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<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	<b>ICOS No:</b>	25/66799/01
	<b>Delivered:</b>	19/05/2026

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 JUDICIAL REVIEW

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

**McLAUGHLIN J**

*Introduction*

[1] This is an application for judicial review of a decision of the Victims' Payments Board Appeal Panel ("the Appeal Panel") dated 14 May 2025. The Appeal Panel upheld the earlier decision of the Board to refuse the applicant's application for a victims' payment on the ground that his injury was not caused by a "Troubles-related incident."

[2] Following a hearing on 16 December 2025, leave to challenge the decision of the Appeal Panel was granted on two grounds and refused on the remaining grounds (*Re Walsh* [2025] NIKB 74). The permitted grounds of challenge were:

- (i) The Appeal Panel erred in concluding that the applicant's injuries were not caused by a Troubles-related incident in light of the available evidence.
- (ii) The Appeal Panel erred by rejecting the application for reasons other than those authorised by the statutory scheme.

*Statutory Framework*

[3] The genesis of the Victims' Payments Scheme derives from the Stormont House Agreement of December 2014, between the Northern Ireland political parties, the Irish government and the UK government. The parties agreed:

“28. Further work will be undertaken to seek an acceptable way forward on the proposal for a pension for severely physically injured victims in Northern Ireland.”

[4] In the years which followed, the Northern Ireland political parties were unable to reach agreement on the content or scope of the proposed scheme. During the period between 2017 and 2020, in the absence of a Northern Ireland Executive Committee, Parliament enacted a number of measures relating to Northern Ireland. Section 10 of the Northern Ireland Executive Formation etc Act 2019 (“the 2019 Act”) provided for the Secretary of State to establish the victims’ payments scheme, first envisaged in the Stormont House Agreement. Section 10(1) of the 2019 Act imposed a duty upon the Secretary of State in the following terms:

“(1) The Secretary of State must by regulations establish a scheme under the law of Northern Ireland which provides for one or more payments to be made to, or in respect of, a person who has sustained an injury as a result of a Troubles-related incident.”

[5] The regulations envisaged by section 10(1) were to be made by January 2020 and to come into force by the end of May 2020 (section 10(2)). The phrase “*Troubles-related incident*”, is defined in section 10(11) of the 2019 Act in the following terms:

“(11) In this section - ... “*Troubles-related incident*” means 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.”

[6] The Victims’ Payments Regulations 2020 (S.I. 2020/103) (“the 2020 Regulations”) were made on 31 January 2020 pursuant to sections 10(1) and (2) of the 2019 Act, with the approval of Parliament. The Explanatory Memorandum to the 2020 Regulations explains the background in the following terms:

“7.1 As part of the 2014 Stormont House Agreement between British and Irish Governments and the Northern Ireland Executive, it was agreed that work would be taken forward to deliver a pension for severely injured victims of the Troubles to promote reconciliation in Northern Ireland following this period of conflict. The Northern Ireland Executive did not deliver a scheme and the

UK Government is making provisions for its establishment.

...

7.3 This instrument establishes a new Scheme for payments to those living with permanent disablement caused by injuries sustained in Troubles-related incidents. The scheme's main objective is to provide those entitled to payments with acknowledgement of the acute harm that they have suffered; as a result of the payments, the Scheme will also provide a measure of financial support, which may help to improve their quality of life and provide greater security around their financial future."

[7] For present purposes, several provisions of the 2020 Regulations are relevant. Regulation 5 governs entitlement and provides:

"5.—(1) A person is entitled to victims' payments in respect of injury caused by a Troubles-related incident if—

- (a) the injury results in permanent disablement;
- (b) the assessed degree of relevant disablement amounts to not less than 14 percent;
- (c) the Troubles-related incident took place—
  - (i) in the United Kingdom,

...

(d) the Troubles-related incident took place on or after 1 January 1966 but before 12 April 2010,

...

(2) But this entitlement is subject to regulation 6.

...

(6) For the purpose of paragraph (5), the purposes of this Scheme are to—

- (a) acknowledge the harm suffered by those injured in the Troubles, and

- (b) promote reconciliation between people in connection with Northern Ireland's troubled past."

[8] Regulation 6 provides exceptions to entitlement for persons with certain convictions. It provides:

"6.—(1) A person is not entitled to victims' payments in relation to a particular Troubles-related incident where the person—

- (a) has a conviction (whether spent or not), and
- (b) that conviction was in respect of conduct which caused, wholly or in part, that incident.

(2) A person is not entitled to victims' payments where the Board considers that the person's relevant conviction makes entitlement to victims' payments inappropriate.

(3) A person is not entitled to victim' payments where the President of the Board considers that the exceptional circumstances of the case, having regard to material evidence, make entitlement to victims' payments inappropriate."

