



Time for a reparations programme for those bereaved during the Troubles?

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ABSTRACT

Compensation schemes for criminal injuries have been practised in numerous countries for over 60 years. Northern Ireland in 1968 introduced a criminal injury compensation scheme to ensure that victims were not left with the burden of the harm and loss caused by criminal acts. However, with the onset of the 'Troubles' in 1969 and the deaths of thousands of people, the scheme was inadequate in responding to protracted violence that left many people unemployed or with multiple casualties in their family. This article outlines some of the findings of archival research on compensation claims during the height of the Troubles. It argues that basing the compensation scheme on income and dependence of a deceased loved one caused arbitrary amounts being paid to those killed in the same incident or in the same family. It also had sharp gender dimensions that discriminated against women and girls as both claimants and for their loved ones when they were killed. This article suggests that, to redress the inadequacies of the compensation scheme during the Troubles for those who were killed, a bereavement payment scheme needs to be established and it outlines some considerations on who would be eligible.

Keywords: bereavement; compensation; Northern Ireland; legacy; Troubles; reparations; complex victims.

INTRODUCTION

Twenty-five years on from the Good Friday Agreement, dealing with what happened, who was responsible, and how to tackle the consequences of the 'Troubles' continues to loom large in Northern Ireland. Despite the United Kingdom (UK) Government passing legislation to 'address the legacy of the Northern Ireland Troubles and promote reconciliation' through the establishment of an 'Independent Commission for Reconciliation and Information Recovery',¹ it has been fiercely opposed by victim groups and local politicians. It has been also

1 Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, hereafter referred to as the 'Legacy Act'.

censured by leading human rights experts at the United Nations (UN) who, during the Act's progression through Parliament, said it will:

thwart victims' right to truth and justice, undermine the country's rule of law, and place the United Kingdom in flagrant contravention of its international human rights obligations breach the Good Friday Agreement ... [this] can significantly undermine the Troubles-related peace process and set a damaging and concerning example for other countries coming out of conflict.²

The UK Government has stated that the Act will be compliant with the European Convention on Human Rights, given the discretion afforded states in investigating the past under the rubric of facilitating truth recovery and reconciliation.³ Despite this, in January 2024 the Irish Government lodged an interstate application against the UK before the European Court of Human Rights (ECtHR) on the basis of the Legacy Act violating articles 2, 3, 6, 13 and 14 of the Convention.

Outside of these developments there has been a lack of any progress in providing reparations to those bereaved during the Troubles, despite a number of policy documents suggesting the need to reform the criminal injury compensation scheme and recognition of redress for those seriously injured.⁴ Reparations are considered by the UN as one of the five key pillars of transitional justice in dealing with the past, yet they have been absent from debates on dealing with the past.⁵ While there have been repeated efforts to secure consensus around the legacy of the Troubles, one of the most comprehensive – the Consultative Group on the Past – saw its final report being rejected outright over the recommendation of a £12,000 recognition payment. As such, reparations have their own toxic legacy that stymies any efforts to progress the issue of dealing with the past. It explains why subsequent efforts to deal with the past – Haas-O'Sullivan 2013, the Stormont House Agreement 2014 and the Legacy Act 2023– make no provision for them, addressing instead efforts to deal with truth and justice. Only the separate advocacy of injured victims for over 20 years saw the Victims' Payments Regulations 2020 established to provide them with a monthly compensatory pension, but nothing for other

2 'UK: flawed Northern Ireland "Troubles" Bill flagrantly contravenes rights obligations, say UN experts' (OHCHR 15 December 2022).

3 See 'Northern Ireland Troubles (Legacy and Reconciliation) Bill: European Convention on Human Rights Memorandum' (NIO 17 May 2022).

4 See Kenneth Bloomfield, *We Will Remember Them* (NIO 1998); and Kenneth Bloomfield et al, *Report of the Review of Criminal Injuries Compensation in Northern Ireland* (HMSO 1999).

5 Fabián Salvioli, 'International legal standards underpinning the pillars of transitional justice', Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/HRC/54/24, 10 July 2023.

victims, nor a wider engagement on reparations.⁶ Before suggesting we need a reparation process for families bereaved during the Troubles, we first need to interrogate what went before and the extent to which it redressed victims' harm.

This journal in 1976 included a special issue on compensation for criminal injuries in Northern Ireland by Desmond Greer and Valerie Mitchell. It was a comprehensive analysis of the Criminal Injuries to Persons (Compensation) Act 1968 (1968 Act), which had been introduced to reflect legal developments in England, Wales and New Zealand to improve the economic plight of crime victims. While the 1968 Act was introduced before the onset of the worst period of violence, Greer and Mitchell found that their extensive examination was important as the scheme 'assum[ed] a role and an importance which was not envisaged when it was enacted' that would be of use to lawyers in the province and in other jurisdictions.⁷ Others like David Miers also wrote in the *Quarterly* during this period of the Troubles on the issue of a victim contributing to their harm under the scheme and found that the scheme produced nonsensical and perhaps unethical outcomes to exclude individuals who got caught up in violence, even if they had experienced unlawful force, rather than their illegal acts excluding or reducing their compensation.⁸ These commentators were looking from the outside-in on how compensation under the 1968 Act manifested through case law. This article takes a different approach, building on these analyses and having access to previously closed records, it paints a more comprehensive internal picture of how the scheme worked in practice.

Compensation has a long history on the island of Ireland, going back well over a thousand years as a means to resolve grievances.⁹ 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 through state-funded statutory compensation schemes. 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

6 See Paul Gallagher, *New Social Movement Theory and the Reparations Movement in Northern Ireland: The Case of the WAVE Injured Group and its Campaign for Recognition* (PhD thesis, Queen's University Belfast 2022); Luke Moffett, 'Struggling for reparations in Northern Ireland' in Clara Ferstman and Mariana Goetz (eds), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity* (Brill 2020) 678.

7 Desmond Greer and Valerie Mitchell, *Compensation for Criminal Injuries to Persons in Northern Ireland* (Northern Ireland Legal Quarterly 1976) vii.

8 David Miers, 'Compensation and the victim's contribution to his injury' (1973) 24(4) Northern Ireland Legal Quarterly 533–537.

