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Comparative analysis of the Historical Institutional Abuse Redress Board

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A paper for the Committee for the Executive Office, comparing the Historical Institutional Abuse Redress Board of Northern Ireland with similar redress schemes in other countries, and with the Troubles Permanent Disablement Payment Scheme.

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Key Points

- This paper is delivered in response to a request from the Committee for the Executive Office. The Committee's request sought comparison of the Historical Institutional Abuse ('HIA') Redress Board with redress schemes in other countries, and comparison with the Victims' Payments Regulations 2020, which establish the Troubles Permanent Disablement Payment Scheme.
- The paper first compares the HIA Redress Board with current and previous redress schemes in the Republic of Ireland ('RoI'), Scotland, Canada and Australia. The Board is then compared to the Troubles Permanent Disablement Payment Scheme.
- The Historical Institutional Abuse Inquiry published its report in January 2017, shortly before the Northern Ireland Executive fell. In the absence of the Executive, the United Kingdom Parliament passed the Historical Institutional Abuse (Northern Ireland) Act 2019 (the 'HIA Act'). The Act has two main effects: the creation of a Commissioner for Survivors of Institutional Childhood Abuse, and the establishment of the Historical Institutional Abuse ('HIA') Redress Board.
- Under the HIA Act, a person can apply to the HIA Redress Board for compensation, if that person suffered abuse while a child and resident in an institution between the years 1922 through 1995. The Act specifies Scheme procedures including application, assessment, awards and interim payments, and review processes.
- Article 15 of the HIA Act establishes that any redress payment made by the HIA Redress Board is disregarded for purposes of tax, national insurance, means-tested benefits, care home cost support and means-tested legal aid support.

However, the Act only applies to Northern Ireland. This means that recipients of HIA redress payments who reside in Great Britain are potentially subject to tax and national insurance deductions, as well as reductions in means-tested benefits, care home cost support and legal aid. In May 2021, the Department of Work and Pensions advised RalSe that they are working with the Northern Ireland Civil Service and Northern Ireland Office to resolve this issue.

- Prior to the HIA Act's passage, the Executive Office consulted on draft HIA legislation between late 2018 and early 2019. The Act as passed differs from views expressed in that consultation in a number of areas, in particular the adjudicatory nature of Redress Board proceedings:
 - The judicial nature of the Redress Board, and the application and appeal process
 - Processes for use of written and/or oral evidence
 - How payments are calculated and structured

HIA redress schemes across the world

- This paper compares the HIA Redress Board of Northern Ireland with two redress schemes in RoI, as well as schemes in Scotland, Canada and Australia. This comparison highlights several points of difference between the Northern Irish scheme, and one or more of the others considered. These are summarised below:

- **Decision makers.** HIA Redress Board decision makers are judicial in nature. Current or former judges chair decision-making panels, and individual judges are responsible for considering appeals.

The other redress schemes considered generally do not require their decision makers to have legal qualifications or background. Instead, legal qualifications are one of multiple criteria – including expertise in trauma, social work, health, counselling and child protection – used by other schemes when appointing decision makers.

- **Application.** Applications to the HIA Redress Board are in writing, and applicants can include supplementary evidence. Where an applicant has previously engaged with the HIA Inquiry, they can direct the Redress Board to use this information when considering their application.

Some other redress schemes had flexibility in this regard. In RoI, applicants could choose to submit their application orally or in writing; in Australia, applicants can circle relevant words and phrases provided, when describing the impact of abuse.

- **Prioritisation.** In Northern Ireland, the President of the HIA Redress Board must prioritise based on age, and available health information. This is also the case in RoI and Scotland, but the other schemes considered did not prioritise in this way.

- **Interim payments.** In Northern Ireland, panels can award £10,000 to individual applicants in advance of a final decision.

In RoI, panels could similarly award interim payments of €10,000 to individual applicants. In Scotland, the Scottish Government made advance payments of £10,000 to elderly and terminally ill survivors before the redress scheme commenced, but there are no interim payments within the scheme itself.

- **Assessment.** In Northern Ireland, panels consider evidence submitted and can permit and compel fresh evidence, including oral hearings in exceptional circumstances. Oral hearings of the HIA Redress Board are ‘non-adversarial’, but ‘some questions are direct and sometimes probing.’

In general, other redress schemes involve the review of documentary and oral evidence. In Scotland, however, it is envisioned that applications will be considered largely on documentary evidence, and in Australia there are no oral hearings whatsoever. Finally in Canada, applicants could choose the location of oral hearings (within reason) to ensure a relaxed and comfortable setting.

- **Awards.** In Northern Ireland, awards range from £10,000 to £80,000 per claimant.

In general, other redress schemes offered higher awards. ROI awards were generally for up to €300,000 and could exceed this; Scottish awards can reach £100,000; Canadian payments could reach \$275,000 with significant additional sums for care needs and income loss; and Australian payments can reach \$155,000.

Notably, one element of the Canadian scheme – the ‘Common Experience Payment’ – employs a different payment structure. To receive the Common Experience Payment, an applicant does not have to demonstrate abuse has occurred: that applicant will receive \$10,000 solely for attending a residential school, and a further \$3,000 for every year they spent there.

- **Reviews.** In Northern Ireland, applicants must lodge appeals within 21 days of receiving the original decision. Individual judges consider appeals, and can request or compel further evidence, including oral hearings.

In other schemes, applicants typically have one to six months to request a review. Decision makers are generally not required to have legal backgrounds. In Canada, reviews do not include further oral hearings. In Scotland, review panels may not reduce the original offer in any way.

- **Where applicant has committed offence.** In Northern Ireland, an applicant remains entitled to compensation, even where that person has been convicted of an offence.

In some other schemes, the rules are more stringent. In Scotland, if the applicant has been convicted of a serious offence, the panel must determine whether it is in the public interest to award them redress payments. In Australia, persons cannot apply if they are currently in jail, or have ever been sentenced to more than five years in jail.

- **Where applicant has reached previous settlement.** In Northern Ireland, where a person has an ongoing court action, that individual may make an application to the HIA Redress Board if:

- (i) The court action is dismissed due to statute of limitations expiration, or withdrawn so the person can apply to the HIA Redress Board instead
- (ii) The application to the Board is to address abuse suffered at an institution managed by a different body/society/organisation than that of the court action.

Where a HIA Redress Board applicant has reached a previous settlement, the applicant is entitled to apply. However, the value of any award is reduced to account for the value of this previous settlement

This is the case with several other schemes. In Canada, an applicant can apply for redress even if that person reached a court settlement before 30th May 2005. Redress Scotland permits applications where the applicant has reached a previous settlement, but the value of this settlement is then deducted from any award.

HIA Redress Scheme & Troubles Permanent Disablement Payment Scheme

- The UK Parliament passed the Northern Ireland (Executive Formation etc.) Act 2019. Amongst other measures, this required the Secretary of State for Northern Ireland to make regulations establishing a victims' payment scheme, coming into force no later than May 2020.
- The Victims' Payment Regulations 2020 create the Troubles Permanent Disablement Payment Scheme ('Troubles Payment Scheme'). The Executive Office nominated the Department of Justice to provide support to the Victims' Payments Board, which will deliver this Scheme. The current intention is for the Scheme to open for applications from 31st August 2021.
- This paper compares the HIA Redress Board of Northern Ireland with the Troubles Permanent Disablement Payment Scheme, as established by the Victims' Payments Regulations 2020. This comparison highlights several points of difference between the HIA Redress Board and the Troubles Payment Scheme. These are summarised below:
 - **Eligibility.** A person can apply to the HIA Redress Board for compensation, if that person suffered abuse while a child and resident in an institution between the years 1922 through 1995.

The criteria for the Troubles Payment Scheme is broader. A person is eligible for the Troubles Payment Scheme if that individual suffered permanent disablement of at least 14% from a Troubles-related incident. That incident must have taken place in the UK, or in Europe – where the applicant has British citizenry, Northern Irish residency rights, or the applicant or applicant's family was working for the Crown whilst outside the UK.

- **Decision makers.** HIA Redress Board decision makers are judicial in nature. Current or former judges chair decision-making panels, and individual judges are responsible for considering appeals.