[9] Regulation 7 expands upon the causation requirement set out in regulation 5 and also establishes criteria by which to assess the remoteness of the connection between the injury and the identified Troubles-related incident. It provides:

"7.—(1) For the purpose of these Regulations, a person's injury may only be considered to be caused by a Troubles-related incident if it is suffered by that person when—

- (a) present at a Troubles-related incident;
- (b) present in the immediate aftermath of a Troubles-related incident in which a loved one died or suffered an injury;
- (c) responding, in the course of employment, to a Troubles-related incident, in which the person reasonably believed a loved one had died or suffered significant injury."

[10] Entitlement to a victims' payment is determined by the Victims' Payment Board through a panel appointed by the President of the Board (Regulations 12(2) and (3)). Determinations by the panel may be appealed (Regulation 34(1)) and are determined by an Appeal Panel, also appointed by the President of the Board (Regulation 25(1)). Appeals proceed by way of a reconsideration of the determination which is under appeal (Regulation 36(1)).

[11] For the purposes of an application for a victims' payment or an appeal, the burden of proving any matter lies upon the applicant (Regulation 44). The applicable standard of proof is the balance of probabilities (Regulation 45).

[12] The Victims' Payments Board has published a series of guidance notes concerning issues relevant to the application process. Guidance Note GN 04/21 (subsequently revised in 2025) provides guidance on how the Board will approach a determination of whether an injury was caused by a "*Troubles-related incident*." The version of GN04/21 which was in force at the time of the impugned decision contained the following guidance:

"4. In determining an application where there is a query as to whether or not an incident is a Troubles-related incident, the Panel should consider at all times the overarching purpose of the Scheme as outlined in regulation 5(6) of the Regulations '*to acknowledge the harm suffered by those injured in the Troubles and promote reconciliation between people in connection with Northern Ireland's troubled past*.'

...

10. In line with the definition provided in section 10(11) of the Act, a Troubles-related incident must firstly involve an "*act of violence or force*."

11. Some Troubles-related incidents were direct acts of violence or force against the state or its apparatus. Some Troubles-related incidents were acts of violence or force carried out by, or on behalf, of the state. Some incidents occurred as a result of tensions between, or within, communities in Northern Ireland. Some injuries resulted from the commission of a serious criminal or scheduled offence. Some injuries resulted, not as a direct result of a criminal act, but in an incident linked to circumstances involving violence or force; clearly and directly as a result of the Troubles. It shall be for the Victims' Payments Board, to decide if a particular incident involved an act of violence or force.

12. Once it has been established by an applicant to the Scheme that the relevant incident did indeed involve an act of violence or force, it must then be shown that the reason for that act of violence or force was 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.”

[Emphasis added]

[13] Annex A of the Guidance Note contains an “*indicative list of incidents which could be considered as involving an act of violence or force for the purposes of a Troubles-related incident.*” The list sets out a series of types of incident which “*could*” fall within the scheme and includes “*false imprisonment.*”

#### ***The application for a victim’s payment***

[14] On 5 June 1991, the applicant was arrested by two members of the military in an alleyway off the Suffolk Road, Lenadoon, Belfast, on suspicion of possession of an explosive substance, namely a coffee-jar bomb, with intent. He was interviewed, charged and later remanded in custody. On 7 December 1992, he was convicted by HHJ Petrie of the offence charged and sentenced to 14 years’ imprisonment. He served seven years in custody and was released in 1998. On 7 January 1994, the Court of Appeal upheld his conviction in a judgment delivered by MacDermott LJ. Following his release from custody, the Criminal Cases Review Commission referred the case back to the Court of Appeal in March 2000. On 11 January 2002, the conviction was upheld by the Court of Appeal for a second time, in a judgment delivered by Carswell LCJ. On 24 January 2007, the Court of Appeal granted leave to appeal against the conviction in a judgment delivered by Kerr LCJ. A subsequent application to admit fresh evidence was granted in November 2007. In March 2010, the Court of Appeal allowed the appeal and quashed the applicant’s conviction (*R v Walsh* [2010] NICA 7).

[15] After his conviction was quashed, the applicant applied for, but was refused, compensation for miscarriage of justice pursuant to section 133 of the Criminal Justice Act 1988. He brought a successful application for judicial review of the refusal but the application was again refused, following a reconsideration by the Minister (*Re Walsh* [2012] NIQB 55). He brought a subsequent application for a Writ

of Coram Nobis for review of the earlier judgment, which was refused (*Re Walsh: For a Writ of Coram Nobis* [2012] NIQB 82).

[16] On 5 January 2022, the applicant submitted an online application for a victims' payment, pursuant to the 2020 Regulations. On the application form, he identified the relevant Troubles-related incident to be his arrest on 5 June 1991 on the Suffolk Road, together with his subsequent detention. He described the incident in the following terms: "*I was unlawfully held captive against my will for seven years.*" As a result of the incident, he claimed to have suffered a psychological injury in the form of PTSD. His description of the injury was:

"My psychological ill-health is directly related to what I have suffered as a result of being unlawfully arrested and wrongly convicted. I have been persecuted for being innocent ever since."