9 See Desmond Greer, *Compensation for Criminal Injury* (SLS 1990).

years of the Troubles, the courts were inundated with claims, peaking at over 500 per week, leading to delays and overburdening the judicial system.¹⁰ As a result, new laws were introduced in 1977 (amended in part in 1982) and 1988 to improve the scheme and deal with the volume of cases. A minimum bereaved payment was guaranteed to widows only in 1977,¹¹ and to parents of minors in 1988.¹² 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.¹³ Importantly, all these provisions were for victims who died after these dates, so the finality of awards meant that families of most victims killed during the Troubles (1966–1976) were ineligible for a bereavement payment.

This article highlights some of the findings of our longer report on the issue,¹⁴ but situates it in the legal analysis of the 1968 compensation scheme. This raises two issues in analysing the 1968 scheme: the passage of time; and compensation during ongoing violations. With the first of these, looking to the past to find solutions in the present has to be critically appraised in light of what Anne Orford finds: that lawyers 'turn to history' to find some evident truth to their own argument, assuming that historical accounts are neutral and objective.¹⁵ Discussing compensation from effectively 50 years ago needs to avoid presentism, both in terms of the value of compensation awards and how harm was understood. Second, much of the literature on reparations for countries transitioning from violent regimes or conflict to democracy and peace focuses on new institutions and mechanisms established in the aftermath. Domestic reparation programmes are often established in transitional societies as a means to comprehensively address victims'

10 HIA/MS/3558. In comparison in 2021/2022 there were in total 3707 compensation cases (71 per week) and 4266 cases (82 per week average) in 2022/2023. See Department of Justice, Annual Report and Accounts for the Year Ending 31 March 2022, 136, and Annual Report and Accounts for the Year Ending 31 March 2023 Report 2023, 144.

11 Art 8 of the 1977 Order (amended in 1982 and 1988) included a discretionary payment for bereaved spouses and children of £5000 and £500 respectively for those who died before 10 December 1981, or £10,000 and £1000 for those who died after this date.

12 Arts 3(3)(b) and 9(3)(b), Criminal Injuries (Compensation) (Northern Ireland) Order 1988.

13 Art 4 (2)(c), Criminal Injuries Compensation (Northern Ireland) Order 2002, based on the recommendation of Bloomfield et al (n 4 above).

14 See Luke Moffett and Kevin Hearty, *More than a Number* (RRV Research Report 2023).

15 See Anne Orford, *International Law and the Politics of History* (Cambridge University Press 2021).

needs, rather than such claims inundating the legal system.¹⁶ This reflects that during ongoing insecurity and conflict which characterised much of the period of the 1968 scheme's operation, reparations were often nominal amounts, with more comprehensive efforts at the end of hostilities. This is a broader gap in the field where there has been little analysis of redressing harm in the face of ongoing violence.¹⁷

This article begins with a background on the compensation scheme under the 1968 Act, before discussing in more depth the process of claiming compensation by bereaved families of those killed during the early years of the Troubles. The second section delves into the dataset by unpicking the practice of compensation for criminal injuries during the Troubles, looking in particular at how amounts were determined based on dependency and income, which in turn had a detrimental impact on women and girls who were killed. This gender dimension is also explored in relation to widows of service personnel and as women being the main claimants for the death of male loved ones. A final aspect considered in this section is the thorny issue of complex victims, that is those individuals who were responsible for victimising others, but were killed themselves. The final section looks at a way forward by suggesting a bereavement payment scheme and considering who would be eligible so as to complement the current injury compensation scheme for those disabled as a result of the Troubles.

THE CRIMINAL INJURIES TO PERSONS (COMPENSATION) ACT 1968

Compensation for injuries caused to persons at the outset of the Troubles/conflict in and around Northern Ireland was mainly dealt with through the 1968 Criminal Injuries (Compensation) Act. There was no special body created to address deaths and injuries related to the violence that became known as the Troubles. This sits in contrast to previous experiences. A special commission was established to deal with the war of independence and civil war in Ireland as well as special financial support to address the '1920–1922 Troubles' in Northern Ireland, given the scale of claims which overwhelmed county councils and the difficulties of judges to award compensation for deaths linked to insurrection and war, rather than crime.¹⁸ In relation to the Irish

16 See Luke Moffett, *Reparations and War* (Oxford University Press 2023).

17 See Helga Binningsbø, Bård Drange and Cyanne Loyle, 'Justice now and later: how measures taken to address wrongdoings during armed conflict affect postconflict justice' (2023) 17(2) *International Journal of Transitional Justice* 212–232.

18 Greer and Mitchell (n 7 above) 19. See also Gemma Clark, *Everyday Violence in the Irish Civil War* (Cambridge University Press 2016) 23–24.

Republican Army (IRA) border campaign in the 1950s, new legislation was introduced through the Criminal Injuries (Northern Ireland) Acts 1956 and 1957 to address the cross-border nature of attacks and the need for Stormont funding through the Ministry of Home Affairs rather than county councils.¹⁹ Thus, the exceptional nature of the violence required a special scheme or funding to be established to deal with such claims. However, with the Troubles no such exception was ever created, only modified laws, in particular for criminal damage.²⁰ As Cheryl Lawther has noted, the continuation of the use of ordinary justice mechanisms to deal with the extraordinary scale of political violence of the Troubles meant that the justice meted out was 'selective and incomplete', which in turn 'fed into hierarchal notions of victimhood'.²¹ This is apparent with compensation, where the inadequate nature of payments is a continuing source of grievance.

As a means to modernise the criminal injuries scheme, the Northern Ireland Assembly introduced the 1968 Act. The 1968 Act followed on from the 1963 New Zealand Act²² and a non-statutory scheme in 1964 in England and Wales. The New Zealand scheme was made up of a three-person tribunal and focused exclusively on personal injuries, given that property losses could be covered by insurance schemes.²³ The UK Government established the criminal injuries compensation scheme to ensure that compensation for criminal injuries no longer had to rely on a court claim or *ex gratia* payments but entitled victims to monetary redress.²⁴ Numerous other jurisdictions have established similar compensation schemes, on the basis of social solidarity with victims and recognition of the violation of their rights as citizens.²⁵

In Northern Ireland, the Minister for Home Affairs William Craig introduced the Northern Irish Act as follows:

It is sometimes complained of the law that it concerns itself more with the criminal than with his victim. Th[is] Bill ... goes some way to redress

19 Greer and Mitchell (n 7 above) 21.

20 See Desmond Greer and Valerie Mitchell, *Compensation for Criminal Damage* (SLS 1982); and Clive Walker, 'Compensation and financial redress for victims of terrorism' in Javier Argomaniz and Orla Lynch (eds), *International Perspectives on Terrorist Victimisation* (Palgrave Macmillan 2015) 101–123.

