

Judicial Communications Office

9 February 2021

COURT FINDS EXECUTIVE OFFICE UNDER LEGAL DUTY TO FUND VICTIMS' PAYMENTS

Summary of Judgment

The Court of Appeal¹ today found that the Executive Office is under a legal duty to fund victims' payments and lump sums under the Victims Payments Regulations 2020. It has given the parties four weeks to find an agreed solution

Background

The Court set out the background to the making of the victims' payments scheme in paragraphs [2] to [17] of its judgment. It referred to the ongoing dispute between the Northern Ireland Executive and the Secretary of State for Northern Ireland on who should be responsible for funding payments made under the scheme. On 21 August 2020, Mr Justice McAlinden found that the Executive Office acted unlawfully in deliberately refusing to designate a Northern Ireland Department to enable the scheme to progress. The Department of Justice was designated as the Department on 24 August 2020. There was no appeal from that part of the judgment and the issue in the Court of Appeal concerned the trial judge's refusal to declare that the failure of the Executive Office to provide a grant of funds to the designated Department constituted unlawful conduct.

Consideration

The task for the Court was to establish what obligation, if any, has been imposed upon the Executive Office by Regulation 9(1)(b) of the Victims' Payments Regulations 2020² ("the 2020 Regulations"). This required the court to establish the intention to be attributed to the legislature in respect of the words used.

The purpose of the 2020 Regulations was to establish a scheme which provides for payments to be made in respect of persons who had sustained an injury as a result of the troubles related incident (in accordance with section 10 of the Northern Ireland (Executive Formation etc) Act 2019 ("the 2019 Act"). The Victims' Payments Board is required to determine the amount of victims' payments payable to the applicant and to make payments by whatever means it considers appropriate. The payments must be made monthly unless the facts of the case mean that other arrangements are more appropriate and the first payment must be made as soon as reasonably practicable after the determination of the amount of the victims' payments payable to the person. The Court said these provisions are consistent with the statutory purpose of the 2019 Act.

Schedule 1 of the 2020 Regulations deals with various funding issues some of which are permissive and others mandatory. In paragraph 9 of Schedule 1, the Executive Office may make to the Department grants of such amounts as the Executive Office determines for the purpose of funding the cost of exercising the administrative functions of the Board and the payment of victims'

¹ The panel was the Lord Chief Justice, Lord Justice Treacy and Mr Justice O'Hara. The Lord Chief Justice delivered the judgment of the Court.

² The Victims' Payments Regulations 2020 (2020 SI No. 103)

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payments, lump sums and subsistence expenses but the Board must pay to the Executive Office all sums received by it in the course of, or in connection with, the exercise of the Board's functions. The Court said it would defeat the purpose of the 2020 Regulations if the funding of the payment of victims' payments or lump sums was a discretionary decision for the Executive Office and it was necessary, therefore, to review the use of language in respect of funding issues in Schedule 1 in order to understand their effect.

The Court said the starting point in paragraph 9(1) of the 2020 Regulations in respect of the funding obligations of the Executive Office is that the paragraph contemplates a determination by the Executive Office for the purpose of the funding. In other words this provision contemplates an assessment of the cost of administrative functions, the extent of victims' payments and lump sums and reasonable expenses. All of those matters will require authentication or carefully considered estimation of anticipated liabilities. The Executive Office is not required to accept the estimates that may be advanced by the Board but in order to satisfy the statutory purpose it must make a determination of the funding requirement for the three matters set out in Paragraph 9(1). The Court said that is the reason why the funding is couched in permissive terms while the obligation on the Board to pay to the Executive Office all sums received by it in the course of or in connection with the exercise of its functions does not require the same discretionary decision-making:

"In our view the statutory purpose set out in section 10 of the 2019 Act and the internal coherence of the 2020 Regulations imposing an obligation on the Board to effect payments as soon as reasonably practicable both lead to the imposition of a legal duty on the Executive Office to fund victims' payments and lump sums having carried out the accounting exercises appropriate to the expenditure of public money."

The Court noted that the trial judge was dissuaded from coming to that view in particular by the decision in Department of Justice v Bell and the Ombudsman [2017] NICA 69. That was a case concerning the funding of the Ombudsman by the Department of Justice and the relevant statutory provision required the Department to pay to the Ombudsman such sums as appeared to the Department to be appropriate for defraying the expenses of the Ombudsman under the Act. The court in that case concluded that the Department of Justice had a statutory discretion with a wide latitude with which the court should not interfere. The Court in this case, however, considered that the Bell case was dealing with a completely different statutory provision that was of no real assistance in the interpretation of the obligations falling to the Executive Office under the 2020 Regulations. It also concluded that the apparently permissive wording of Regulation 9(1)(b) of the 2020 Regulations does not prevent the imposition of a duty to pay.

Conclusion

The Court declared that there is a legal duty on the Executive Office to fund victims' payments and lump sums under the 2020 Regulations so that the Board can make the necessary payments in accordance with Regulation 23. It expressed no view on the dispute between the Northern Ireland Executive and the Northern Ireland Office on the source of the funding. The Court adjourned the appeal for four weeks to allow the parties to find an agreed solution. If that is not possible the case will be relisted on notice to the Department of Finance as an additional notice party.

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NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

ENDS

If you have any further enquiries about this or other court related matters please contact:

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