[17] In June 2022, the applicant was referred for medical assessment. The assessment form records the following description of the Troubles-related incident which he claimed caused the injury:

"In 1991, Mr Walsh was walking to meet a friend at the pub when he was stopped and wrongfully arrested and unlawfully detained of having an explosive device. He was detained for seven years between 1991 and 1998."

[18] The applicant was diagnosed as suffering from PTSD and assessed to be 21% disabled. The disablement was also found to be attributable to the Troubles-related incident, as described.

[19] On 14 December 2023, a Panel of the Board decided that the applicant was not eligible for a victims' payment on the ground that his arrest and detention did not constitute a "*Troubles-related incident.*" The Panel was not satisfied that the incident involved the use of "*violence or force*" but made no determination as to whether the other elements of the statutory definition were satisfied, namely whether the incident was related to the constitutional status of Northern Ireland, political hostility or sectarian hostility between the people of Northern Ireland. The reasoning of the panel is encapsulated in the following extract from its written decision:

"... The first element of the definition requires there to have been an act of violence or force. The panel considered the Annex to Guidance Note GN04/21 ... which provides an indicative list of incidents which could be considered as an act or violence or force for the purposes of a Troubles-related incident. Being arrested and imprisoned on remand or as a sentenced prisoner

does not fall within this list. Although this list includes “false imprisonment” and the applicant refers to being unlawfully held captive against his will for seven years and to being unlawfully arrested, no evidence was provided as to his initial arrest or his detention being unlawful at the time or that he was subject to false imprisonment. The panel acknowledges the applicant’s conviction was later determined to be unsafe, however, that does not retrospectively effect the legality of the initial arrest and sentence of imprisonment. While it is acknowledged that it is an indicative list, there is nothing to suggest the applicant’s arrest and detention falls within the same category as the type of incidents intended to be covered by this scheme.

The panel is accordingly not satisfied any violence or force was carried out against the applicant during this incident.”

[20] It is not entirely clear what information was available to the Panel at the time of its decision. The available materials suggest that the Panel had the information supplied by the applicant in support of the application, the fact of his conviction, the subsequent judgment of the Court of Appeal quashing the conviction and the judgments in the later judicial review challenges. The Panel also appears to have obtained from its own researches some news reports about the 2010 Court of Appeal decision.

[21] The applicant appealed to an Appeal Panel. It appears that more materials may have been available to the Appeal Panel, insofar as the Appeal Panel made express reference to more materials than were referred to in the Panel decision. The materials referred to by the Appeal Panel are summarised in its written decision and included the following:

- (i) The judgment of the Court of Appeal quashing the conviction ([2010] NICA 7) and the judgment of Weatherup J quashing the refusal of miscarriage of justice compensation ([2012] NIQB 55).
- (ii) A detailed personal statement by the applicant.
- (iii) A range of materials from police and the Forensic Science laboratory. These materials appear to have been disclosed to the applicant in 2008 following the 2007 decision of the Court of Appeal to grant leave to appeal the conviction for a third time. These materials formed the centrepiece of the appeal and of this challenge. They are analysed in more detail below.

- (iv) An extract from a book *Righting miscarriages of Justice?* by Laurie Elks, a former commissioner within the Criminal Cases Review Commission. The extract dealt with the process of re-interviewing witnesses during a CCRC reference and included commentary on the applicant's case in which the arresting soldiers had been re-interviewed.
- (v) A request by the applicant to the PPS under the Freedom of Information Act 2000 relating to the existence of further material within PPS files, other than those already disclosed.
- (vi) Extract from a transcript of the applicant's original trial, relating to a recusal application refused by HHJ Petrie.

[22] The decision of the Appeal Panel, records that an oral hearing was conducted. The Panel confirmed receipt of all of the above information. It confirmed that the applicant made oral submissions on all of the above and it recorded a summary of both the materials and the submissions. The decision of the Appeal Panel is set out in more detail below. It ultimately dismissed the appeal for essentially the same reasons as the Panel.

[23] Both before the Appeal Panel and before this court, the applicant made detailed submissions on the content of the police and forensic science records. In light of the central focus upon these materials, it is important to explain their relevance by setting out in more detail both the decision of the Court of Appeal and also the content of the materials.

### *R v Walsh [2010] NICA 7*

[24] The background to the applicant's arrest, trial, conviction and appeals is set out in detail in the judgment of the Court of Appeal. In summary, he was arrested on 5 June 1991 as he walked through an alleyway off the Suffolk Road. The central evidence against him was given by two soldiers. The evidence of one soldier was that he had stopped the applicant and asked him to take his hands out of his pockets. As he did so, he was found to be holding a coffee-jar bomb in his right hand. The soldier told him to set the jar on a nearby wall. The evidence of the other soldier was that he had been following behind while on patrol in formation and had observed the applicant stopped in the alleyway holding a coffee-jar like device in his right hand. He secured the applicant's hands. Forensic testing later revealed traces of RDX (one of the two components of the bomb) on the applicant's left hand but not on the inside of his left pocket. No explosive residue was found on the inside of his right pocket. No fingerprints were found on the exterior of the bomb which had been wrapped in sellotape, a portion of which had the sticky side facing out. No fibres connected to the applicant's clothing were found on the device. The expert forensic evidence included the opinion that it probably would not be difficult for the bomb maker to avoid transfer of residue to the exterior of the coffee jar. Fingerprints would have been expected but could have been lost due to contact when the coffee

jar device was bagged. The evidence of the Crown's fingerprint expert was that the sticky tape was not a good receptor for fingerprints and that "*you may get one maybe in about a million*" through contact with the sticky side of sellotape.