21 Cheryl Lawther, 'Criminal justice, truth recovery and dealing with the past in Northern Ireland' in Anne-Marie McAlinden and Clare Dwyer (eds), *Criminal Justice in Transition: The Northern Ireland Context* (Hart 2015).

22 Under the Criminal Injuries Compensation Act 1963.

23 See B J Cameron, 'The New Zealand Criminal Compensation Act, 1963' (1965) 16(1) *University of Toronto Law Journal* 177–180.

24 See Mary Baber, *Criminal Injuries Compensation Research Paper 95/64* (House of Commons Library 22 May 1995); and Greer and Mitchell (n 7 above) 22.

25 See David Miers, 'Looking beyond Great Britain: the development of criminal injuries compensation' in S Walklate (ed), *Handbook of Victims and Victimology* (Routledge 2011) 337, 339–340.

that balance ... Generally the intention is not that the State should be given the same liability for compensation as the offender but that the State should so far as is reasonable ensure that the victim does not suffer undue hardship.²⁶

However, unlike the English scheme with its independent compensation body, the 1968 Act extended the jurisdiction of the courts to deal with a wider range of criminal injuries, given their long experience of dealing with such claims under previous Acts.²⁷ While the 1968 Act was established to deal with 'ordinary' crime in the relative peace of the 1960s in Northern Ireland, in practice it was soon confronted with being the main avenue for victims of the early years of the Troubles to claim compensation, causing it to 'operate in circumstances wholly different from those for which it was designed'.²⁸ As a result, claims went from £131,876 in 1969–1970, to £7,966,328 in 1975–1976.²⁹ Bereaved family members could also bring claims through other avenues, such as through civil litigation under the Fatal Accidents (Northern Ireland) Order 1977 (the 1977 Order), but this required the party to evidence that the death was the result of negligence or other tort of another party.³⁰

In terms of the process of claiming compensation under the 1968 scheme, individuals who suffered loss as a result of violence caused during the Troubles would have to report it to a police constable or station within 48 hours, provide a notion of intention to the county court of bringing a claim, and make an application within three months of the commission of the crime that gave rise to the injury.³¹ Claims for killed family members were primarily made by the victim's spouse on behalf of both themselves and any children as dependants, or where there was no spouse by the personal representatives of the deceased person's estate.³² The court could only award pecuniary (economically assessable damages, ie income) losses and direct costs (such as funeral expenses) for spouses or dependent relatives of the deceased victim claiming compensation. Pecuniary damages were only available to spouses and dependants, which meant that, for those who were single, children or elderly killed, their compensation was often just funeral costs.

26 Criminal Injuries to Persons (Compensation) Bill, Order for Second Reading, 31 January 1968, 625.

27 Ibid.

28 Greer and Mitchell (n 7 above) 23.

29 Ibid.

30 We came across cases in the archives where a person killed by an army vehicle was awarded £50,000, sums at the higher end of the criminal injuries compensation scheme as it worked off private law principles of quantification of loss.

31 1968 Act, s 1(3)(e) and s 2(1).

32 Ibid s 2(3).

Compensation was calculated as the annual income of the deceased victim.³³ In other words this placed a cap on the total amount that could be claimed by victims.³⁴ However, where an ‘unlawful assembly’ or ‘unlawful association’³⁵ 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, where 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.³⁶ As Greer pointed out, compensation for death under the 1968 Act had to be based strictly on a pecuniary amount, with little to no room to quantify pain and suffering of those bereaved that would change the general rules of common law damages. This slowly changed with subsequent reforms in 1977 and 1988, with solatium amounts recognised on bereavement in a limited number of circumstances.³⁷

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 (SoS) 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 £5000 and £500 respectively for those who died before 10 December 1981, or £10,000 and £1000 for those who died after this date.³⁸ 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.³⁹ This discretionary scheme was introduced on 11 January 1977 to counter criticism of the lack of support to widows who were left impoverished.⁴⁰ 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 account for over 4000 of the 9500 claims for personal injury in 1976, most for a few hundred pounds each.⁴¹ While we focus on the first few years of the Troubles before the

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

34 This claim ceiling was roughly around £2000 per annum in the 1970s.

35 1968 Act, s 4(7).

36 *Ibid* s 4(6).

37 Desmond Greer, ‘The Criminal Injuries (Compensation) (Northern Ireland) Order 1988’ (1988) 39(4) *Northern Ireland Legal Quarterly* 372–393, 383.

38 Art 8, 1977 Order as amended by 1982 NI 22 and 1988 NI 4.

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

40 ‘Diary of events’, *Fortnight* (141) (Belfast 4 February 1977).

41 ‘Claims crackdown!’ *Belfast Newsletter* (Belfast 2 July 1977).

1977 Order came into force, subsequent compensation awards were not fundamentally changed. As the next section will discuss, the problem with the scheme rests with it awarding redress on the basis of income and dependency, meaning that many victims, such as those who were single and/or unemployed, received small sums of compensation.