Decision makers for the Troubles Payment Scheme are judicial and medical in nature. Normally, a Panel of one legal member (a barrister or solicitor of 5 years' standing) will make decisions. In certain circumstances, Panels of three members – including medical practitioners and 'ordinary members' – will make decisions. Finally, the President of the Victims' Payments Board can delegate the decisions of one-member legal Panels to staff.

- **Application.** Applicants must provide written applications with supporting evidence to the HIA Redress Board within five years of the HIA Redress Scheme opening.

Written applications to the Victims' Payments Board must also be submitted within five years. However, the Secretary of State can extend this date, and applications may be allowed after this time in certain circumstances.

- **Prioritisation.** The President of the HIA Redress Board must prioritise based on age, and available health information.

The Victims' Payments Board can also do this, but is not actively required to do so. The Board is only specifically required to give priority to applicants who disclose that they are terminally ill.

- **Interim payments.** HIA Redress Board panels can award £10,000 to individual applicants in advance of a final decision.

Where a Troubles Payment Scheme applicant cannot have their permanent disablement assessed, interim assessments and associated payments can last for up to four years, before the panel must reach a final assessment.

- **Assessment.** HIA Redress Board panels consider evidence submitted and can permit and compel fresh evidence, including oral hearings in exceptional circumstances. These are 'non-adversarial', but 'some questions are direct and sometimes probing'.

Troubles Payment Scheme assessments require the panel to determine that a Troubles-related incident caused permanent disablement, and a health care professional to determine the extent of disablement. Unlike the HIA Redress Board, this initial assessment does not involve oral hearings in any circumstances.

- **Awards.** HIA redress awards range from £10,000 to £80,000 for each applicant.

Troubles Payment Scheme payments currently range from £2,014 to £10,071 per year, for each applicant.

- **Review.** HIA redress applicants must lodge appeals within 21 days of receiving the original decision. Individual judges consider appeals, and can request or compel further evidence, including oral hearings.

Troubles Payment Scheme applications must be lodged within one year, although the President of the Victims' Payments Board can permit appeals after this. Appeal Panels have three members. The Panel can reconsider the original application, require new medical assessments, and hold oral hearings under oath.

- **Where applicant has committed offence.** A HIA Redress Board applicant remains entitled to compensation, even if that individual has been convicted of an offence.

Troubles Payment Scheme applicants are not entitled to awards where they have a conviction relating to the incident for which they have applied. In addition, where an applicant has a conviction excluded from rehabilitation across the UK, the Victims' Payments Board must consider whether making payments would be appropriate. Finally, the Board President can remove entitlement in exceptional circumstances.

- **Where applicant has reached previous settlement.** In Northern Ireland, where a person has an ongoing court action, that individual may make an application to the HIA Redress Board if:

- (i) The court action is dismissed due to statute of limitations expiration, or withdrawn so the person can apply to the HIA Redress Board instead
- (ii) The application to the Board is to address abuse suffered at an institution managed by a different body/society/organisation than that of the court action.

Where a Troubles Payment Scheme applicant has received previous compensation, they remain entitled to apply. The Victims' Payments Board must take their previous compensation into account when calculating their award, but the treatment of this compensation appears more generous than the HIA Redress Board. Specifically, the Victims' Payments Board must calculate what the victim would have received if they had received victims' payments from the time of the incident, and then exempt this from any reduction.

- **Treatment of payments and ‘disregards’.** HIA redress payments are disregarded for purposes of tax, national insurance, means-tested benefits, care home cost support and means-tested legal aid support. However, this does not currently apply to applicants residing in Great Britain. This means that those recipients are potentially subject to tax and national insurance, as well as reductions in means-tested benefits and payments.

Across the UK, Troubles Payment Scheme recipients are disregarded in a narrower set of circumstances. Payments are disregarded for the purposes of means-tested benefits, benefit recovery schemes, care home accommodation or repayment of criminal injury compensation. However, payments are subject to tax and national insurance, and would be considered when means-testing for legal aid and Access to Justice.

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1 Introduction

This paper is delivered in response to a request from the Committee for The Executive Office. The Committee's request sought comparison of the Historical Institutional Abuse ('HIA') Redress Board with redress schemes in other countries, and comparison with the Victims' Payments Regulations 2020, which establish the Troubles Permanent Disablement Payment Scheme.

The paper is structured as follows:

- Section 2 briefly details the background to the HIA Redress Board for Northern Ireland.
- Section 3 compares the Northern Irish HIA Redress Board with similar redress schemes across the world: specifically, those in the Republic of Ireland ('RoI'), Scotland, Canada and Australia.
- Section 4 details the background to the Troubles Permanent Disablement Payment Scheme. The Northern Irish HIA Redress Board is then compared to that Scheme.

2 HIA Redress Board

This section briefly details the background to the HIA Redress Board.

2.1 Background

In September 2011, the Northern Ireland Executive announced that it would create an inquiry into abuse in residential homes in Northern Ireland.¹ In May 2012, the First and deputy First Ministers announced agreed terms of reference for the inquiry:

The NI Executive's Inquiry and Investigation into historical institutional abuse will examine if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 1922-1995.

[. . .]

The Inquiry and Investigation under the guidance of the Panel will make as many preparations as practicable prior to the passing of the relevant legislation, this will include the commencement of the research element. Commencement of the work of the Acknowledgement Forum is not dependent upon the commencement of legislation and will begin its work as soon as practicable.

The Chair of Investigation and Inquiry Panel will provide a report to the Executive within 6 months of the Inquiry conclusion. If additional time is required the Chairman will, with the agreement of the Panel, request an extension from the First Minister and deputy First Minister which will be granted provided it is not unreasonable.

The Inquiry and Investigation will take the form of

- *an Acknowledgement Forum,*
- *a Research and Investigative team and*
- *an Inquiry and Investigation Panel with a statutory power which will submit a report to the First Minister and deputy First Minister.*²

After the First and deputy First Ministers extended the deadline for the Inquiry's report,³ this was published on 20th January 2017, shortly before the Executive fell.⁴

In the absence of the Executive, the Head of the Northern Ireland Civil Service wrote to the Northern Ireland Office. He noted that decisions would ultimately be for Executive Ministers, but proposed that the Executive Office commence drafting legislation on two specific recommendations from the Inquiry Report: establishing a commissioner for survivors of abuse, and establishing a redress board to administer compensation payments to survivors of HIA.⁵

¹ See <https://www.bbc.co.uk/news/uk-northern-ireland-25637486>, retrieved on 7th June 2021

² Northern Ireland Assembly, *Office of the First Minister and deputy First Minister: Written Ministerial Statement* (2012)

³ The Inquiry into Historical Institutional Abuse (Amendment of Terms of Reference) Order (Northern Ireland) 2015

⁴ Report chapters are available at <https://www.hiainquiry.org/historical-institutional-abuse-inquiry-report-chapters>

⁵ Northern Ireland Office, *Historical Institutional Abuse (Northern Ireland) Act 2019: Explanatory Notes* (2019) p5

This legislation was subsequently drafted, and consulted on between November 2018 and March 2019.⁶ Given the continuing absence of Ministers at that time, the Secretary of State asked Northern Irish political parties to discuss and resolve issues that would normally require Ministerial decisions. Following these talks, the UK Parliament passed the Historical Institutional Abuse (Northern Ireland) Act 2019 (the ‘HIA Act’).

The Act has two main effects – the establishment of a ‘HIA Redress Board’, and the creation of a ‘Commissioner for Survivors of Childhood Institutional Abuse’.

2.2 HIA Redress Board

The Act applies only to Northern Ireland.⁷ It creates the HIA Redress Board, an independent body to deliver the recommendations for redress in the HIA Inquiry Report.⁸ The President of the Board and all other ‘judicial members’⁹ are appointed by the Lord Chief Justice of Northern Ireland, and the Executive Office appoints all other Board members.¹⁰

The Act further details how the Redress Board will operate, including the following:

- Eligibility
- Decision makers
- Application
- Prioritisation
- Interim payments
- Assessment
- Awards
- Review
- Where applicant has committed offence
- Where applicant has reached previous settlement
- Status of any redress payment and ‘disregards’

2.3 Commissioner for Survivors of Institutional Childhood Abuse

The Act also creates a Commissioner for Survivors of Institutional Childhood Abuse, with the principal aim of:

*[. . .] promot[ing] the interests of any person who suffered abuse while a child and while resident in an institution at some time between 1922 and 1995 (both inclusive).*¹¹

In relation to the HIA Redress Board, the Commissioner has multiple functions. Specifically, the Commissioner:

⁶ The Executive Office, *Historical Institutional Abuse Consultation – Report on Responses* (2019)

⁷ *The Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 32

⁸ As cited immediately above, Sch.1 para. 4

⁹ As per Sch. 1 para. 5 of the Act, a ‘judicial member’ means current or former judges of the Court of Judicature of Northern Ireland, or current or former judges and deputy judges of any county court of Northern Ireland.