[25] There were three broad issues in the 2010 appeal which may be summarised as follows:

- (i) Fresh evidence from one soldier. The Court of Appeal admitted in evidence a fresh statement from the soldier who had observed from behind the applicant holding the device and who had secured his hands. In his new statement, he indicated that he had approached the alleyway from a different position which would have affected his view along the alleyway. However, he did not change the statement relating to his observation of the applicant holding the coffee-jar device. The Court of Appeal ultimately found that "*no more than modest significance*" should be attributed to this fresh evidence ([2010] NICA 7, at [34]).
- (ii) Fingerprints. The Court of Appeal admitted fresh evidence from a fingerprint expert for the applicant and also received evidence from the then head of the PSNI Fingerprint Bureau. The result of that evidence was that even the PSNI expert accepted that the original expert opinion may have misled the court. The fresh evidence indicated a strong likelihood that if the coffee-jar bomb had been handled by the applicant, as alleged, a fingerprint would have been detectable immediately thereafter. However, it may also have been lost during bagging, in light of the techniques used at that time. The Court of Appeal considered that if this evidence had been given at trial, it may have affected the trial judge's conclusion that the forensic evidence had been neutral ([2010] NICA 7, at [35]).
- (iii) Non-disclosure. The applicant also relied upon the new materials obtained during the 2008 disclosure process. The judgment records that the materials indicated another person had been noticed in a vehicle at one end of the alleyway, who was described on intelligence grounds as a "top IRA man." This person had been arrested and interviewed over two days, during which it was put to him that police believed he may have been the person who drove the bomber to the area. This person was released without charge. The Court of Appeal found that there was "*no evidence of any other person in the vicinity of the coffee jar at any material time and the question remained as to how it got there.*" It described the reference to the arrest of the top IRA man as providing at best "*a partial theory*" ([2010] NICA 7, at [26] & [36])

[26] The Court of Appeal's ultimate conclusions were set out in para [37]. In allowing the appeal it referred to the fact that the fresh fingerprint evidence may have affected the trial judge's overall view about the forensic evidence and also that the change in the soldier's evidence about his view of the alleyway may have provided "*some material which may have affected the evaluation of his reliability.*" It

identified these two factors as being the ones which left it with “a significant sense of unease about the safety of the verdict.” In its dispositive conclusions, the Court of Appeal made no reference to the possibility that the fresh materials about the “top IRA man” had influenced its decision to quash the conviction.

### *Police and forensic science records*

[27] The police and forensic science laboratory materials which were relied upon in support of the claim for a victims’ payment appear to be less extensive than those which were available to the Court of Appeal. For example, the Court of Appeal referred to papers which indicated the location of the arrest of the suspected IRA man, the fact that he was in a vehicle, the identity of the soldier who arrested him, the connection between that individual and an address nearby, the number of times on which he was interviewed and the materials put to him during interview ([2010] NICA 7, at para [26]). By contrast, the materials available to the Appeal Panel were the following:

- (i) A forensic science laboratory form, recording the submission of material for testing. It records the occurrence as a “*find of explosives (blast bomb)*” on the Suffolk Road. The date and time of the incident are recorded as “13:50 hours approx 5-6-91” with the person suspected named as John Christopher Walsh.
- (ii) A forensic science laboratory form containing details of the case and instructions to the laboratory. They contain the following manuscript note:

“Walsh was stopped with a suspect device on the Suffolk Road at approx 13:50 hours. At about the same time [Mr F] of [ADDRESS REDACTED] was also stopped. [Mr F] has a flat at [XX] Suffolk Road. Can Walsh be connected to [Mr F] and can BXI3 [illegible] swab [illegible] for Exp residues.”
- (iii) A forensic science laboratory form recording the submission of material for testing. The description of the incident is recorded as an “*explosives find, Suffolk Road.*” The date and time of the incident are recorded as “1:35pm, 5/6/91.” The identity of the suspect recorded as “[Mr F], DOB: [REDACTED], at [ADDRESS REDACTED].” The date and time of the incident are recorded in manuscript. It appears on the face of the record that the time may originally have been recorded as “2.35”, but that the numeral “2” has been changed to “1”, as both numerals can be observed and the numeral “1” appears to have been written in darker ink. There is no evidence at all about how the time was originally recorded, who did so, whether it was ever amended, whether any amendment occurred before or after submission of the form to the laboratory and, if so, in what circumstances. No evidence of the history of how the form was filled out was available to the Board or to this court.