THE PRACTICE OF CRIMINAL INJURY COMPENSATION AND SETTLEMENTS DURING THE EARLY YEARS OF THE TROUBLES

The data in this section is developed from data collected from the Public Records Office of Northern Ireland (PRONI), newspaper archives and the archive of the Compensation Services in the Department of Justice.⁴² It followed from a series of interviews conducted with victims, former paramilitaries, government officials and civil society organisations as part of a larger project on reparations in post-conflict societies.⁴³ From these interviews, a common theme anecdotally emerged of the inadequate compensation paid to those who were bereaved as a result of the Troubles, which encouraged us to dig deeper into the issue. From the data we collected, we were able to identify 1000 cases of compensation awarded under the scheme or settled on its basis, reflecting around 55 per cent of all those killed during the Troubles.⁴⁴ In our sample of compensation awards (N=1000), the lowest award during the 1966–1976 period was £43 to cover the funeral costs of a female victim caught up in a bombing. 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 £6917 and the median £2712.⁴⁵ In total, £6,896,699.94 was paid to 983 victims; 14 had their claims rejected and three abandoned their claims. Well over half of our sample (60%), equating to 603 victims, saw their families awarded less than £5000 for their death. Of that number, 363 received less than £1500, with 272 receiving between £3000 and £10,000 (27%), 166 receiving £10,000 to £25,000 (16%), and only 44 (4.4%) receiving more than £25,000. 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

42 For further details on methodology, see Moffett and Hearty (n 14 above) 9–13.

43 See *Reparations, Responsibility and Victimhood in Transitional Societies*.

44 As discussed in the final section, there were around 1800 individuals killed during the 1966–1976 period, but there are variations as to the exact amount based on different datasets.

45 Nine awards were of undisclosed amounts.

unequal, and a large proportion of victims were awarded a pittance. The rest of this section concentrates on three key themes that emerge from the analysis of this data: the impact of the income/dependency on similarly situated victims; gender; and complex victims.

Compensation based on income and dependency

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.⁴⁶ 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’.⁴⁷ 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 Commissioner for Victims and Survivors for Northern Ireland (CVSNI), Bertha McDougall noted that up until 1988 compensation was ‘only for loss of earnings with no consideration of the emotional pain of bereavement’.⁴⁸ 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 a remedy which includes adequate compensation for both pecuniary (income/property) loss *and* non-pecuniary or moral harm,⁴⁹ that is, mental or physical suffering as a result of the violation, including the failure to adequately investigate, which was not provided under the 1968 scheme.

Under the 1968 scheme dependants could claim only for ‘pecuniary’ losses, that is, loss of income from the victim who died.⁵⁰ To illustrate

46 Marie Breen-Smyth, *The Needs of Individuals and their Families Injured as a Result of the Troubles in Northern Ireland* (WAVE Trauma Centre 2012) 177.

47 ‘Claim by army widow rejected’ *Belfast Newsletter* (Belfast 19 May 1975).

48 Bertha McDougall, *Support for Victims and Survivors: Addressing the Human Legacy* (Commissioner for Victims and Survivors for Northern Ireland 2007 (CVSNI)) 48.

49 *Aksoy v Turkey*, App No 21987/93 (ECHR 18 December 1996) [113]; *Tagayeva and Others v Russia*, App No 26562/07 (ECHR 13 April 2017) [649]; *Mapiripán Massacre v Colombia*, Series C No 134 Judgment (IACHR 15 September 2005) [282]; and *Case of Members and Militants of the Patriotic Union v Colombia*, Judgment Series C No 455 (IACHR 27 July 2022) [625].

50 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.

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 1975.⁵¹ 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 £4567, with £500 awarded to cover tax on the compensation interest; it was then multiplied by 13 (years to his retirement age), giving a total of £52,871.⁵² The complex nature of the application process, and indeed of the 1968 Act 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.⁵³ The 1977 Order moved to an administrative scheme that did not require court litigation except on appeal, but the legal process remained complex and did not necessarily militate further victimisation for claimants.⁵⁴ Legal advice and experience with the scheme varied. One woman whose husband was shot walking home during a riot, accepted a settlement on the advice of her lawyer rather than risk going to court, fearing that she would receive nothing.⁵⁵ The use of settlements also created an unequal power relationship between victims, often coming from working-class backgrounds, whose deaths were caused by the security forces wherein government lawyers intentionally negotiated to reduce payments to a fraction of their worth that at the same time avoided public reputational damage to the armed forces and scrutiny by the courts.⁵⁶

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.⁵⁷ 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

51 *Staunton v Secretary of State for Northern Ireland*, Unreported Judgment 2 May 1975 in Greer and Mitchell (n 7 above) 105–106.

52 Ibid.

53 1968 Act, s 9,

54 Tom Hadden, 'Anyone for compensation?' *Fortnight* (142) (Belfast 18 February 1977) 7.

55 Robbie McKee, 'The father who will not be home to say happy birthday' *Belfast Newsletter* (Belfast 1 December 1976).

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

57 Susan McKay, *Bear in Mind these Dead* (Faber & Faber 2009) 268.

family which was awarded a few thousand pounds in compensation for the death of their father, but whose cousins received tens of thousands a decade later when their father was also killed

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. 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 £15,000.⁵⁸ In another bombing, one bereaved family was awarded £44.62, another £9000 and an injured victim £35,000.⁵⁹ 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).⁶⁰ In contrast, the families of three non-commissioned soldiers killed in a bombing a few years earlier were awarded £8000 in total, including premiums for two children.⁶¹

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.⁶² Likewise, only £51,000 was awarded to eight of the 10 families whose loved ones were killed in the Kingsmill massacre in 1976,⁶³ whereas the widow of a businessman, kidnapped and killed by the IRA in 1973, was awarded £100,000 by the NIO.⁶⁴ 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 to £3 per week; in fact, it was £12 to £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. Those from working-class backgrounds

58 County court record LOND/6/3/1/8.

59 County court record LOND/6/3/3/5.

60 '£250,000 for families' *Belfast Telegraph* (Belfast 21 December 1982).

61 County court record TYR/6/5/12.

62 County court record LOND/6/3/1/8-6/3/1/9.

63 'Minibus massacre' *Evening Echo* (Cork 27 November 1976).

64 'Body now identified' *Irish Independent* (Dublin 15 March 1980).

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.⁶⁵ One 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'.⁶⁶

Children, too, were seen as 'not economically active',⁶⁷ 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.⁶⁸ 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 £5000, whereas for his single brother the family received only £112 for his funeral costs.⁶⁹ 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 £2800 for both of them. 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.

Under the 1968 Act and 1977 Order, claimants for compensation also had to show that they were dependent⁷⁰ on the income of 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 only funeral costs would be paid on bereavement of a loved one. For instance, in the case of 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,

65 Interview NI02, April 2018.

66 Interview NI01, April 2018.

67 Ibid.

68 David McKittrick, 'Mother found dead' *Irish Times* (Dublin 22 January 1980).

69 *Belfast Newsletter* (Belfast 27 November 1976).

