

Judicial Communications Office

21 August 2020

COURT RULES IN VICTIMS' PAYMENTS CHALLENGE

Summary of Judgment

Introduction

Sitting in the High Court today, Mr Justice McAlinden delivered judgment in the case of Jennifer McNern (applicant) and the Executive Office (respondent) and the Secretary of State for NI (notice party) and Brian Turley (applicant) and the Executive Office and the Secretary of State for NI (respondents).

This application for judicial review was brought by two individuals who claimed entitlement to payments under the Victims' Payments Regulations 2020 ("the 2020 Regulations"), made under sections 10 to 13 of the Northern Ireland (Executive Formation etc) Act 2019 ("the 2019 Act"), an Act of the United Kingdom Parliament. Section 10(1) of the 2019 Act which came into force on 22nd October, 2019, imposed a duty upon the Secretary of State for Northern Ireland:

"by regulations to 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."

This is further to the commitment set out in paragraph 28 of the 2014 Stormont House Agreement to find a way to provide a "pension" for those most seriously injured in the Troubles.

Section 10(2) of the 2019 Act mandated that the first regulations made under sub-section (1) had to be made before the end of January, 2020 and had to come into force before the end of May, 2020.

In order to comply with his statutory duty, the Secretary of State for Northern Ireland made the 2020 Regulations on 31st January 2020.

Under regulation 1 a number of these Regulations came into force on 24th February 2020 and the remainder came into force on 29th May 2020. Regulation 3 and Schedule 1 which established and made further provision for the Victims' Pension Board (a corporate body) came into effect on 24th February, 2020 as did paragraph 4(1) of Schedule 2 which specifically required the Board to "make arrangement for guidance to be issued to health care professionals regarding the assessment of the degree of relevant disablement." Paragraphs 1, 4 and 5 of Schedule 3 also came into force on 24th February, 2020 and these also specifically relate to the statutory recognition of the Board.

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The Regulations which came into effect on 29th May, 2020 included those in Parts 3 to 8 of the Regulations and the other provisions of Schedules 2 and 3. Part 3 of the Regulations sets out the parameters of entitlement to the scheme.

The Challenge

The Applicants both challenged the alleged failure of the Executive Office to comply with its obligation set out in paragraph 2(1) of Schedule 1 to the 2020 Regulations to designate a Northern Ireland Department to exercise the administrative functions of the Victims' Payments Board established by regulation 3(1). They also alleged that the Executive Office's failure to make any grants to the designated Department under paragraph 9 of Schedule 1 is unlawful.

Mr Turley additionally alleged that if the provisions of paragraph 2(1) and paragraph 9(1) of Schedule 1 could be interpreted as not imposing a requirement upon the Executive Office to designate a Department and provide grant funding to that Department within the period between 24th February, 2020 and 29th May, 2020 but instead enable the Executive Office, for political reasons, to delay taking such steps until outstanding political issues can be resolved, then the Secretary of State has failed to comply with his statutory duty imposed upon him by the provisions of the 2019 Act because he has failed to enact regulations which establish an effective and workable scheme under the law of Northern Ireland which provides for payments to be made to or in respect of a person who has sustained an injury as a result of a Troubles-related incident.

Judgment

Delivering judgment in the High Court today, Mr Justice McAlinden ruled that:

- The Secretary of State has complied with his statutory duty and has made Regulations to 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. Their meaning is clear and they can only be interpreted as meaning that the Victims' Payments Scheme would be ready to come into operation from the end of May, 2020¹;
- It is incumbent upon the Executive Office to forthwith designate a Department under paragraph 2(1) of Schedule 1 to the Victims' Payments Regulations 2020 to exercise the administrative functions of the Victims' Payments Board on the Board's behalf²;

¹ Paragraph 34

² Paragraph 30(a)

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- The actions of the Executive Office in deliberately refusing to designate a Department and thus stymieing the implementation of the scheme in order to pressurise the Secretary of State for Northern Ireland to make a different scheme which will be substantially directly funded by Westminster and which will have very different entitlement rules constitutes unlawful action on the part of the Executive Office. The Executive Office has acted unlawfully in deciding to refuse to designate a Department in an effort to have the lawful scheme promulgated in the Victims' Payments Regulations 2020 replaced by a different scheme. It is clearly unlawful for the Executive Office to deliberately refuse to comply with a legal requirement set out in a legislative scheme promulgated by the Westminster Parliament in order to force changes to that legislative scheme³;
- In circumstances where the 2020 Regulations do not make specific provision for the funding of the Victims' Payments scheme other than under paragraph 9 of Schedule 1 to the Regulations, the permissive language contained in paragraph 9(1) may in certain circumstances impose a duty on the Executive Office to provide grant funding to the designated Department. Such a duty could arise immediately upon the designation of a Department by the Executive Office and the circumstances in which such a duty would arise would include the situation where the Executive Office has already succeeded in obtaining funding from the Department of Finance for the establishment and operation of the Victims' Payments scheme⁴.

NOTES TO EDITORS

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

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³ Paragraph 30(b)

⁴ Paragraph 33