- (iv) A forensic science laboratory form recording the submission of material for testing. The incident is again described as “*explosive find*” on the Suffolk Road. The date and time of the incident are recorded as “13:50, 5/6/91.” The identity of the persons suspected are recorded as both Christopher Walsh and [Mr F]. The addresses and dates of birth of both individuals are also recorded.
- (v) An RUC form recording an authorisation which appears to have been given by D/Superintendent Martindale at 6pm on 5 June 1991 for the taking of bodily samples from [Mr F]. The authorisation form records that the suspect is in custody and states:

“Whereas, [Mr F] is in police detention and has ~~failed to consent~~/consented to provide a sample of swabbing kit plus clothing, plus hair combings which he was requested to provide in compliance with the above-mentioned legislation; and whereas I have reasonable grounds for suspecting his involvement in a serious arrestable offence and for believing that the sample will tend to confirm or disprove his involvement, to wit: possession of an explosive device, namely a blast bomb.” [emphasis added]

The form appears to record that this authorisation was given at 2:45pm on 5 June 1991.

### ***Appeal Panel determination***

[28] The Appeal Panel ultimately determined that the applicant was not entitled to a victims’ payment. It first considered whether there was a Troubles-related incident. It identified the relevant incident to be the applicant’s arrest on 5 June 1991, his subsequent conviction and his seven year detention. The Appeal Panel decision included the following paragraph which was relied upon heavily by the applicant:

“[10] The appellant also provided a very helpful chronology which indicated that he was unlawfully arrested at 1:50pm on 5 June 1991 by a single member (Corporal Blackrock). The appellant indicated that he was denied access to legal advice for 48 hours. The appellant also indicated in this chronology that at 1:35pm on the same date of 5 June 1991, an adult male [Mr F] was detained by a military patrol (including Corporal Blackrock) in possession of an explosive device, namely a

blast bomb (and this was not discovered by the appellant until 2008).”

[29] The Panel then recited all of the evidence, including the forensic/PSNI materials and it recorded the following inferences and conclusions which the applicant had invited the Panel to draw (summarising):

- (i) Mr F had been arrested in possession of the alleged device approximately 15 minutes before the applicant arrived at the scene.
- (ii) The apparent manuscript change in the recorded timing of Mr F's arrest was evidence that the *“state falsely alleged that Mr F was arrested at 3:35pm in a follow-up operation.”*
- (iii) The authorisation from Superintendent Martindale to take samples from Mr F at 6pm indicated that, by the time the form was completed, police did not consider the applicant as the primary suspect.

[30] The Appeal Panel refused the appeal for essentially the same reasons as the Panel. Its reasoning is encapsulated 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 appellant was arrested on 5 June 1991 and was convicted after a court trial on 7 December 1992 for possession of explosives and received a 14-year custodial sentence. The appellant was legally represented at this trial. The appellant was released from prison on 4 June 1998. His conviction was not quashed by the Court of Appeal until 16 March 2010. 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 appeal panel also concurs with the hearing panel that the quashing of his conviction on 16 March 2010 does not retrospectively affect the legality of his initial arrest and sentence of imprisonment. The Appeal Panel also notes that the appellant has not provided any evidence of a successful claim for false imprisonment brought by him, or receipt by him of any compensation regarding same. In conclusion, 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’ payment.”

### *Consideration*

[31] The applicant’s primary ground of challenge is that the Appeal Panel erred in its conclusion that his arrest and subsequent detention did not amount to a Troubles-related incident. It is important to record that both the Panel and the Appeal Panel rejected the application on the basis that there had been no “*act of violence or force*.” Neither body made any decision on whether the incident was also related to the constitutional status of Northern Ireland or to political/sectarian hostility. I have therefore not addressed that issue.

[32] The policy development and statutory history of section 10 of the 2019 Act and the 2020 Regulations provide little interpretative assistance to the phrase “*act of violence or force*.” They simply reveal an intention to create a scheme for the benefit of persons who were injured during the Troubles. The clearest expression of statutory intention is found in regulation 5(6) which describes the scheme’s objectives to be the acknowledgement of harm suffered by those injured in the Troubles and the promotion of reconciliation in connection with Northern Ireland’s troubled past. This broad context and these statutory purposes therefore provide the backdrop for interpreting the words of the 2019 Act. Since the 2019 Act made express provision for the operational detail and scope of the scheme to be defined by regulations (section 10(1)) and since there is a clear temporal connection between the 2019 Act and the 2020 Regulations, it is also appropriate to interpret both the Act and the Regulations harmoniously with one another, in accordance with the principles explained by Lord Sales in *R (PACCAR) v Competition Appeal Tribunal* [2023] UKSC 28, para [45].

[33] A harmonious reading of section 10 of the 2019 Act and regulation 5 of the 2020 Regulations makes clear that applicants for a victims’ payment must satisfy four separate elements in order to establish eligibility under the scheme:

- (i) The existence of an act of violence or force;
- (ii) The purpose of the act of violence or force must be related to the constitutional status of Northern Ireland and/or sectarian/political hostility between people in Northern Ireland;
- (iii) An injury; and
- (iv) A causative connection between the act of violence or force and the injury.