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

on the basis that his parents were not dependent on his income.⁷¹ One army widow was denied compensation on the basis of the judge not finding her sufficiently dependent after nine weeks of marriage, as she still lived with her parents.⁷² Small amounts were paid to the next of kin of whole families that were killed in the same incident, 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 £2012, another £5500 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. These differences on income and dependency are particularly acute when it comes to female victims who were killed, underscoring the gendered dimensions of the scheme.

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. Catherine O'Rourke and Aisling Swaine found that the criminal injury compensation scheme gave 'less value to the loss of women's lives' due to gender inequalities in earnings.⁷³ 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'.⁷⁴ 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.⁷⁵

71 Chris Thornton, Seamus Kelters, Brian Feeney and David McKittrick, *Lost Lives: The Stories of the Men, Women and Children Who Died as a Result of the Northern Ireland Troubles* (Mainstream 2004) 454.

72 'Claim by army widow rejected' *Belfast Newsletter* (Belfast 19 May 1975).

73 Catherine O'Rourke and Aisling Swaine, 'Gender, violence and reparations in Northern Ireland: a story yet to be told' (2017) 21(9) *International Journal of Human Rights* 1302–1319, 1307.

74 *Workshop Report: Developing Gender Principles for Dealing with the Legacy of the Past* (Legacy Gender Integration Group 2015) 13–14.

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

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 per cent were female. During our period of study, 1966 to the end of 1976, 89.4 per cent (1611) of those killed were male and 10.6 per cent (191) were female. This imbalance is reflected in a tendency of women to be the main claimants of compensation for the loss of their loved ones. Although women account for just 8.8 per cent of victims killed in our sample, they represent 72 per cent (721) of recipients of compensation.⁷⁶ Most 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, we identified 90 women and girls who were killed during the 1966–1976 period, this accounted for 47 per cent of all women (191) who died during this period of the Troubles. In terms of their status, 86 were civilians, two were members of the Ulster Defence Regiment (UDR), one was a police constable and one a member of Cumann na mBan. Twenty of the 90 females were under the age of 18 at the time of their death. In only 11 of these 90 cases did the families of the women killed receive more than £5000, with £13,000⁷⁷ and £25,000⁷⁸ being the highest amounts awarded. More than half of the 90 (58%, N=52) were awarded less than £1000, giving an average of £1742, less than a third of the average for all victims killed during the 1966–1976 period (£6917).

There were further gender dimensions in the compensation process. Women were often discriminated against 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.⁷⁹ One interviewee told us that the judge in

76 146 were the fathers, sons, brother or uncle as personal representatives of the deceased's estate. 133 were unknown.

77 The victim was in the UDR – the larger award reflects that £2000 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 is likely this amount reflected his personal harm. The victim's father died of a heart attack a few days later.

78 The victim had a well-paid office job.

79 Relatives for Justice, *Submission to Special Rapporteur of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo De Greiff November 2015* (2015) 39.

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’.⁸⁰ 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.⁸¹ 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.⁸² There were few case decisions or transcripts in our data, but the awarding of small amounts in claims involving either women who were killed or those who were young widows is apparent, especially with war widows.

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. For the families of unmarried or single mothers who were killed, 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 Ulster Defence Association (UDA), the family 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.’⁸³ In other cases for unmarried mothers, them being ineligible meant that they could only show that their child was a dependant of their deceased father, such as a 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 £1250.⁸⁴

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 cohabiting partners and their children being denied

80 Interview NI05.

81 Desmond Greer, *Compensation for Criminal Injury* (SLS 1990) 177.

82 McKay (n 57 above) 69.

83 Ciarán Barnes, ‘I heard mum beg for mercy’ *Sunday Life* (Belfast 7 February 2010).

84 ‘Illegitimate child gets £1,250’ *Irish Press* (Dublin 16 November 1973).

compensation because the 1968 Act and the 1977 Order stipulated that only married spouses could claim.⁸⁵ By way of example, 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.⁸⁶ 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.⁸⁷ This was the position until the 1988 Order, which was expanded to include cohabittees.⁸⁸

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. Although the 1968 Act introduced a provision intended to compensate Royal Ulster Constabulary (RUC) members injured in rioting, it was also open to widows of British soldiers.⁸⁹ 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,⁹⁰ 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.⁹¹ 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.⁹² 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.⁹³ In contrast to civilian victims, the plight of war widows was

85 'Their men, shot dead, women get no compensation' *Irish Independent* (Dublin 3 July 1975); 1968 Act, s 2(3); and 1977 Order, art 4.

86 *Ibid.*

87 '£80,000 for sons of victim' *Irish Independent* (Dublin 21 December 1982).

88 1968 Act, s 2(2).

89 1968 Act, s 11(1)(b).

90 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.

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

92 Greer and Mitchell (n 7 above) 58.

93 1977 Order, art 8.

often raised in Westminster by the families' MPs, including responses by ministers that such widows would be able to benefit from the new discretionary payment.⁹⁴

Another difficulty was that police and army pensions normally ceased when the surviving spouse remarried, entered a civil partnership or began cohabiting 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,⁹⁵ while those who remarried lost their pension and received 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 £5000. 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.⁹⁶ In November 2023, the War Widows Association for bereaved families of British Army personnel, which had campaigned on this issue since 1973, secured a recognition payment 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 support and policy change.⁹⁷ The same cannot be said for those who were seen as undeserving of redress due to their association with armed non-state groups.

Complex victims

Complex victims are those who are responsible for causing harm to others, but also suffered harm themselves.⁹⁸ I have written previously in this journal about the challenges of complex victims around a

94 '£6,000 deal for soldier's widow' *Belfast Telegraph* (Belfast 12 July 1977).

95 See reg 32, Royal Ulster Constabulary Pensions Regulations (Northern Ireland) 1973.

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

97 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* (Belfast 10 March 1975).