¹⁰ As cited in footnote 7, Sch. 1 para. 5

¹¹ *The Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 22

- Must publicise the role of the Board
- Must provide general advice and information to people considering whether to make an application to the Board
- Must monitor the operation of the Board
- May establish a panel of solicitors with the expertise to assist applications and appeals to the Board¹²

The First and deputy First Ministers appointed the first Commissioner for Survivors of Institutional Childhood Abuse in October 2020.¹³

On 21st April 2021, the Commissioner briefed the Committee for the Executive Office, and stated that it could take up to ten years for the HIA Redress Board to process redress applications, at current rates.¹⁴

In response to an Assembly Question on 14th May 2021, the First and deputy First Ministers advised that the Redress Board had considered 629 applications, with total awards of £13.4 million to successful claimants. The Ministers further advised that the President of the Redress Board had recently met with victims and survivors' groups, and officials would work with the Commissioner to:

*...look at all aspects of the applicant journey, to identify what is working well; where there is scope for improvement; and where further support can be provided. This will of course involve input from victims' and survivors' representatives.*¹⁵

2.4 Points where HIA Act differs from consultation responses

As detailed in section 2.1 above, the Executive Office consulted on draft HIA legislation between November 2018 and March 2019. The provisions of the HIA Act as passed differ from the views expressed in that consultation in some areas. These include the following:

- A majority of respondents did not agree that the Redress Board should be judicial-led, and suggested a multidisciplinary Board incorporating legal, health and social care professionals.¹⁶
- A majority of respondents supported the right to appeal, but many felt appeals should be to a multi-disciplinary panel (rather than a single judicial member) and should include oral evidence.¹⁷
- There was a broad range of views on written and oral evidence. Some respondents felt oral hearings should be avoided altogether to prevent further

¹² *The Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 28

¹³ NIA OR 6 October 2020, p20

¹⁴ See <https://www.bbc.co.uk/news/uk-northern-ireland-56835374>, retrieved on 7th June 2021

¹⁵ AQO1969/17-22

¹⁶ The Executive Office, *Historical Institutional Abuse Consultation – Report on Responses* (2019) p9

¹⁷ As cited immediately above, p10

trauma, while others felt applicants should be given the option of oral hearings, as some may find it difficult to describe their experiences in writing.¹⁸

- Many respondents suggested a different structure for payments – including, for example, a standard £3,000 for every year spent in an institution.¹⁹

Many of these suggestions are reflected in HIA schemes in other countries. These schemes are considered in the following section.

¹⁸ The Executive Office, *Historical Institutional Abuse Consultation – Report on Responses* (2019) p10

¹⁹ As cited immediately above, p14

3 HIA redress schemes across the world

This section compares the HIA Redress Board of Northern Ireland with similar redress schemes across the world.

Following discussions with Committee staff, RaISe considered current and recently closed redress schemes in RoI, Scotland, Canada and Australia. The Independent Inquiry into Child Sexual Abuse in England and Wales was also researched; however, that inquiry has not yet completed its final report and there is no comparable redress scheme in England and Wales.²⁰

Tables 1a to 1k, beginning overleaf, compare the Northern Irish HIA Redress Board with five other redress schemes, on the following grounds:

- Purpose
- Eligibility
- Decision makers
- Application
- Prioritisation
- Interim payments
- Assessment
- Awards
- Review
- Where applicant has committed offence
- Where applicant has reached previous settlement

²⁰ The UK Government Department for Health and Social Care launched a 'Payment Scheme for former British Child Migrants' delivered by the Child Migrants' Trust, in 2019. However, this was a small, non-legislative scheme and is not particularly comparable to the HIA Redress Board for Northern Ireland. See <https://www.gov.uk/government/news/payment-scheme-for-former-british-child-migrants> and <https://www.childmigrantstrust.com/news/2019/1/30/ex-gratia-payment-scheme-for-former-british-child-migrants>, accessed 28th May 2021

Table 1: HIA schemes across the worlda) Purpose

Scheme	Purpose
1 - HIA Redress Board (Northern Ireland)	To deliver the recommendations for redress in the HIA Inquiry report. ²¹
2 – Residential Institutions Redress Board (RoI)	To make ‘fair and reasonable’ awards to children abused while at industrial schools, reformatories and other state-regulated institutions. ²²
3 – Caranua (RoI)	To provide funding for ‘approved services’ – including housing, mental health and personal social support – to former residents of residential institutions. ²³
4 - Redress Scotland	To acknowledge and provide tangible recognition of harm, resulting from historical child abuse, in various care settings in Scotland. ²⁴
5 – Indian Residential Schools Settlement Agreement (Canada)	To deliver a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools. ²⁵
6 – National Redress Scheme (Australia)	To deliver redress for survivors of abuse, as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse. ²⁶

b) Eligibility

Scheme	Eligibility
1 - HIA Redress Board (Northern Ireland)	If a person suffered abuse between 1922-1995 (inclusive) while a child, and resident in an institution. ²⁷

²¹ *The Historical Institutional Abuse (Northern Ireland) Act 2019*, Sch.1 para. 4

²² *Ireland Residential Institutions Redress Act 2002*, art. 5; see also <https://www.rirb.ie/>, retrieved on 7th June 2021

²³ *Ireland Residential Institutions Statutory Fund Act 2012*, art. 7

²⁴ Scottish Parliament, *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill: Policy Memorandum (2020)* p2

²⁵ Canada, the Assembly of First Nations and Inuit Representatives and the Anglican, Presbyterian, United & Roman Catholic Churches, *Indian Residential Schools Settlement Agreement 2006*) p6

²⁶ See <https://www.nationalredress.gov.au/>, retrieved 26th May 2021; see also Royal Commission into Institutional Responses to Child Sexual Abuse, *FINAL REPORT: Preface and Executive Summary (2017)* p176

²⁷ As cited in footnote 21, art. 2

Scheme	Eligibility
1 - HIA Redress Board (Northern Ireland) (continued)	Where a person has died after 28 th April 1953, a surviving spouse, civil or cohabiting partner or surviving children can apply, if that individual is a 'residuary beneficiary' of the person's estate. ²⁸
2 – Residential Institutions Redress Board (RoI)	If a person was resident in an institution during childhood, and injured in a way consistent with abuse alleged to have occurred. ²⁹ Where a person has died on or after 11 th May 1999, that person's children or spouse may make an application. ³⁰
3 – Caranua (RoI)	Any person who received an award from the Residential Institutions Redress Board (or would have, but for court or private settlements) – see immediately above. ³¹
4 - Redress Scotland	If a person was abused as a child, while resident in a 'relevant care setting', before 1 st December 2004. ³² Where a person died on or after 1 st December 2004, that individual's spouse, civil partner, cohabitant, children or stepchildren can make an application – known as a 'next of kin' application. ³³
5 – Indian Residential Schools Settlement Agreement (Canada)	Eligibility for the Common Experience Payment (CEP) is having attended an Indian Residential School before the end of 1997, and being alive on 30 th May 2005. ³⁴ Eligibility for an Independent Assessment Process (IAP) Payment is meeting the above CEP criteria, and having experienced sexual or physical assaults whilst attending an Indian Residential School. ³⁵

²⁸ *The Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 6(1)

²⁹ *Ireland Residential Institutions Redress Act 2002*, art. 7

³⁰ As cited immediately above, art. 9

³¹ *Ireland Residential Institutions Statutory Fund Act 2012*, art. 3

³² *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*, art. 18

³³ As cited immediately above, arts. 24-28

³⁴ Canada et. al, *Indian Residential Schools Settlement Agreement* (2006) pp12-13

³⁵ Canada et. al., *Indian Residential Schools Settlement Agreement: Schedule D – Independent Assessment Panel* (2006) pp2-5