[34] The first and most obvious feature of the scope of the scheme is that it is not limited to injuries sustained as a result of violence or force used by terrorist

organisations or other non-state actors. The words “*violence or force*”, without any qualification as to the identity of the perpetrator point clearly towards the inclusion of injuries which were sustained by the actions of both non-state actors or state bodies which were engaged in the use of force against individuals. Two features of the scheme reinforce this conclusion. First, the 2020 Regulations contain no express exclusionary provision or language relating to injuries caused by state bodies. By contrast, the 2020 Regulations do contain other express exclusionary provisions for other circumstances. For example, an individual may be excluded by reason of a conviction (regulation 6) or on the ground that the injury is too remote from the relevant Troubles-related incident (regulation 7). Injuries caused by state bodies form such an important part of the history of the Troubles that the combination of the broad qualifying language and the omission of any exclusionary provision relating to state authorities point clearly towards their inclusion. Second, the stated objectives of the scheme include reconciliation and acknowledgment of the harm suffered by those injured in the Troubles. The inclusion of injuries sustained at the hands of the state is entirely consistent with these objectives. Indeed, the exclusion of such injuries is much more likely to be entirely inconsistent with the scheme’s objectives. I therefore consider that the phrase “*act of violence or force*” defines eligibility under the scheme sufficiently broadly to include those injuries sustained as a result of the use of force by state authorities.

[35] The phrase “*act of violence or force*” also raises the question of whether the cause of the injury must be an unlawful use of force. The word “*violence*” clearly carries the connotation of an unlawful use of force. However, it is of note that the word “*force*” is not qualified by the word “*unlawful*.” In the course of submissions, several hypothetical scenarios were considered which one might expect to fall within the scheme but in which there may be doubt about whether the force which was the proximate cause of the relevant injury was unlawful. Examples included an individual who was injured by jumping out of a window or running into the path of a vehicle while trying to escape a hostile group or other perceived source of threat. A further example included civilians injured while being directed away from the source of a bomb warning if it later transpired to be a hoax, involving no explosive device and no use of force at all.

[36] In my view, the correct interpretation of the phrase “*act of violence or force*” is apparent when considered in light of the historical context of the Act and Regulations, namely the Troubles in Northern Ireland. It was a period characterised not only by terrorist violence, but also by civil unrest, sectarian hostility and security/law enforcement measures undertaken by the state authorities. The actions for which later acknowledgement by the state and efforts at reconciliation is most clearly appropriate is unlawful conduct, not the lawful use of force. I therefore consider that a “*Troubles-related incident*” for the purposes of the scheme is one in which the “*incident*” involved the unlawful use of force. A contrary interpretation would lead to the absurd consequence that any person injured as a result of the use of lawful force or even an accidental use of force during the period of the Troubles could potentially be eligible for a victims’ payment. Such an interpretation would

result in a scheme of almost infinite scope and which extended well beyond its stated objectives. There is nothing within the language, objectives or context of the relevant legislative provisions which supports such a broad interpretation. If it had been intended by Parliament, I consider that the Act or the Regulations would have used express language to that effect.

[37] As the examples referred to above illustrate, it is clear that there may be some cases in which some act of threatened violence or other unlawful act may have occurred, but where there is doubt about the remoteness of the connection between the underlying unlawful incident and the immediate source of the force which inflicted the injury. I consider that this interpretation is also reflected in Annex A to Guidance Note 04/21 which includes as examples of "*acts of violence or force*" incidents which involve unlawful conduct but which may not actually involve the deployment of physical force (eg "*Threats to destroy or damage property*"; "*Incitement to commit an offence*"; "*Blackmail*" and "*Threats to kill.*" "*Common assault*" is also listed which can include putting a person in fear of violence, rather than an actual use of force). In such cases, I consider that eligibility should be determined by reference to the requirement of causation, rather than the lawfulness of the use of force. In my view, the requirement for an "*act of violence or force*" means that an applicant must demonstrate some underlying unlawful incident involving an actual (or possibly a threatened) use of unlawful force. Thereafter, the remoteness of the connection between the unlawful incident and the immediate cause of the injury, will be a matter to be assessed by the Board on a case-by-case basis. The more remote the connection, the less likely the injury can be said to have been caused by the relevant incident, as required by regulation 5.

[38] In the present case, the incident relied upon by the Applicant did not involve the use of or threat of violence, rather it involved the use of force by the exercise of powers of arrest and detention - initially by the military and later by the police and prison authorities. If the use of force by state bodies is capable of falling within the scheme, I consider that there is no reason why the use of force to effect an arrest and detention could not, in principle, also be included. However, in light of the requirement for the use of force to be unlawful, it follows that the arrest and detention must also be demonstrated to have been unlawful. In practical terms, this means that an applicant for a victims' payment must demonstrate that those powers were exercised without a proper legal basis. A contrary interpretation would mean that any person arrested or detained during the period of conflict in Northern Ireland and who suffered an injury (physical or psychological) as a consequence may be entitled to a payment under the scheme, even if the arrest and detention were wholly lawful. I consider that such a wide interpretation would be so unreasonable and so implausible that it could not have been intended by Parliament.

