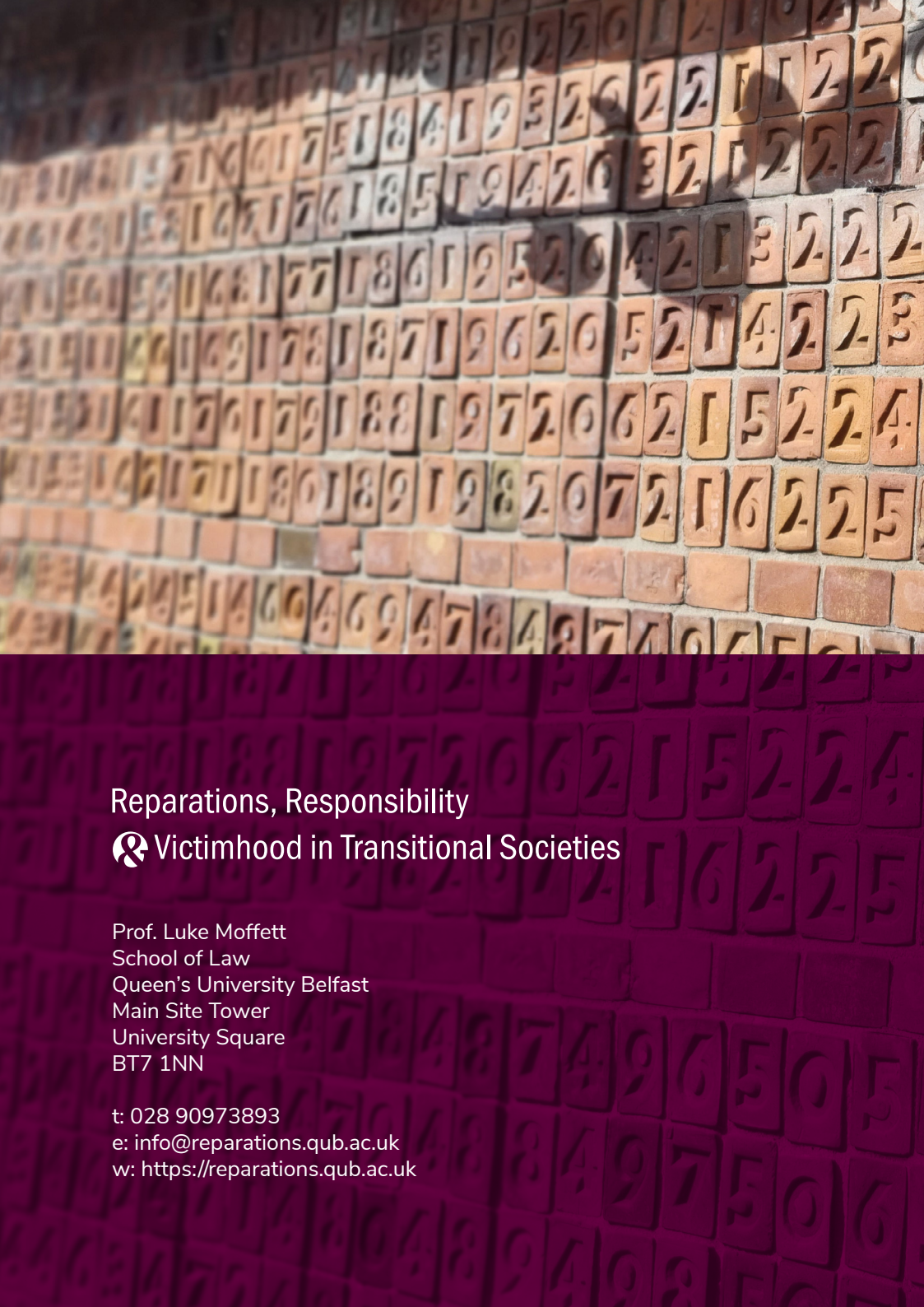
249 Interview NI04.

Inclusion of all names is not intended to equate one victim with another, but to reflect that each family suffered a loss. Those who seek to prevent such a memorial must recognise that no one victim has priority over another. A memorial is not just about victims; in part, it is something that future society needs to be confronted with in order to prevent the past from repeating itself. Belfast City Hall could be an appropriate place to have such a memorial, given its central place in the city, which already includes memorials to those killed in the sinking of the Titanic, in the Second Boer War, both World Wars and the Korean war.²⁵⁰ It seems that as a society, we are physically perpetuating silence around the past and causing ourselves amnesia by not having a memorial to the Troubles alongside these others.

Conclusion

Compensation for those bereaved during the Troubles was inadequate, unfair and discriminatory. Basing compensation on income and dependency meant that the non-pecuniary losses bereaved families suffered were not redressed. The process of claiming compensation caused disparities between males and females, young and old, civilians and fighters, as well as those killed in the same incident and members of the same family. The compensation schemes created a hierarchy of victims, which devalued the lives of those lost during the Troubles, burdening victims with the cost of killings. Our data points to victims receiving paltry amounts, with a total of only £6.9 million in compensation paid to the families of the 1,000 victims in our sample, with each family on average receiving £6,917. There are clear gendered impacts of the compensation for females both as claimants and as victims. While there are ongoing court cases and schemes that are providing compensation to some victims, only a handful of victims are eligible for these; this continues to rub salt into old wounds by making some victims feel that the lives of their killed family members are worthless. A bereaved payment scheme is feasible and perhaps necessary in light of human rights obligations and in the wake of the Legacy Bill. We have set out a number of options for how best to achieve this, in terms of which body would be responsible, the amount of the award, who would be eligible, how it can be split amongst bereaved family members, and what other forms of reparations may be appropriate. A bereavement payment scheme will never fully remedy the loss of a loved one, but it can contribute to acknowledging and redressing their death.

250 There are also memorials to Operation Banner, 9/11 and the landing of US troops in Europe during the Second World War.



Reparations, Responsibility

 Victimhood in Transitional Societies

Prof. Luke Moffett
School of Law
Queen's University Belfast
Main Site Tower
University Square
BT7 1NN

t: 028 90973893
e: info@reparations.qub.ac.uk
w: <https://reparations.qub.ac.uk>