Scheme	Eligibility
5 – Indian Residential Schools Settlement Agreement (Canada) (continued)	If a person dies on or after 30 th May 2005, and has submitted their CEP application, the payment can be made to their Personal Representative. ³⁶
6 – National Redress Scheme (Australia)	Any person who was born before July 2010, experienced institutional child sexual abuse before July 2018, is an Australian citizen or permanent resident, and where the institution has joined the National Redress Scheme. ³⁷ If a person dies after commencing an application, the scheme considers that person's application as though they were alive. Any payment is made in accordance with that person's will, and the law concerning disposing of property of deceased persons. ³⁸

c) Decision makers

Scheme	Decision makers
1 - HIA Redress Board (Northern Ireland)	HIA Redress Panels are chaired by a 'judicial member' (current/former judges in certain NI courts), and include two other non-judicial members. ³⁹
2 – Residential Institutions Redress Board (RoI)	'Reasonable balance' requirement between men and women for Board members, but no requirement for legal or judicial background. A judge was appointed Chair of the Board in 2008. ⁴⁰
3 – Caranua (RoI)	Caranua Board has 'reasonable balance' requirement between men and women for Board members, but no requirement for legal or judicial background. Currently two barristers, neither of whom is the chair. ⁴¹
4 - Redress Scotland	Redress Scotland has one chair and five other members. ⁴²

³⁶ Canada et. al, *Indian Residential Schools Settlement Agreement* (2006) p80

³⁷ National Redress Scheme, *Overview Fact Sheet* (2019) p1 and *Who Can Apply Fact Sheet* (2018) p1

³⁸ Australia *National Redress Scheme for Institutional Child Sexual Abuse Act* 2018, arts. 58-60

³⁹ *The Historical Institutional Abuse (Northern Ireland) Act* 2019, art. 8

⁴⁰ Ireland *Residential Institutions Redress Act* 2002, art. 6; see also <https://www.education.ie/en/The-Department/Agencies/Details-of-Membership-of-State-Boards/>, retrieved on 8th June 2021

⁴¹ Ireland *Residential Institutions Statutory Fund Act* 2012 art. 11; see also <https://www.education.ie/en/The-Department/Agencies/Details-of-Membership-of-State-Boards/>, retrieved on 8th June 2021

⁴² *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act* 2021, Sch. 1 para. 1

Scheme	Decision makers
4 - Redress Scotland (continued)	<p>There is no requirement for legal or judicial backgrounds, and 'it is intended to appoint persons with relevant expertise in the fields of emotional and psychological trauma, law, social work and health.'⁴³</p> <p>Redress Scotland also has the power to delegate its functions to committees and staff – who are not required to be members of Redress Scotland.⁴⁴</p>
5 – Indian Residential Schools Settlement Agreement (Canada)	<p>The Independent Assessment Process is delivered by adjudicators, led by a Chief Adjudicator.⁴⁵</p> <p>The agreement specifies criteria for adjudicators, including a mixture of legal and other skills and experience. A law degree is the first criterion, but other training and experience is considered in lieu of a law degree.</p> <p>When assigning individual adjudicators to cases, the Chief Adjudicator must have regard to individuals' expertise, and enable them to build knowledge on individual schools.⁴⁶</p>
6 – National Redress Scheme (Australia)	<p>Applications are considered by Independent Decision Makers. Judicial or legal backgrounds are not required: some decision makers have legal qualifications, but many have backgrounds in social work, nursing, counselling and child protection.⁴⁷</p>

⁴³ Scottish Parliament, *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill: Policy Memorandum* (2020) p18

⁴⁴ *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*, Sch. 1 paras 9-10

⁴⁵ Canada et. al., *Indian Residential Schools Settlement Agreement: Schedule D – Independent Assessment Panel* (2006) p24

⁴⁶ As cited immediately above, pp14-15

⁴⁷ National Redress Scheme, *How Your Application is Considered Fact Sheet* (2019) p1 and *Independent Decision Makers* (2021)

d) Application

Scheme	Application
1 - HIA Redress Board (Northern Ireland)	Written application with any supporting evidence. Applicants must submit this within five years of scheme opening. ⁴⁸ If the applicant has previously engaged with HIA Inquiry, the applicant can direct Panel to use this information. ⁴⁹
2 – Residential Institutions Redress Board (RoI)	The applicant could decide to submit an application in writing, or orally. Applications were required within three years of scheme opening; this was subsequently extended to just under six years. ⁵⁰
3 – Caranua (RoI)	Application in writing. Caranua closed to new applications in August 2018. ⁵¹
4 - Redress Scotland	Applicants choose between a Fixed Rate Application (FRA) or an Individually Assessed Application (IAA). Scottish Ministers have the power to specify the format of application. ⁵²
5 – Indian Residential Schools Settlement Agreement (Canada)	Written application for Common Experience Payment (CEP) and Independent Assessment Process (IAP) payments. ⁵³ The IAP process includes subsequent oral hearings. ⁵⁴
6 – National Redress Scheme (Australia)	Written application detailing the abuse experienced and its impacts. ⁵⁵ In describing impact of abuse, applicants can write a short statement or can ‘circle relevant words and phrases from a list’. Examples include ‘education’, ‘home life’, ‘relationships’,

⁴⁸ *Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 5. The HIA Redress Board opened to applications on 31st March 2020, and will remain open until March 2025.

⁴⁹ Historical Institutional Abuse Redress Board, *Procedural Guidance (2020)* p2

⁵⁰ *Ireland Residential Institutions Redress Act 2002*, art. 10

⁵¹ See <https://caranua.ie/faqs/application-deadline-frequently-asked-questions/>, retrieved 27th May 2021

⁵² *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*, art. 29

⁵³ Canada et. al., *Indian Residential Schools Settlement Agreement (2006)* p44, and *Schedule D – Independent Assessment Panel (2006)* pp8-9

⁵⁴ As cited immediately above, pp9-10

⁵⁵ National Redress Scheme, *Filling in the Application Fact Sheet (2018)* pp1-2

Scheme	Application
6 – National Redress Scheme (Australia) (continued)	‘physical disability’, ‘emotions’, ‘drug & alcohol use’ and ‘homelessness’. ⁵⁶ Applicants can include supporting documentary evidence. ⁵⁷ There are no oral hearings.

e) Priority

Scheme	Priority
1 - HIA Redress Board (Northern Ireland)	The President of the Redress Board has a duty to prioritise on basis of age, and available health information. ⁵⁸
2 – Residential Institutions Redress Board (RoI)	The Board must have regard to age and health of applicants, when prioritising applications. ⁵⁹
3 – Caranua (RoI)	No prioritisation.
4 - Redress Scotland	The Chair of Redress Scotland has a duty to prioritise on bases of age, and available health information. ⁶⁰
5 – Indian Residential Schools Settlement Agreement (Canada)	No prioritisation.
6 – National Redress Scheme (Australia)	No prioritisation required within the redress scheme. (‘Knowmore’, an independent legal service providing advice and support to applicants, prioritises on the bases of age and life-threatening illness. ⁶¹)

⁵⁶ National Redress Scheme, *Describing Impact in Your Application Fact Sheet* (2019) p1

⁵⁷ As cited immediately above

⁵⁸ *The Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 7

⁵⁹ *Ireland Residential Institutions Redress Act 2002*, art. (5)(1)(c)

⁶⁰ *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act*, art. 34

⁶¹ See <https://knowmore.org.au/wp-content/uploads/2020/05/For-allied-health-professionals.pdf>, retrieved on 2nd June 2021

f) Interim payments

Scheme	Interim payments
1 - HIA Redress Board (Northern Ireland)	Panel can award £10,000 to individual applicants before final decision made. ⁶²
2 – Residential Institutions Redress Board (Ireland)	Board could award €10,000 to individual applicants before final decision made. ⁶³
3 – Caranua (RoI)	No interim payments.
4 - Redress Scotland	The Scottish Government made advance payments of £10,000 to elderly and terminally ill survivors, ahead of the creation of Redress Scotland. ⁶⁴ There are no interim payments within the Redress Scotland scheme.
5 – Indian Residential Schools Settlement Agreement (Canada)	No interim payments.
6 – National Redress Scheme (Australia)	No interim payments.