[39] In this case, it was therefore necessary for the applicant to demonstrate to the satisfaction of the Board, on the balance of probabilities, that his arrest and detention were unlawful and without any legal basis. In other words, he bore a burden of

adducing evidence to satisfy the Board, on the balance of probabilities, that there were no reasonable grounds for suspicion that he was in possession of an explosive device and that they had arrested him on an entirely false premise. Since the case against him was that he had been arrested while physically holding the device while alone in an alleyway, in practical terms this required him to demonstrate that he had been “framed” by the arresting soldiers. On any analysis, this was a heavy burden.

[40] In support of his case, the applicant’s core contention was that the timeline of his arrest relative to that of Mr F (as recorded in the forensic science/PSNI documents) unequivocally demonstrated the falsity of the soldiers’ evidence and the absence of any reasonable grounds for suspicion. He contended that since he was arrested at 1:50pm and that since Mr F had been arrested at 1:35pm, on suspicion of possession of an explosive device, he could not possibly have been in possession of the same device 15 minutes later. The applicant also relied heavily upon the Appeal Panel’s comment at para (10) that it found the chronology of events provided by the applicant to be “helpful” (see para [28] above). The applicant contended that this amounted to the Appeal Panel accepting the chronology as an accurate historical record of events. Accordingly, he submitted that the Appeal Panel erred by not going on to conclude that the arrest must have been unlawful.

[41] When determining whether the Applicant’s arrest, conviction and detention amounted to a “*Troubles-related incident*”, the task facing both the Board and the Appeal Panel was to assess the totality of the evidence presented by the applicant, together with the other historical evidence which the Board had itself been able to obtain and to form an overall assessment of whether it was more likely than not that his arrest and subsequent detention had been unlawful.

[42] It is clear that the Appeal Panel considered all of the evidence put forward by the applicant, including the forensic science documents, the police records and the judgments of both the Court of Appeal and the High Court. I consider that, on the evidence available to it, it was lawfully open to the Appeal Panel (and to the initial Panel) to conclude that the evidence did not achieve the requisite standard and I therefore conclude that that the Appel Panel’s decision was a lawful one.

[43] On the applicant’s key submission about the timeline of his arrest, relative to that of Mr F, I do not consider that there is any inconsistency between the fact that the PSNI arrested Mr F as part of the same operation on suspicion of possession of an explosive device and that it also arrested the applicant 15 minutes later in physical possession of the same device. The available evidence does not reveal the intelligence or other information which was available to the military at the relevant time. However, it does suggest that a single operation was in motion which extended beyond the applicant’s involvement. The records show that police investigated the possibility of a connection between the two individuals by submitting exhibits to the forensic science laboratory in an effort to establish that connection. The available records do not speak of the time at which it might have been suspected that Mr F was in possession of the device. The mere fact that he was

arrested 15 minutes earlier than the applicant and that the basis for his arrest was a suspicion of possession, do not compel the conclusion that Mr F must have been in physical custody of the device at the time of his arrest. As stated by the Court of appeal at para [26] of its judgment, it appears that Mr F was arrested on suspicion of having driven the bomber to the location. Furthermore, as observed above, the material available to the Court of Appeal to support its comments appears to have been more extensive than was available to the Board or Appeal Panel. However, even in the absence of more extensive records, the mere fact that the two arrests took place at different times and that both individuals were suspected of being in possession of the same device does not, of itself, reveal a legal or logical inconsistency. It is entirely possible that police suspected both individuals of having sequential possession of the device or of being part of a joint enterprise. Accordingly, in my view, the applicant's central contention that he could not have been in possession of the device 15 minutes after Mr F's arrest, is not an inevitable inference to be drawn from the available materials.

[44] The Applicant also relied upon the authorisation given by D/Superintendent Martindale to take bodily samples from Mr F. He submitted that the authorisation was given on the basis that Mr F was suspected of being in possession of an explosive device. He pointed out that the time of the signature on the authorisation appears to have been 6pm. He contended that Mr F must therefore have been the prime suspect at this point in time, which in turn undermined the existence of reasonable grounds for suspicion in relation to his arrest. I do not accept that such an inference can be drawn from this document. It is a document which records an authorisation to take bodily samples from Mr F in furtherance of the investigation into his involvement in possessing the coffee jar device. It says nothing about him being the primary suspect. If anything, it is consistent with the course of investigation described above, namely that on the day of the Applicant's arrest, police were investigating the possible involvement of Mr F in the same operation. The document also appears to record that the authorisation was actually given at 2.45pm on 5 June 1991, with the form completed and signed by D/Superintendent Martindale later at 6pm. However, no evidence was available to the Appeal Panel or to this Court about events surrounding the preparation and execution of the document. All of the above is inference and speculation based upon the entries appearing on the face of the document alone. Accordingly, it does not therefore appear to support the applicant's interpretation of the chronology of the police investigation or the grounds of suspicion held by the arresting soldiers.

