

Neutral Citation No: [2025] NIKB 74	Ref:	McLA12932
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No:	25/66799/01
	Delivered:	16/12/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION
(JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY JOHN WALSH
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

The applicant appeared as a Litigant in Person
Mr McAteer (instructed by Departmental Solicitor's Office) for the Proposed Respondent

McLAUGHLIN J (Ex Tempore)

Introduction

[1] This is an application for leave to apply for judicial review of a decision of the Victims' Payments Board Appeal Panel ("the Board") dated 14 May 2025, whereby it refused the applicant's application for a Troubles Related Disablement Payment, pursuant to the Victims' Pensions Regulations 2020 ("the Regulations"). The Regulations were made by the Secretary of State pursuant to section 10 Northern Ireland (Executive Formation etc) Act 2019.

[2] In light of my decision to grant leave on some grounds, I do not propose to set out the detailed and complicated factual background to the application, as a full hearing is the appropriate means by which to address the facts. I wish to make clear that nothing in this judgment should be interpreted as a finding of fact or legal conclusion relating to the underlying events. This Court is concerned only with the legality of the decision of the Appeal Panel and is not a tribunal of fact in relation to historic events. At this stage, it is sufficient to note that the event at the heart of the application for a payment under the 2020 Regulations was the applicant's arrest on 5 June 1991 on the Suffolk Road and subsequent conviction for possession of an explosive device, namely a blast bomb. The applicant was sentenced to 14 years' imprisonment and served seven years of that sentence. In 2010, the Court of Appeal quashed the applicant's conviction (*R v Walsh* [2020] NICA 7). The applicant claims that his arrest, conviction and detention constitute a "Troubles-related incident" for the purposes of the 2020 Regulations. As part of the application process, the

applicant was found by the Board's medical assessors to be suffering from impaired psychological function since the time of his arrest and detention in 1991 and that the extent of his disablement was 20%. The Board concluded that the events relied upon by the applicant did not fall within the definition of a "Troubles-related incident" and this decision was upheld by the Appeals Panel, in its decision of 14 May 2025.

[3] Regulation 5 of the 2020 Regulations prescribes the criteria for entitlement to a victims' payment, which include that the person must have suffered an injury resulting in permanent disablement, caused by a "Troubles-related incident", which in turn is defined by section 10(11) of the 2019 Act in the following terms:

"Troubles-related incident means an incident involving an act of violence or force carried out in Ireland, the United Kingdom or anywhere else in Europe for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there."

[4] Over many years, the applicant has maintained a series of legal challenges and claims arising from these events. For present purposes, it is not necessary to set out a full chronology. It is sufficient to note that the Department of Justice ("the Department") refused an application for miscarriage of justice compensation pursuant to section 133 Criminal Justice Act 1988. The applicant now maintains, in summary, that since his conviction has been overturned, his original arrest and detention were unlawful. The centrepiece of this claim was a chronology from the day of his arrest. He maintains that the arrest occurred at 15:50 hrs on 5 June 1991, whereas a different person (referred to as "Mr F") was arrested at the scene at 15:35 hrs in possession of the explosive device. The applicant therefore maintains that once this chronology is accepted, he could not possibly have been in possession of the device. Hence he claims that his entire arrest, conviction and subsequent detention were unlawful.

[5] A Guidance Note (GN04/21) published by the Board includes guidelines on the scope of the phrase "Troubles-related incident". The Appeal Panel decision refers to the guidance and records that the relevant incident must involve "violence or force", which may include acts perpetrated by state authorities. Annex A sets out an indicative list of the types of incidents which could be considered to involve the use of violence or force and includes "false imprisonment".

[6] The decision and reasoning of the Appeal Panel when refusing the application appears in the following paragraph:

"(36) The Appeal Panel determines that for false imprisonment to apply to the Appellant's case, his detention must have been without any legal basis ... The Appeal Panel concurs with the Hearing Panel that the Appellant was lawfully arrested on 5 June 1991 and lawfully convicted and imprisoned

after a Court trial on 7 December 1992. Consequently, the Appellant was legally convicted and imprisoned until the conviction was quashed on 16 March 2010 ... the quashing of his conviction ... does not retrospectively affect the legality of his initial arrest and sentence of imprisonment ... the Appellant has not provided any evidence of a successful claim for false imprisonment brought by him or receipt by him of compensation regarding same. ... The Appeal Panel is not satisfied on the balance of probabilities that there is sufficient evidence of false imprisonment to amount to an "act of violence or force" for the purposes of a Troubles-related incident. Therefore, the Appeal Panel determines that the Appellant is not eligible for victims' payments."