g) Assessment

Scheme	Assessment
1 - HIA Redress Board (Northern Ireland)	The panel considers evidence, and can permit fresh evidence and direct oral hearings in ‘exceptional circumstances’. ⁶⁵ It can also compel persons to provide evidence. ⁶⁶ Oral evidence sessions are ‘non-adversarial’, but ‘some questions are direct and sometimes probing’. ⁶⁷

⁶² *Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 14

⁶³ *Ireland Residential Institutions Redress Act 2002*, art. 10

⁶⁴ Scottish Parliament, *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill: Policy Memorandum (2020)* pp14-15

⁶⁵ *The Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 9

⁶⁶ As cited immediately above, art. 10

⁶⁷ Historical Institutional Abuse Redress Board, *Procedural Guidance (2020)* p4

Scheme	Assessment
2 – Residential Institutions Redress Board (RoI)	Applications were considered in private setting by panels of at least two Board members. Panels could compel documentary evidence, and request oral evidence from applicants. ⁶⁸
3 – Caranua (RoI)	A ‘Caranua Advisor’ considers the application against the criteria, and makes recommendation to Director of Services. The Director makes the final decision. ⁶⁹
4 - Redress Scotland	It is envisioned that applications will be considered largely on documentary evidence. ⁷⁰ Panels will have the discretion to request oral evidence. ⁷¹
5 – Indian Residential Schools Settlement Agreement (Canada)	The IAP involves oral hearings after a written application. These hearings are defined as ‘inquisitorial’. ⁷² Alleged perpetrators have the right to be heard, and if so will normally be heard after the claimant. Adjudicators can recall an applicant or alleged perpetrator to ‘resolve a credibility issue’, but this will only happen ‘rarely’. ⁷³ Applicants can choose the location of oral hearings, within reason, to ensure a ‘relaxed and comfortable setting’. ⁷⁴
6 – National Redress Scheme (Australia)	Decision Makers consider the application and supporting evidence; this typically takes 3 to 12 months. The level of award depends on whether abuse occurred, the impact of that abuse, any further ‘institutional vulnerability’, and the presence of ‘extreme circumstances’. ⁷⁵

⁶⁸ Ireland *Residential Institutions Redress Act 2002*, art. 10

⁶⁹ See <https://caranua.ie/faqs/applying-for-services-everything-you-need-to-know-about-applying-for-support-from-caranua/>, retrieved 25th May 2021

⁷⁰ Scottish Parliament, *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill: Policy Memorandum* (2020) p43

⁷¹ *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*, art. 79

⁷² Canada et al., *Indian Residential Schools Settlement Agreement: Schedule D - Independent Assessment Panel* (2006) pp9-10

⁷³ As cited immediately above, p12

⁷⁴ Canada et al., *Indian Residential Schools Settlement Agreement: Schedule D - Independent Assessment Panel* (2006) p13

⁷⁵ Home Affairs Minister (Australia), *National Redress Scheme for Institutional Child Sex Abuse Assessment Framework* (2018) rules 5-6

h) Awards (per individual applicant)

Scheme	Awards (per individual applicant)
1 - HIA Redress Board (Northern Ireland)	£10,000 to £80,000. ⁷⁶
2 – Residential Institutions Redress Board (RoI)	Up to €300,000, and could exceed this in ‘exceptional cases’. ⁷⁷
3 – Caranua (RoI)	Not applicable (total lifetime budget of Caranua was €110 million. ⁷⁸)
4 - Redress Scotland	FRAs are for £10,000. ⁷⁹ IAAs, where awarded, are for an additional £10,000 to £90,000. ⁸⁰ This means in total, awards are for up to £100,000.
5 – Indian Residential Schools Settlement Agreement (Canada) 5 – Indian Residential Schools Settlement Agreement (Canada) (continued)	CEP is a flat payment of \$10,000 for attending a relevant school, with a further \$3,000 for every year spent there. ⁸¹ IAP uses a points-based system. IAP payments can be up to \$275,000. A further \$15,000 is available for future care, and up to \$250,000 is available where the applicant can prove income loss. ⁸²
6 – National Redress Scheme (Australia)	Up to \$150,000, with a separate amount of up to \$5,000 also available for counselling support. ⁸³ Where an applicant gets a redress offer, that person will also be entitled to ‘a direct personal response from an institution (e.g. an apology).’ ⁸⁴

⁷⁶ *The Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 12

⁷⁷ *Ireland Residential Institutions Redress Act 2002 (Section 17) Regulations 2002*

⁷⁸ *Ireland Residential Institutions Statutory Fund Act 2012*, art. 29(4)

⁷⁹ *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*, art. 38

⁸⁰ As cited immediately above, art. 39

⁸¹ Canada et. al., *Indian Residential Schools Settlement Agreement* (2006) p44

⁸² Canada et al., *Indian Residential Schools Settlement Agreement: Schedule D - Independent Assessment Panel* (2006), pp3-6

⁸³ Home Affairs Minister (Australia), *National Redress Scheme for Institutional Child Sex Abuse Assessment Framework* (2018) rules 5-6

⁸⁴ National Redress Scheme, *What You Can Apply For Fact Sheet* (2019) pp1-2

i) Review

Scheme	Review
1 - HIA Redress Board (Northern Ireland)	<p>Applicants must lodge appeals within 21 days of receiving the original decision.⁸⁵</p> <p>Appeals are considered by a single judicial member, using the same procedures used by original Panel – meaning review can include compelling of further written and oral evidence.⁸⁶</p>
2 – Residential Institutions Redress Board (RoI)	<p>Applicants had to request review within one month. A separate Review Committee considered the review: there was no requirement for judicial or legal backgrounds, though a judge chaired the Committee since 2002.⁸⁷</p> <p>The Committee had regard to initial evidence submitted, but could also take further submissions and evidence.⁸⁸</p>
3 – Caranua (RoI)	<p>Applicant has 30 days to appeal a Caranua decision. The Caranua Appeals Officer considers the appeal and can request further written and oral evidence.⁸⁹</p> <p>The applicant may further appeal to the High Court, within 28 days of the Caranua appeals process, on a point of law.⁹⁰</p>
4 - Redress Scotland	<p>Redress offers last for six months, although the panel has the ability to extend this period.⁹¹</p> <p>If an applicant wants a review, that applicant must request this within eight weeks of the offer.⁹² The review panel will have three members, none of who were involved in the original decision.</p>

⁸⁵ *The Historical Institutional Abuse Redress Board (Applications and Appeals) Rules (Northern Ireland) 2020*, rule 12(3)(b)

⁸⁶ *The Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 16

⁸⁷ *Ireland Residential Institutions Redress Act 2002*, art. 13; see also <https://www.education.ie/en/The-Department/Agencies/Details-of-Membership-of-State-Boards/>, retrieved on 8th June 2021

⁸⁸ As cited immediately above, art. 15

⁸⁹ *Ireland Residential Institutions Statutory Fund Act 2012*, art. 22

⁹⁰ As cited immediately above

⁹¹ *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*, art. 49

⁹² *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*, art. 54(3)

Scheme	Review
4 - Redress Scotland (continued)	If the review panel reaches a different decision, this new offer is valid for six months, although the panel has the ability to extend the period. ⁹³ The review panel may not find an applicant ineligible for redress; reduce the amount of redress offered; or increase deductions from redress payments. ⁹⁴
5 – Indian Residential Schools Settlement Agreement (Canada)	<p>Any party to a decision can ask for a review. Reviews are considered by the Chief Adjudicator, or an appointee of the Chief Adjudicator.⁹⁵</p> <p>The party seeking review can submit a 1500 word statement, whilst others can offer replies of up to 1000 words. In exceptional circumstances, the adjudicator may permit the party seeking review one further submission.⁹⁶</p> <p>There are no further oral hearings; the review uses existing evidence and the above statements. There is no indication of further recourse to review; the adjudicator’s decision appears to be final.⁹⁷</p>
6 – National Redress Scheme (Australia)	<p>Applicants have six months to accept an offer or request a review.⁹⁸ If an applicant requests a review, a different Decision Maker reconsiders the information initially provided – no additional information is considered.⁹⁹</p> <p>Where the original decision is upheld, the applicant has another two months to accept or decline the offer. Where a different offer is made, the applicant has six months.¹⁰⁰</p>