98 See Luke Moffett, 'Reparations for "guilty victims": navigating complex identities of victim-perpetrators in reparation mechanisms' (2016) 10(1) *International Journal of Transitional Justice* 146–167; and Kevin Hearty, 'Problematising symbolic reparation: "complex political victims", "dead body politics" and the right to remember' (2020) 29(3) *Social and Legal Studies* 334–354.

pension for those seriously injured during the Troubles.⁹⁹ While that scheme has now been established and such individuals are eligible to apply, subject to a review by a panel, we did not back then have a clear picture of compensation practices for such individuals during the Troubles. What is apparent from our dataset is that out of 276 deceased individuals who were members of a paramilitary group and were killed during the 1966–1976 period of the Troubles, 61 of them saw their families receive some form of compensation.¹⁰⁰ More than £200,000 was paid to the families of 56 individuals, who on average received £3392. The other five claims were dismissed or abandoned. Twenty-eight families were compensated less than £3000 and seven were compensated more than £10,000, with two families receiving £20,000 and £25,000 respectively. 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.

Under the 1968 Act, criminal injuries compensation schemes designated certain victims killed during the Troubles as ‘uncompensable’ by excluding them from the schemes or reducing their award.¹⁰¹ From early in the Troubles, compensation was often reduced or withheld depending on the action and circumstances of the victim, including being a member of an associated proscribed organisation or near a riot at the time of their death or injury.¹⁰² Judges were willing to reduce and refuse compensation in cases where state lawyers alleged that the victim was involved in riotous behaviour or political violence. For instance, in the *McDaid* case, the claimant was a spectator caught up in a riot in Derry in 1969 that resulted in him being shot in the back and seriously injured as he ran away. Judge McGonigle acknowledged that the shooting of the claimant was ‘unlawful and criminal’, but it was unclear who the shooter was and, although the claimant was caught up in the rioting, rather than being an active participant which would have refused the claim, he reduced

99 See Luke Moffett, ‘A pension for injured victims of the Troubles: reparations or reifying victim hierarchy’ (2015) 66 *Northern Ireland Legal Quarterly* 297–319.

100 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 22 were members of the UDA. In total there were 617 civilians: 80 members of the police, 173 British soldiers and 53 UDR, with 16 statuses contested or unknown.

101 Miers (n 25 above). The 1968 Act, s 1(2), 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’.

102 Miers (n 8 above).

the award by a third.¹⁰³ 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.¹⁰⁴ 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 £1600.¹⁰⁵ One British soldier who was mistaken for a sniper by another soldier had his claim dismissed under the 1968 scheme.

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 and £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.¹⁰⁶ 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.¹⁰⁷ Under human rights law, the use of lethal force to stop a person taking a helmet would be considered disproportionate.¹⁰⁸ Moreover, blaming the victim rather than critically challenging the way lethal force was governed and acknowledging the consequences for the victim and their family diminishes the value of the life lost.

The compensation scheme in the face of ongoing political violence was inadequate to redress the ripple effects on families and communities. 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

103 *McDaid v The Ministry of Home Affairs*, Unreported, High Court of Justice in Northern Ireland, 10 May 1973, McGonigle J.

104 Such as through the Fatal Accidents Act (NI) 1959 and the 1977 Order.

105 *Belfast Newsletter* (n 97 above).

106 See also 1977 Order, art 5(2).

107 *Lost Lives* (n 71 above) 75.

108 *Güleç v Turkey*, App No 21593/93, Judgment (ECtHR), 27 July 1998, [71].

£150 for her husband's death. In another case, a family whose mother was killed in a gun battle in 1972 saw her son shot dead in the feud between the Irish National Liberation Army (INLA)/Provisional IRA/Official IRA 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 £1422 for the second son. By contrast, the families of two civilians killed by British Army gunfire in the same gun battle were awarded £7586.25 and £2700, respectively. When an uncle of the two deceased sons was killed in 1974, his family was awarded £20,000.

There were discrepancies in awards with judges using their discretion to determine whether or not they should compensate those killed, rather than have a strict standard of redress. In the case of an individual who was shot dead at a British Army checkpoint, the judge awarded £2500 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.¹⁰⁹ In one case, compensation was paid to families to cover the cost of funerals for those who blew themselves up,¹¹⁰ while in another case a family was awarded £750 for an IRA member who died in a premature bomb explosion. This would go against the principle of *ex turpi causa* that Justice McGonigle highlighted in the *McDaid* case as a means to dismiss such claims. Even if such circumstances of the victim could be taken into account, not all those responsible for victimising others were convicted. 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 the Dublin and Monaghan bombings that killed 34 people and injured over 300 more.

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 Ulster Volunteer Force (UVF) was awarded £700 because he was single. Similarly, the parents of a UDA member who was beaten to death by loyalists in Long Kesh internment camp were compensated £508 for his death. 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 cases involving fights, the nature of the victim's involvement. However, compensation for

109 *Lost Lives* (n 71 above) 205.

110 One loyalist received £75.

these individuals was not reduced on the basis of their membership of the UDA, 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 SoS discretion to reduce or refuse an award. For instance, a widow whose husband, a member of the UDA/Ulster Freedom Fighters (UFF), was shot dead by the IRA, had her compensation reduced from £6000 to £5000 because he was a member of such an organisation, even though it was not then proscribed. The widow of another senior UDA/UFF commander who was shot dead by his own organisation was only awarded funeral costs of £135.¹¹¹ 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.¹¹²

As a result of this condemnation of killed paramilitary members being included in the scheme, the Criminal Injuries (Compensation) (Northern Ireland) Order 1977 expressly prohibited past or present members of proscribed organisations from receiving compensation, including their bereaved family members.¹¹³ The provision gave the Northern Ireland SoS the discretionary power to reduce or refuse compensation to which an applicant was otherwise entitled.¹¹⁴ The prohibition excluded anyone who had been involved in an illegal organisation 'at any time whatsoever' from receiving compensation. This meant that it disqualified anyone convicted of a schedule offence, even though they were unlawfully killed in circumstances not related to their paramilitary activity. By way of illustration, the family of a man shot dead by the IRA was refused compensation because the victim had previously been convicted of membership of Na Fianna Eireann – the

111 'UDA man's widow has award cut' *Irish Press* (Dublin 20 April 1977).

112 '£20,000 to murdered man's widow queried' *Fermanagh Herald* (Enniskillen 24 April 1976).