[7] The applicant advances four proposed grounds of challenge:

- (i) Institutional and Perceived Bias of Victims Pensions Board.
- (ii) Irrationality – refusal of claim.
- (iii) Ultra Vires – Misinterpretation/Misapplication of Regulations.
- (iv) Breach of article 3 ECHR.

Grounds 2 & 3

[8] Although Mr Walsh might disagree with this characterisation, it is very clear from the helpful submissions both written and oral that the centrepiece of this challenge is the issue of whether or not the applicant's arrest in 1991 and subsequent detention were lawful and the related question of whether the injury suffered by the applicant (and accepted by the Board) had been caused by a "Troubles' related incident" within the meaning of the 2020 Regulations.

[9] The Appeal Panel has given detailed written reasons for its decision that the injuries were not caused by a Troubles-related incident. In doing so, it has distinguished between the arrest and detention of the applicant in 1991 and the later decision of the Court of Appeal to quash his conviction. It is also clear that in reaching its decision, the Appeal Panel took account of the published guidelines which indicate that an unlawful arrest can, in certain circumstances, amount to an "act of force or violence" which may be capable of supporting a claim under the regulations for a victim's payment. In this case, the Appeal Panel decided that those circumstances were not satisfied and that the decision of the Court of Appeal to quash the applicant's conviction did not necessarily render unlawful the original arrest. This reasoning of the Appeal Panel is relevant to both grounds 2 and 3. By ground 2 the Applicant contends that the decision of the Panel was irrational and by ground 3, he contends that it acted ultra vires by failing to interpret and apply the

2020 Regulations correctly. The applicant describes the alleged legal error as “jurisdictional self-disqualification”. Whichever description is used the issue remains whether or not the Appeal Panel correctly applied and interpreted the Regulations.

[10] These grounds of challenge are unusual and the underlying claim appears to be without clear precedent under the 2020 Regulations. I was not referred to any other examples of cases in which the Board has either allowed or refused a claim for a victims' payment arising out of an alleged false imprisonment. The decision of the Panel was also made against the backdrop of a complex and prolonged procedural history. It appears that a lot of evidence about the case was available to the Board which appears to have been considered both at the time of the initial decision and on appeal. At this stage of the proceedings, I am not prepared to find that those grounds of challenge are unarguable. While I do not consider the issue to be entirely clear cut one way or the other, I would like to have a fuller consideration of these two grounds and I will grant leave on grounds 2 and 3.

Ground 1 – Institutional and Perceived Bias

[11] Ground 1 involves three separate challenges to both the Victims Payment Scheme and the decision of the Appeals Panel in this case. All three limbs of this ground of challenge are based upon a contention of unlawful bias.

[12] The first limb of the challenge is directed towards the statutory arrangements under which the Appeal Panel and the entire Victims' Payment Scheme have been established. Pursuant to Schedule 1, paragraph 2 to the 2020 Regulations the Executive Office must designate a Northern Ireland Department to *“exercise the administrative functions of the Board, on behalf of the Board itself”* (Paragraph 2(2)). The Department of Justice has been nominated as the relevant Department. The Board is an independent statutory body corporate. It is comprised of a President, appointed by the Lady Chief Justice and its members (legal, medical and ordinary) are appointed by Northern Ireland Judicial Appointments Commission. Its powers and functions are exercised independently of the department which provides administrative support only and has no power either to exercise the powers of the Board or to direct its members. The statutory arrangements are not dissimilar to those which govern many other independent public authorities and tribunals which are funded from public funds and receive administrative support from civil servants who have been seconded from a Northern Ireland department. The role of the funding/supporting department is sometimes referred to as that of a “sponsor department”. In this case, the arrangements are all prescribed by Regulations, which in turn are made under an Act of Parliament. The 2020 Regulations themselves have been approved by Parliament by means of the negative resolution procedure.

[13] The applicant contends that the mere fact that a Northern Ireland department has a role in supporting the administration of the Board, gives rise to an impermissible appearance of bias both generally and in this case, in light of the

alleged role of the state authorities in his arrest and detention. I find that this aspect of the challenge is not arguable and does not enjoy any reasonable possibility of success. It is clear from the statutory arrangements that the Department has no power of any nature to exercise or even to influence the decisions of the Board. It is an entirely independent public authority, comprised of individuals who are themselves appointed by independent authorities. Even leaving aside the fact that the Regulations have been approved by Parliament, it is simply unarguable that they give rise to an impermissible perception of bias in the eyes of an independent and fair-minded observer or a perception that the Department will have an interest in the outcome of any particular case. It is patently clear that a reasonably well-informed and fair-minded, independent observer would consider the Board to be independent of government and capable of discharging its functions in accordance with the Regulations, without any risk of bias or favouritism towards any public authority, whether devolved or from central government. I find this aspect of the challenge to be unarguable and that it does not enjoy reasonable prospects of success.