⁹³ *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*, art. 58

⁹⁴ As cited immediately above, art. 57(2)

⁹⁵ Canada et al., *Indian Residential Schools Settlement Agreement: Schedule D - Independent Assessment Panel* (2006) p14

⁹⁶ As cited immediately above

⁹⁷ As cited in footnote 95

⁹⁸ National Redress Scheme, *The Application Process Fact Sheet* (2019) p1

⁹⁹ National Redress Scheme, *Responding To An Offer Or Asking For A Review Fact Sheet* (2018) p2

¹⁰⁰ As cited immediately above, p2

j) Where applicant has committed offence

Scheme	Where applicant has committed offence
1 - HIA Redress Board (Northern Ireland)	Applicant remains entitled to compensation, even if convicted of an offence. ¹⁰¹
2 – Residential Institutions Redress Board (RoI)	Applicant remains entitled to compensation, even if convicted of an offence. (No specific provision in legislation. ¹⁰²)
3 – Caranua (RoI)	If a person was eligible for the Residential Institutions Redress Board (see immediately above), that person is eligible for Caranua. ¹⁰³
4 - Redress Scotland	Where an applicant has been convicted of a serious offence, the panel must determine whether it would be in ‘the public interest’ ¹⁰⁴ to make a redress payment to that person before the individual’s application is considered.
5 – Indian Residential Schools Settlement Agreement (Canada)	An applicant remains entitled to compensation, even if convicted of an offence. (No specific provision in agreement.)
6 – National Redress Scheme (Australia)	A person cannot apply if currently in jail, or has ever been sentenced to more than five years in jail. ¹⁰⁵

¹⁰¹ *Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 9(6)

¹⁰² Confirmed in email correspondence between RaiSe and Irish Department for Education officials, 28th May 2021

¹⁰³ *Ireland Residential Institutions Statutory Fund Act 2012*, art. 3

¹⁰⁴ *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*, art. 60(5)

¹⁰⁵ National Redress Scheme, *Who Can Apply Fact Sheet* (2018) p1

k) Where applicant has reached previous settlement

Scheme	Where applicant has reached previous settlement
1 - HIA Redress Board (Northern Ireland)	Applications are generally not permitted where a court has previously dismissed a claim, or where court proceedings are ongoing. ¹⁰⁶ Where an applicant has reached a previous settlement, the applicant is entitled to apply. However, the value of any award will be reduced to account for the value of this previous settlement, which is increased to account for inflation between the settlement date and the launch of the HIA Redress Board. ¹⁰⁷
2 – Residential Institutions Redress Board (RoI)	Applications were not permitted where a court or other settlement has been reached, or where a court determination has been made. ¹⁰⁸
3 – Caranua (RoI)	Not applicable.
4 - Redress Scotland	Applications are permitted where an applicant has reached a previous settlement. However, the applicant must advise of any such settlements, and their value will be deducted from any redress award. ¹⁰⁹
5 – Indian Residential Schools Settlement Agreement (Canada)	Where an applicant has reached settlement before 30 May 2005, that person can apply for CEP and IAP payment as normal. ¹¹⁰ Where an applicant reached a settlement using the Canadian Government Dispute Resolution Model, that person’s case may generally be re-opened within the IAP, or the settlement adjusted to meet IAP award levels. ¹¹¹
6 – National Redress Scheme (Australia)	Applications are not permitted if the person has already received a court-ordered payment from the institution in question. ¹¹²

¹⁰⁶ *Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 4. Where a person has ongoing court action, applications are permitted where:

- A claim has only been dismissed due to the relevant statute of limitations being expired
- A person withdraws their court proceedings in order to apply to the HIA Redress Board
- A person has ongoing court proceedings relating to one body/society/organisation, but wishes to apply to the HIA Redress Board in relation to abuse suffered at institutions managed by a different body/society/organisation

¹⁰⁷ As cited immediately above, art. 13

¹⁰⁸ *Ireland Residential Institutions Redress Act 2002*, art. 7

¹⁰⁹ *Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*, arts. 42-45

¹¹⁰ Canada et al., *Indian Residential Schools Settlement Agreement* (2006) pp76-77

¹¹¹ As cited immediately above

¹¹² National Redress Scheme, *Who Can Apply Fact Sheet* (2018) p1

4 HIA Redress Board and the Troubles Permanent Disablement Payment Scheme

This section first provides brief background to the passage of the Victims' Payment Regulations in early 2020. These regulations are then compared to the HIA Redress Board.

4.1 Commission for Victims and Survivors in Northern Ireland

The Victims and Survivors (Northern Ireland) Order 2006 ('2006 Order') created a Commissioner for Victims and Survivors in Northern Ireland.¹¹³ The Order defines a victim and survivor as:

- (a) someone who is or has been physically or psychologically injured as a result of or in consequence of a conflict-related incident;*
- (b) someone who provides a substantial amount of care on a regular basis for an individual mentioned in paragraph (a); or*
- (c) someone who has been bereaved as a result of or in consequence of a conflict-related incident.*¹¹⁴

The Commissioner's aim is to promote the interests of victims and survivors.¹¹⁵ The Commissioner has specified statutory duties and powers, including reviewing the adequacy of law and practice affecting victims and survivors; commissioning research and educational activities; and making representations on behalf of victims' and survivors' interests.¹¹⁶

In January 2008, the First Minister and deputy First Minister appointed four commissioners.¹¹⁷ This required amendment of the 2006 Order, to reflect a change from a single 'Commissioner' to the larger body of a 'Commission'.

The Order was subsequently amended by the Commission for Victims and Survivors Act (Northern Ireland) 2008, which allowed the First and deputy First Ministers to appoint as many commissioners as they wished.¹¹⁸ In effect, the 2008 Act expanded the office of the Commissioner to a whole Commission, and did not change the Commission's aim, duties or powers in any way.¹¹⁹

From 2015 to 2020, there was a Commissioner for Victims and Survivors. Since August 2020, when that Commissioner resigned, there has been no replacement.¹²⁰

¹¹³ *The Victims and Survivors (Northern Ireland) Order 2006*, as amended by the *Commission for Victims and Survivors Act (Northern Ireland) 2008*

¹¹⁴ As cited immediately above, art. 3

¹¹⁵ As cited in footnote 113, art. 5

¹¹⁶ As cited in footnote 113, art. 6-7

¹¹⁷ Northern Ireland Office, *Commission for Victims and Survivors Act (Northern Ireland): Explanatory Notes* (2008) p1

¹¹⁸ As cited in footnote 113, Sch.1 para. 3(1)

¹¹⁹ As cited in footnote 117, p2

¹²⁰ See <https://www.irishnews.com/news/northernirelandnews/2021/01/27/news/executive-office-delay-in-replacing-victims-commissioner-branded-disgraceful--2199321/>, retrieved on 8th June 2021

4.2 Proposal for £12,000 payment

In 2009, the Consultative Group on the Past presented its final report to the Secretary of State for Northern Ireland. Amongst other recommendations, the report proposed that:

*The nearest relative of someone who died as a result of the conflict in and about Northern Ireland, from January 1966, should receive a one-off ex-gratia recognition payment of £12,000.*¹²¹

This was criticised by some victims' families at the time, and the Secretary of State did not take forward the recommendation. At the time, he stated that 'the time is not right for a recognition payment' and 'there isn't a consensus' on the matter.¹²²

Initially, the Commission for Victims and Survivors supported the proposal for a '£12,000 payment to the next of kin of the dead of the conflict'.¹²³ In its 'Advice to Government' in 2010, however, the Commission withdrew that support. In doing so, the Commission cited the controversy and division caused by the proposal, as well as the fact that those seriously injured in the conflict would not receive payment.¹²⁴

4.3 Northern Ireland (Executive Formation etc.) Act 2019

In the 2014 Stormont House Agreement, signatories agreed to 'seek an acceptable way forward on the proposal for a pension for severely physically injured victims in Northern Ireland'.¹²⁵ However, at the time of the Executive's fall in January 2017, this issue had not been resolved.