113 Greer and Mitchell (n 7 above) 96.

114 Art 6(3) of the 1977 Order 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. Art 8(4) gave the SoS discretion to pay compensation to such a person 'if he considers it to be in the public interest to do so'. Art 3(2)(d) further gave the SoS the power to withhold compensation where the victim did not fully cooperate 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 cooperation or where victims may have been threatened or otherwise intimidated into withholding cooperation.

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.¹¹⁵ 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 Cases 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.¹¹⁶ 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’.¹¹⁷ This was a practice throughout the Troubles.

In recent news coverage, a woman whose husband was shot dead as part of an INLA feud in 1996 was left to raise her 11-month old twins alone. She was quoted as saying that it had had a ‘profound’ impact on her that had left her ‘struggling’ financially for many years and without a pension.¹¹⁸ Indeed, the most recent Victims Commissioner, as his parting gift from office, released legal advice to advance a payment for those bereaved noting its ‘contentious’ nature and that:

[t]here will be some who find it difficult to accept the idea that all bereaved families should be included, regardless of who their deceased loved one was. I fully understand this challenge, but I do see the value of a recognition payment to those suggested in this paper in promoting reconciliation.¹¹⁹

Jim Allister, Member of the Legislative Assembly, blithely derided the Victims Commissioner’s recommendation of a payment to all those bereaved as a ‘provo pay day for terrorist relatives’,¹²⁰ reflecting that the politics of victimhood have not matured since the rejection of the Consultative Group on the Past’s recognition payment in 2009. Such

115 ‘Family of murdered man denied compensation’ *Fermanagh Herald* (Enniskillen 19 April 1980) 13.

116 *Ibid.*

117 Miers (n 8 above).

118 Allan Preston, ‘Murdered INLA man’s family call for victims’ payment’ *Irish News* (Belfast 4 January 2024).

119 ‘Advice to government on provision of a bereavement payment scheme and services for people bereaved as a result of the Troubles/conflict’ (CVSNI December 2023) 3.

120 Preston (n 118 above).

kneejerk reactions only stymie all bereaved victims' rights for a few soundbites for the daily media cycle. While it may be justified to reduce the amount of compensation for someone for the harm they caused to others, for bereaved families the loss of a loved one should not deny them recognition for and redress of their loss. International human rights law recognises that, where a person suffers a gross violation of human rights, their character or background cannot justify they or their next-of-kin being discriminated against in being denied a right to reparations.¹²¹

Although the criminal injuries compensation scheme could reduce or deny compensation for bereaved family members, some victims made claims not only to provide them with some financial security or recompense of expenses, but as the only means to seek disclosure of the facts and to clear the name of their killed family member.¹²² As a mechanism for responding to political violence it was a blunt tool in unpicking fact from fiction in what occurred and the circumstances of those killed, as with the large payments made to those who later turned out to be volunteers. While this oversight may seem to be unpalatable to some, compensation should have a fundamental value at its core in providing remedy to those who have had their rights violated. This is not to justify the actions of those who engaged in violence, but to reaffirm the value of human life and dignity that no one should be killed because of their association or background. This grounds what a reparation programme should look like for those bereaved that helps to navigate how a payment scheme for the bereaved would operate, to which we now turn.

A BEREAVEMENT PAYMENT SCHEME

The 2023 Legacy Act 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, it overrules such discretion.¹²³ 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 for Nazi-era atrocities

121 Though the amount and form of reparations can differ from civilians – see Moffett (n 98 above).

122 As stated by one widow for her husband shot dead in 1973. '£1,500 for widow of shot man' *Belfast Newsletter* (Belfast 1 June 1979).

123 Legacy Act, s 43.

provided a few thousand euros to each victim who had suffered forced or slave labour.¹²⁴ 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 which included provisions for reparations to victims. Reflecting on these provisions, Justice Didcott held that the 1995 Promotion of National Unity and Reconciliation Act ‘offers some quid pro quo for the loss and establishes the machinery for determining such alternative redress’.¹²⁵ The UK 2023 Legacy Act envisages a different approach to dealing with the past, with no redress scheme for bereaved victims. In other situations, the ECtHR has held that, while blanket amnesties are seen as unlawful in international law, conditional amnesties as proposed under the Legacy Act can be permissible if they are part of ‘a reconciliation process and/or a form of compensation to the victims’.¹²⁶ 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. Any reform of the Legacy Act to make it compliant with the European Convention would likely have to include inquests, investigations and perhaps a bereaved payment scheme to allow recognition of those bereaved who may not benefit from further investigations.

A bereavement payment scheme to redress the inadequacy and discrimination faced by many victims who were bereaved during the Troubles is needed. While there are a number of options of how such a scheme could be achieved, such as increased bereavement payments from the Victims and Survivors Service (£500–£1000 currently), through the current injured scheme under the Victims Payment Board (VPB), or a new body could be established to deliver compensation to those bereaved during the Troubles.¹²⁷ The Commission for Victims and Survivors (CVS), based on our dataset and report, recommended that a statutory scheme be established to either award a lump sum or monthly payment to spouse/partner, parent, child and siblings

124 See Edda Kristjansdottir and Barbora Simerova, ‘Processing claims for “other personal injury” under the German Forced Labour Compensation Programme’ Permanent Court of Arbitration (ed), in *Redressing Injustices through Mass Claims Processes: Innovative Responses to Unique Challenges* (Oxford University Press 2006) 109–137.

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

126 *Marguš v Croatia*, App No 4455/10, Judgment, 27 May 2014, [139].

127 For a fuller discussion on this issue, see Moffett and Hearty (n 14 above) 41–59.

bereaved.¹²⁸ The CVS has recommended that all those bereaved should receive a payment to acknowledge their loss. This would, according to the CVS, amount to between £129 million and £1.9 billion, depending on the scope of beneficiaries along with the amount and the recurrence of annual payments. The rest of this section discusses such eligibility for all victims.