[45] In light of all of the above, I therefore consider that, on the basis of the available materials, the Appeal Panel and the Board were entitled to conclude that they were insufficient to demonstrate the unlawfulness of the applicant's arrest and detention.

[46] The Appeal Panel also clearly read and considered the judgment of the Court of Appeal by which the applicant's conviction was quashed. The Court of Appeal had clearly been aware of the materials pointing to the possible involvement of Mr F

as a “top IRA man” in the same operation. However, this does not appear to have formed the basis of the Court of Appeal’s decision that the conviction was unsafe (per paras [25] & [26] above). The fresh materials which led the Court of Appeal to hold a “sense of unease” about the safety of the conviction were the fresh fingerprint evidence and, to some degree, the fresh statement by the soldier who stated that he had observed the applicant’s arrest. The Court of Appeal did not make any findings to the effect that the applicant had been “framed” by the soldiers or that no connection existed between the applicant and the device. For example, it did not find that the soldiers had been untruthful about the applicant being stopped while holding the explosive device. Nor did it find that the device was already located on the wall when the applicant was stopped. Indeed, if anything, its findings were to the opposite effect, when it concluded at [36]: “.....There was no evidence of any other person in the vicinity of the coffee jar at any material time and the question remained of how it got there.” It is therefore both legally and factually possible that the applicant was lawfully arrested on suspicion of possession of the device, but that his conviction was later found to be unsafe. Accordingly, I consider that it was lawfully open to the Appeal Panel to conclude that the totality of the evidence (including the decision of the Court of Appeal) was insufficient to demonstrate, on the balance of probabilities, that the initial arrest and detention were unlawful.

[47] A further issue which was raised in the course of the hearing was that, during the vast majority of the period of the applicant’s custody, the legal basis for his detention was an order of a court, following his remand or conviction, as opposed to the suspicion of the arresting soldiers. The potential relevance of this issue is the common law principle established in *Austin v Dowling* (1870) LR 5 CP 534 that the tort of false imprisonment does not lie against the detaining authority where the imprisonment is effected through judicial proceedings. The principle was recently affirmed and applied by the Court of Appeal in *Zenati v Commissioner of Metropolis* [2015] 2 WLR 1563, at paras [50]-[51]. This issue would only have been relevant to the present application if the panel had been satisfied that no legal justification for the applicant’s arrest existed. In those circumstances, a question may have arisen about the duration of the qualifying Troubles-related incident and whether it could have extended beyond the date of the first remand hearing. If there had been no false imprisonment beyond that date, a subsidiary issue may also have arisen about whether a malicious prosecution could be an “act of violence or force” and hence whether it could constitute a Troubles-related incident. It is of note that “malicious prosecution” does not appear on the indicative list of Troubles-related incidents within Annex A of the Board’s guidance. In light of the conclusions which I have reached above, these issues do not arise.

[48] Finally, the applicant also criticised the Appeal Panel’s determination insofar as it referred to the absence of evidence of the applicant ever maintaining or succeeding in a civil claim for false imprisonment. He contended that he was under no obligation to have brought such a claim and that the panel fell into error insofar as it considered it to be necessary. I accept that a successful claim for false imprisonment is not a pre-condition to a successful claim for a victims’ payment

where the claim is based upon an allegation of wrongful arrest and detention. However, I do not accept that the Panel's comments at para 36 can properly be interpreted to mean that the panel applied such a requirement. Read fairly and in context, I do not consider that the Panel did anything other than note the absence of any claim for, or a judicial finding of, false imprisonment. If such a finding had ever been made, it would clearly have been of substantial evidential significance when assessing his application for a victims' payment.

[49] For all of the above reasons, I consider that the applicant's primary ground of challenge must fail. I consider that the Appeal Panel was justified in its conclusion that the evidence was not sufficient to demonstrate that his original arrest and detention had been unlawful, notwithstanding the subsequent quashing of his conviction. I therefore find that the Appeal Panel was entitled to conclude that any injury suffered by the applicant was not caused by an "*act of violence or force*" within the meaning of the 2019 Act and 2020 Regulations and hence was not caused by a "*Troubles-related incident*" as required by regulation 5.

[50] The applicant's second ground of challenge was largely dependent upon the first. The applicant contended that since his claim fell within the scheme, he ought only to have been excluded for one of the statutory grounds, such as a conviction (per regulation 6) or other statutory ground for disqualification. As set out above, neither the Panel nor the Appeal Panel made any determination on this issue and rejected the applicant's claim solely on the ground that there had been no "*act of violence or force.*" Since I have concluded that the Appeal Panel was entitled to make that finding and to refuse the application on that basis, this ground of challenge does not properly arise on the facts.

[51] For all of the above reasons, I find that neither of the permitted grounds of challenge are made out and I dismiss this application for judicial review. I will hear the parties on costs.