In this context, the UK Parliament passed the Northern Ireland (Executive Formation etc.) Act 2019. This Act extended the period for forming the Executive, but also required the Secretary of State for Northern Ireland to make regulations in certain devolved areas, including abortion law, same sex marriage and victims' payments. Specifically, Article 10 required the Secretary of State to establish a victims' payments scheme in regulations, coming into force no later than May 2020.¹²⁶

4.4 Victims' Payments Regulations

The Victims' Payments Regulations 2020 were made on 31st January 2020, and took effect on 29th May 2020.

The regulations provide for the creation of the Troubles Permanent Disablement Payment Scheme ('Troubles Payment Scheme'), and establish the Victims' Payments Board to deliver the Scheme. Table 2 below considers the Scheme in comparison with the HIA Redress Board.

¹²¹ *Report of the Consultative Group on the Past* (2009) p12

¹²² See http://news.bbc.co.uk/1/hi/northern_ireland/7909625.stm, retrieved on 7th June 2021

¹²³ Commission for Victims and Survivors, *Advice to Government: Dealing with the Past* (2010) p9

¹²⁴ As cited immediately above, pp9-10

¹²⁵ Northern Ireland Office, *Stormont House Agreement* (2014) p6

¹²⁶ *Northern Ireland (Executive Formation etc) Act 2019*, art. 10

4.5 Judicial review

The Victims' Payment Regulations 2020 require the Executive Office to nominate a Department to provide administrative support to the Victims' Payments Board by 24th February 2020.¹²⁷ After the Executive Office failed to do so, two applicants who would potentially be eligible for victims' payments brought a judicial review of this.

The High Court of Justice in Northern Ireland issued its judgment on 21st August 2020, finding in the applicants' favour:

[27] Put in its starkest terms, the Executive Office seeks to persuade the Court that it is legitimate 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 scheme. This is a truly shocking proposition. It demonstrates either wilful disregard for the rule of law or abject ignorance of what the rule of law means in a democratic society.

[. . .]

[30] For the avoidance of any doubt, I make the following specific findings:
(a) The clear, unqualified and unconditional language of paragraph 2(1) of Schedule 1 to the 2020 Regulations can only be interpreted as imposing a duty on the Executive Office to designate a Northern Ireland Department on 24th February, 2020 or as soon as possible thereafter so as to enable the Board to be established and functioning to a limited extent before 29th May, 2020. It is incumbent upon the Executive Office to forthwith designate a Department under paragraph 2(1) of Schedule 1.

(b) 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 2020 Regulations 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 scheme.¹²⁸

In response to the ruling, the Executive Office nominated the Department of Justice to support the Victims' Payments Board.¹²⁹

¹²⁷ *The Victims' Payments Regulations 2020*, reg. 1 and Sch.1 para. 2

¹²⁸ High Court of Justice in Northern Ireland, *NIQB 57* (2020) pp11-12

¹²⁹ See <https://www.justice-ni.gov.uk/victims-payment-scheme>, retrieved on 1st June 2021

In March 2021, delivery of the victims' payments scheme was delayed by the need to provide medical guidance to applicants.¹³⁰ At the time of writing, the intention is for the Scheme to open for applications on 31st August 2021.¹³¹ Long-term funding arrangements for the Scheme have not yet been agreed between the Northern Ireland Executive and the UK Government.¹³²

¹³⁰ See <https://www.bbc.co.uk/news/uk-northern-ireland-56244726>, retrieved on 7th June 2021

¹³¹ See <https://www.bbc.co.uk/news/uk-northern-ireland-57483261>, retrieved on 16th June 2021

¹³² See <https://www.justice-ni.gov.uk/news/victims-payment-scheme>, retrieved on 8th June 2021

Table 2: Comparison of HIA Redress Board & Troubles Permanent Disablement Payment Scheme

Scheme	HIA Redress Board (NI)	Troubles Permanent Disablement Payment Scheme
Eligibility	<p>If a person suffered abuse between 1922-1995 (inclusive) while a child, and resident in an institution.¹³³</p> <p>Where a person has died after 28th April 1953, that person's surviving spouse, civil or cohabiting partner or surviving children can apply, if a 'residuary beneficiary' of that person's estate.¹³⁴</p>	<p>If a person suffered permanent disablement with an assessed degree of at least 14%, due to a Troubles-related incident between 1st January 1966 and 12th April 2010.</p> <p>The Troubles-related incident must have taken place:</p> <ul style="list-style-type: none"> • In the UK • Anywhere in Europe, provided the applicant was: <ul style="list-style-type: none"> a) a British Citizen b) a person born in Northern Ireland with at least one parent who is a British or Irish citizen, or is otherwise entitled to reside in Northern Ireland c) Outside the UK in service of the Crown, or d) An accompanying close relative of a person outside the UK in service of the Crown.¹³⁵ <p>Where a successful applicant dies, that applicant can nominate one person to continue to receive payments for a further ten years. The nominee must have been a spouse, civil partner or cohabiting partner, or a carer for the successful applicant.¹³⁶</p> <p>Where a person dies before making an application, an application can be made on their behalf by the person's spouse, civil partner or cohabiting partner; or a carer.</p>

¹³³ *The Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 2

¹³⁴ As cited immediately above, art. 6(1)

¹³⁵ *Victims' Payments Regulations 2020*, reg. 5

¹³⁶ As cited immediately above, reg. 9

Scheme	HIA Redress Board (NI)	Troubles Permanent Disablement Payment Scheme
<p>Decision makers</p>	<p>HIA Redress Panels chaired by ‘judicial member’ (current/former judges in certain NI courts) and including two other non-judicial members.¹³⁷</p>	<p>Under this Scheme, the Lord Chief Justice of Northern Ireland appoints the Chair of the Victims Payment Board. That individual must be a Court of Judicature judge, or a County Court judge or deputy judge.¹³⁸</p> <p>The Northern Ireland Judicial Appointments Commission appoints members of the Victims Payments’ Board. There are three types of members:</p> <ul style="list-style-type: none"> • Legal members (barristers or solicitors of five years’ standing) • Medical members (registered medical practitioners) • Ordinary members (where the Department of Justice is content they have appropriate knowledge or experience)¹³⁹ <p>Decisions are made by Panels of Board members. Normally, a Panel will consist of one legal member of the Board,¹⁴⁰ although the Chair of the Board retains the option of delegating the work of these Panels to staff.¹⁴¹</p> <p>In some circumstances, a Panel will include three members: one legal member (who chairs), one medical member and one ordinary member. These Panels make decisions in specific circumstances, which are:</p> <ul style="list-style-type: none"> • Where the ‘Troubles-related incident’ took place outside of the specified dates (1st January 1966 to 12th April 2010) • Where the applicant has a relevant conviction (excluded from rehabilitation across the UK), or there are exceptional circumstances • Where there is consideration of whether a person is to be treated as having been a carer for an applicant who has deceased

¹³⁷ *The Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 8

¹³⁸ *Victims’ Payments Regulations 2020*, Sch. 1 reg. 4; see also <https://www.lawsoc-ni.org/troubles-permanent-disablement-payment-scheme-for-applications>, retrieved 1st June 2021. Incidentally, the current Chair of the Board also wrote the judgment in the judicial review concerning the Victims’ Payment Regulations, in August 2020.

¹³⁹ As cited immediately above, Sch. 1 reg. 3

¹⁴⁰ As cited in footnote 138, Sch. 1 reg. 12

¹⁴¹ As cited in footnote 138, Sch. 1 reg. 12(7)

Scheme	HIA Redress Board (NI)	Troubles Permanent Disablement Payment Scheme
Decision makers (continued)		<ul style="list-style-type: none"> • Where more than one person has made an application on behalf of a deceased applicant • Where awards must be adjusted to account for past compensation
Application	<p>Written application with any supporting evidence.¹⁴² Must be lodged within five years of scheme opening.¹⁴³</p> <p>If applicant has previously engaged with HIA Inquiry, the applicant can direct Panel to use this information.¹⁴⁴</p>	<p>Written application in a form approved by the Victims' Payments Board, within five years of scheme opening (or any later date determined by Secretary of State for Northern Ireland).</p> <p>Applications can be allowed outside of this period where there has been a material change of circumstance (in terms of evidence, or the removal of a criminal conviction from the applicant), or where the President considers it equitable to allow the application.¹⁴⁵</p>
Priority	The President of the Redress Board has a duty to prioritise on basis of age, and available health information. ¹⁴⁶	<p>The Victims' Payments Board must give priority to applicants who disclose that they are terminally ill.</p> <p>The Board may also prioritise based on the age, and available information on the health, of each applicant – however they are not obliged to do so.¹⁴⁷</p>
Interim payments	Panel can award £10,000 before final decision made. ¹⁴⁸	Where the condition of the applicant does not allow their permanent disablement to be assessed by a health care professional, interim assessments (and consequent interim payments) can last for up to four years.