[14] The second limb of ground 1 is directed at the legal member of the Board who acted as Chair of the Appeal Panel in this case. She is a qualified solicitor who is currently employed by the Government Legal Service and works in the Departmental Solicitor's Office. She has been appointed to her position as a legal member by the Northern Ireland Judicial Appointments Commission and meets the statutory criteria for appointment. She fulfils the role in her private capacity and not in her capacity as a solicitor, employed to provide legal advice to Northern Ireland departments. The applicant contends that the mere fact of her employment as a government solicitor is sufficient to give rise to an impermissible perception of bias on the part of the Appeal Panel. The legal standard by which an appearance of bias must be assessed is well-established and was set out in *Porter v Magill* [2002] 2 AC 357. In this jurisdiction, many of the authorities were reviewed by McCloskey J in *R v Jones* [2011] NIJB 122. The judgment includes extensive citation from the decision of the Court of Appeal in *Locabail v Bayfield Properties* [2000] 1 All ER 65 in which the court considered the types of issues and personal connections which could give rise to an impermissible appearance of bias on the part of a judge. The factors which would not "ordinarily" give rise to such a concern included a judge's "service or employment background or history" (*Locabail*, at [25]).

[15] I do not find this proposed ground of challenge to be arguable. I do not consider that the Chair's employment status would give rise to a real perception or a real risk of bias in the mind of a reasonably well-informed independent observer, equipped with all of the relevant facts. The chair has been appointed in accordance with the statutory procedure after demonstrating compliance with the requirements for appointment. She is required by law to exercise her legal duties independently of any person and of government and fulfils this role in her private, rather than employed capacity. In doing so, she does not act under the direction of any government official, civil servant or minister. Simply because she is employed to advise devolved government bodies, does not give rise to a real risk that she would be perceived as unable to make independent decisions. In my view, a reasonably

well-informed independent observer would clearly recognise and understand this distinction. In my mind, that is simply not arguable and I refuse leave on this aspect of ground 1.

[16] The third limb of ground 1 is very similar and I also consider it to be unarguable. The applicant contends that the decision of the Panel is affected by a perception of bias because the Board is represented in these proceedings by a solicitor employed by the Departmental Solicitors' Office (Ms Bell) who had previous professional involvement by acting as a solicitor for other government departments in other litigation brought by the applicant. Ms Bell had no role whatsoever in the decision making process which is under challenge and is simply acting as a solicitor for the Board in the course of this litigation. That role is entirely distinct from the decision which is under challenge and does not give rise to a real risk of a perception of bias on the part of the Board.

[17] For the reasons given above, all three limbs of ground 1 are, in my view, unarguable and do not enjoy reasonable prospects of success. I therefore refuse leave on ground 1.

Ground 4 - Article 3 ECHR

[18] By this proposed ground, the applicant claims that the decision to refuse a victims' payment forms part of a course of conduct which amounts to inhuman and degrading treatment, contrary to article 3 ECHR. The applicant relies upon the background to his arrest, conviction and sentence, together with his very prolonged pursuit of legal recourse for what he regards as a serious wrong. Viewed in that context, he considers that the decision of the Panel was unlawful and that its effects on him in a manner which amounts to inhuman and degrading treatment. In my view, there is absolutely no evidence before the court that the decision of the Board could arguably support a finding of inhuman and degrading treatment under article 3. On the contrary, while the applicant disagrees with the substance of the decision, and while I have given leave to challenge it on other grounds, there is absolutely nothing to suggest that the decision was taken otherwise than in good faith and on grounds that Panel considered to be in accordance with their statutory obligations. It may well be that the applicant suffers from injury and psychological damage as a result of his past experience, but there is absolutely no evidence to suggest that any action taken on behalf of the Board in reaching this decision has either contributed to it or exacerbated it, let alone reaching the threshold of seriousness for inhuman and degrading treatment which a claim under article 3 would require. Leave on ground 4 is therefore refused.

[19] I therefore grant leave on grounds 2 and 3 and refuse leave on grounds 1 and 4.