Determining who is eligible for any reparations in the aftermath of mass violence is always a contested space. A key challenge of a bereavement payment scheme will be identifying those who died as a result of the Troubles. While there are lists of all those who died during the Troubles, the exact number ranges from 3400 to 4000 and the figures contain numerous ‘inconsistencies’, whether or not accidental and incidental deaths are included, such as traffic accidents.¹²⁹ 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 demonstrate that they were in the ‘immediate aftermath’ of an incident to benefit, as applicants for the Troubles-related disablement payment are required to do. Like compensation bodies in other jurisdictions, a bereavement payment scheme could develop its own registry of victims,¹³⁰ 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. The VPB links eligibility to a ‘Troubles-related incident’, which is defined as:

128 CVSNI, *Advice to Government on Provision of a Bereavement Payment Scheme and Services for People Bereaved as a Result of the Troubles/Conflict* (December 2023).

129 Marie-Therese Fay, Mike Morrissey and Marie Smyth, *Northern Ireland’s Troubles: The Human Costs* (Pluto Press 1999) 131. During the 1966–1977 period, McKeown’s index finds there were 1750 deaths; Sutton Index includes 1799 deaths; and *Lost Lives* (n 71 above) has 1863 recorded.

130 Jairo Rivas, ‘Official victims’ registries: a tool for the recognition of human rights violations’ (2016) 8(1) *Journal of Human Rights Practice* 116–127.

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.¹³¹

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.¹³²

With the aim of preventing future inquests, the Legacy Act 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’.¹³³ 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,¹³⁴ 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.

131 Northern Ireland (Executive Formation etc) Act 2019, s 10(11).

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

133 Legacy Act, s 9(9).

134 **CAIN** archive gives details on 20 of these cases 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 £1000; 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* (Belfast 18 July 2017).

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 per cent if they reside in the country where the terrorist attack occurs or 40 per cent if they do not.¹³⁵ Moreover, the Spanish Government pays the difference if the country where the 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.¹³⁶

Many reparations programmes do not require identification of a perpetrator or responsible actor in order for victims to bring claims.¹³⁷ 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 on hunger strike. 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.¹³⁸ 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 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.

Other reparation programmes use the term ‘civilian’ to distinguish payment made to those who did not take part directly in hostilities.¹³⁹

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

136 Ibid art 22(2).

137 Principle 9, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005, A/RES/60/147; and *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, 14 October 2014, A/69/518, para 25.

138 See Conall Mallory, Sean Molloy and Colin Murray, ‘Tort, truth recovery and the Northern Ireland Conflict’ (2020) 3 *European Human Rights Law Review* 243-261.

139 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’.

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.¹⁴⁰ 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.

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 ...¹⁴¹

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 Past¹⁴² and the discussion around a 'Troubles pension' for the severely injured too,¹⁴³ it is clear from the above that the difficulty posed by the issue has long pre-dated these discussions. Through its review on the conviction and circumstances of their injury, the VPB offers a more balanced approach to tackling these issues for injured claimants.¹⁴⁴ 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.¹⁴⁵

140 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).

141 Interview NI18.

142 Bill Rolston, 'Dealing with the past in Northern Ireland: the current state of play' (2013) 8 *Estudios Irlandeses* 143–149.

143 Moffett (n 99 above).

144 Reg 6, Victims' Payment Regulations 2020.

145 See Moffett (n 98 above).

The Consultative Group on the Past's recognition payment was scuppered because compensation was offered to all those bereaved. The recent recommendations by the Victims Commissioner for a bereavement payment have been rejected by unionists with the same arguments that it is effectively paying terrorists who intentionally harmed others. 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,¹⁴⁶ 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. 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 was 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.

CONCLUSION

The 1968 Act was established with the good intentions of reducing the burden of crime on victims, but in the face of the political violence of the Troubles it only served to revictimise and degrade many bereaved families. While money can never quantify or fully remedy the harm caused by the killing of a loved one, the trifling amount offered to many victims was an affront and diminished the value of the right to life during the Troubles. These problems stemmed from a bureaucratic quantification of loss through income and dependency that had gendered and class dimensions that were ill-suited to remedying protracted political violence. Although there is much politicking around victimhood and deservedness for compensation in current debates on those who are bereaved, the data supports that dozens of paramilitary members were compensated, and in many ways this reflects that they were unlawfully killed, and their families should have some form of redress. Returning to the issues of assessing justice processes in posterity and during ongoing violence, it is easy to point out the

146 Ibid.

problems in hindsight. It could be said that, given the circumstances, that the courts were able to accommodate hundreds of claims and deal with them within a year or two was a feat in itself, but such procedural quantitative completion belies the attenuated qualitative rendering of justice for thousands of people who had their loved ones murdered.¹⁴⁷

Lawyers and judges involved in criminal injuries compensation were themselves targeted for being associated with the legal system. Indeed, a number of compensation claims were presided over by judges Rory Conaghan and Martin McBirney, who were both assassinated simultaneously by the IRA in their homes in 1974. As Kieran McEvoy points out, the legal system as an extension of the British Government's armoury was not neutral in the conflict.¹⁴⁸ This is not to justify the reprehensible targeting of the legal profession, but to critically reflect on the system and those in it who followed the law, rather than do justice to victims. This goes beyond the 'largely positivistic outlook on law' shared by the legal profession at the time,¹⁴⁹ which also exhibited the misogynistic and sexist biases that discriminated against women and girls. The legal profession took a reductive approach to not individualise loss and not see the bigger picture of serious violations of human rights being disaggregated through the courts, which was more suited to dealing with interpersonal crime than large-scale political violence. This going through the motions as a means to legally routinise the chaotic violence that characterised Northern Ireland could be seen as a way of normalising the traumatic events that grasped the country. However, the data from our research has highlighted the devastating impact it had on bereaved families, adding insult to loss and undermining their rights to an adequate and effective remedy. This is further thwarted by the 2023 Legacy Act that forecloses all redress avenues for victims. The Act perhaps offers an opportunity now before the European Court to seek progress to creating a bereavement payment scheme to effectively acknowledge and remedy the continuing harm caused by killings during the Troubles.

147 The violence in Northern Ireland never reached the threshold for a non-international armed conflict under international humanitarian law that would provide belligerent immunity for killing, and, even if it had, the majority of people killed were civilians or those not directly taking part in hostilities. Thus the vast majority of deaths were murder, with the exception of those involving self-defence or prevention of crime under common law.

148 Kieran McEvoy, 'What did the lawyers do during the "war"? Neutrality, conflict and the culture of quietism' (2011) 74(3) *Modern Law Review* 350–384, 379–380.

149 *Ibid* 381.