¹⁴² *Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 9

¹⁴³ As cited immediately above, art. 5. The HIA Redress Board opened to applications on 31st March 2020, and will remain open until March 2025.

¹⁴⁴ Historical Institutional Abuse Redress Board, *Procedural Guidance (2020)* p2

¹⁴⁵ *Victims' Payments Regulations 2020*, reg. 8

¹⁴⁶ As cited in footnote 142, art. 7

¹⁴⁷ *Victims' Payments Regulations 2020*, reg.11

¹⁴⁸ As cited in footnote 142, art. 14

Scheme	HIA Redress Board (NI)	Troubles Permanent Disablement Payment Scheme
Interim payments (continued)		After this, the health care professional must assess any disablement, so far as possible, and report this to the Panel. ¹⁴⁹
Assessment	Panel can permit fresh evidence and direct oral hearings in ‘exceptional circumstances’. Can compel persons to provide evidence. ¹⁵⁰ Oral evidence sessions are ‘non-adversarial’, but ‘some questions are direct and sometimes probing’. ¹⁵¹	<p>A Panel of the Board will consider the application and determine entitlement, subject to the applicant’s degree of relevant disablement.¹⁵² The burden of proof is on the applicant,¹⁵³ and the standard of proof is the balance of probabilities.¹⁵⁴ Panels may require any person to provide records, documents or information to assist in their determinations, which are enforceable by civil proceedings.¹⁵⁵</p> <p>Disablement is assessed by a health care professional. This assessment can include consideration of relevant information from the applicant or Board, physical examination, and reports from other health care professionals. The degree of the applicant’s disablement is assessed by comparing the applicant with an average, healthy person of the same age and gender who is not disabled.¹⁵⁶</p> <p>The health care professional then makes a report to the Board, specifying the degree of the applicant’s disablement, and the reasons for that finding.¹⁵⁷ Once the Panel has made its decision, the Board must then write to the applicant informing that person of the outcome of its assessment, the reasons for this and their right to appeal.¹⁵⁸</p> <p>Where an applicant’s disablement has become worse, that person may apply to have their disablement assessed again. Where this occurs, a health care</p>

¹⁴⁹ *Victims' Payments Regulations 2020*, reg. 14

¹⁵⁰ *Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 9

¹⁵¹ Historical Institutional Abuse Redress Board, *Procedural Guidance (2020)* p4

¹⁵² As cited in footnote 149, reg. 12

¹⁵³ As cited in footnote 149, reg. 44

¹⁵⁴ As cited in footnote 149, reg. 45

¹⁵⁵ As cited in footnote 149, reg. 29

¹⁵⁶ As cited in footnote 149, Sch. 2 para. 1

¹⁵⁷ As cited in footnote 149, reg. 13

¹⁵⁸ As cited in footnote 149, reg. 17

Scheme	HIA Redress Board (NI)	Troubles Permanent Disablement Payment Scheme
Assessment (continued)		professional completes another assessment and reports to the Board, which subsequently makes a decision and communicates this to the applicant. ¹⁵⁹
Awards (per individual applicant)	£10,000 to £80,000. ¹⁶⁰	<p>Awards are based on pensions for disabled members of the naval, military and air forces.</p> <p>The most recent rate, as set in 2020, would result in payments from £2,014 to £10,071 per year.</p>
Review	<p>An appeal must be lodged within 21 days of receiving original decision.¹⁶¹ Appeals are considered by a single judicial member, using the same procedures used by original Panel – meaning review can include compelling of further written and oral evidence.¹⁶²</p>	<p>An appeal must be lodged within one year (though the President of the Board may choose to permit appeals after this). The application must be in writing, and specify the grounds on which the appeal is made.</p> <p>Appeal Panels consist of three members, including one medical member where the appeal requires consideration of health assessments.¹⁶³</p> <p>In considering an appeal, the Appeal Panel may require new medical assessments,¹⁶⁴ reconsider material from the original application, consider advice from Board advisers,¹⁶⁵ and hold oral hearings, which may be under oath. Panels can require any person to attend such hearings.¹⁶⁶ At an oral hearing, the applicant can appear in person or appoint a representative.¹⁶⁷</p>

¹⁵⁹ *Victims' Payments Regulations 2020*, reg 33

¹⁶⁰ *Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 12

¹⁶¹ *The Historical Institutional Abuse Redress Board (Applications and Appeals) Rules (Northern Ireland) 2020*, Rule 12(3)(b)

¹⁶² As cited in footnote 160, art. 16

¹⁶³ As cited in footnote 159, reg. 35

¹⁶⁴ As cited in footnote 159, reg. 37

¹⁶⁵ As cited in footnote 159, reg. 36

¹⁶⁶ As cited in footnote 159, reg. 39

¹⁶⁷ As cited in footnote 159, reg. 40

Scheme	HIA Redress Board (NI)	Troubles Permanent Disablement Payment Scheme
Review (continued)		The Appeal Panel can confirm the original decision, or change the decision and/or an assessment of disablement. Once the decision is made, the Panel must notify the applicant in writing of the outcome of the appeal. ¹⁶⁸
Where applicant has committed offence	Applicant remains entitled to compensation, even if convicted of an offence. ¹⁶⁹	Applicants are not entitled where they have a conviction in relation to the Troubles-related incident for which they are applying. Where applicants have a ‘relevant conviction’ (which is excluded from rehabilitation across the UK), the Board must consider whether that conviction makes payments inappropriate. In addition, the President of the Board can decide that the exceptional circumstances of the case make entitlement to payments inappropriate. ¹⁷⁰
Where applicant has reached previous settlement	Applications generally not permitted where a court has previously dismissed a claim, or where court proceedings are ongoing. ¹⁷¹ Where applicants have reached prior settlements, they are entitled to apply. However, awards are reduced to account for the value of previous	Where a person is entitled to payments, but has received previous settlements for their disablement, they are entitled to apply. The Board may reduce their payments to take account of previous settlements, including to account for inflation between the Troubles-related incident and the decision on the person’s application. If doing so, the Board must ignore what the legislation calls ‘exempted compensation’. In calculating exempted compensation, the Board essentially must calculate what the victim would have received if they had received victims’ payments from the time of the incident, and then exempt this from any reduction. ¹⁷³ This appears more generous than the HIA scheme’s treatment of previous settlements. This difference reflects the fundamental underlying difference between the two schemes: the HIA Redress Board award lump sums, while the Victims’ Payments Board awards indefinite pensions.

¹⁶⁸ *Victims’ Payments Regulations 2020*, reg. 38

¹⁶⁹ *Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 9(6)

¹⁷⁰ As cited in footnote 168, reg. 6

¹⁷¹ *Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 4

¹⁷³ As cited in footnote 168, reg. 20

Scheme	HIA Redress Board (NI)	Troubles Permanent Disablement Payment Scheme
Where applicant has reached previous settlement (continued)	settlement, which is increased to account for inflation between the settlement date and the launch of the HIA Redress Board. ¹⁷²	
Treatment of payments and 'disregards'	Payments disregarded for purposes of tax, national insurance, means-tested benefits, care home accommodation, legal aid or means-tested Access to Justice. ¹⁷⁴ However, this disregard provision only extends to recipients living in Northern Ireland. ¹⁷⁵	Across the UK, victims' payments are disregarded for the purposes of means-tested benefits, care home accommodation or the repayment of any criminal injuries compensation. ¹⁷⁶ In addition, victims' payments are disregarded for purposes of benefit recovery schemes. ¹⁷⁷ However, victims' payments are subject to tax and national insurance, and would be considered in the context of means-testing for legal aid support.

¹⁷² *Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 13

¹⁷⁴ *Historical Institutional Abuse (Northern Ireland) Act 2019*, art. 15

¹⁷⁵ As cited immediately above, art. 32

¹⁷⁶ *Victims' Payments Regulations 2020*, reg. 26

¹⁷⁷ As cited immediately above, reg. 27